

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1573/MUM/2024

Assessment Year 2011-12

ITO, Ward - 8(3)(1)

617, Aaykar Bhavan,
New Marine Lines,
Mumbai - 400020
Maharashtra

..... Appellant

v/s

M/s. V Real Estate (India) Pvt. Ltd.

101, 1st Floor, 5A, Navre Apartment,
S. Vallabh Das Marg, SION (W),
Mumbai - 400022, Maharashtra
PAN: AACCV 5750B

..... Respondent

Assessee by : Shri Ramesh Chedda

Revenue by : Ms. Usha Gaikwad, Sr. AR

Date of Hearing - 04/09/2024

Date of Order - 02/12/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The Revenue has filed the present appeal challenging the impugned order dated 04.02.2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In this appeal, the Revenue has raised the following grounds: -

"1. Whether on the facts and in the circumstances of the case and in law the Ld. CITA erred in holding the unexplained cash credits as held by the AO in

the assessment order as income from other sources as improper without appreciating the fact that explanation/documentary evidences were furnished by the assessee company in this regard during the assessment proceedings which is supported by the judgments in the case of Roshan Di Hatti o CIT 119771107 ITR 937 (SC) / Kale Khan Mohammad Hanif v CIT (1963) 50 ITR 1 (SC) ?

2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in holding that income accruing to the assessee on sale of agricultural land is business income when the said transaction was not mentioned in the Memorandum & Article of Association by its object clause of the assessee company.

3. Whether on the facts und in the circumstances of the case and in law the CIT(A) erred in holding that the compensation derived out of sate of agricultural land is pertaining to 'Income from other sources' as held by A.O. is improper without appreciating the fact that no material or evidence found during the year under consideration that assessee derived income from business."

3. The brief facts of the case are that the assessee is a private limited company and is engaged in real estate development. For the year under consideration, the assessee filed its return of income on 29.09.2011, declaring a total loss at Rs. (-) 86,11,011/-. The original return of income filed by the assessee was processed vide intimation dated 15.01.2012 issued under section 143(1) of the Act accepting the returned loss. Thereafter, the assessee filed a revised return of income on 29.09.2012, wherein the loss was reduced to Rs. (-) 21,11,000/-. The case was selected for scrutiny and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. During the assessment proceedings, the assessee was asked to furnish the reasons for the revision of its return of income and the allowability of the same. In response, the assessee submitted that the land in Survey No.130/2 at Village Gota, District Ahmedabad Gujarat, which was purchased by the assessee by agreement dated 08.02.2008 for Rs.1,57,85,406/- was sold vide agreement dated 17.09.2010 for a total consideration of

Rs.2,03,00,000/- to Mr. Bharat Mansukhlal Thakkar ("Mr. Thakkar"). The said land was again agreed to be purchased by the assessee vide agreement dated 17.09.2010 for a total consideration of Rs.2,50,00,000/-. The assessee submitted that as per the said agreement, the company paid Rs.50 Lakh to Mr. Thakkar on 16.09.2010. The assessee submitted that it was further agreed in the said agreement that the seller was to settle the claims of any other party in respect of the said land and would make the title to the said land absolutely clear and marketable. It was further agreed that, in the event, the seller defaults in executing the final conveyance in favour of the assessee, then the said Agreement would be cancelled. Subsequently, the seller did not intend to execute the conveyance in favour of the assessee and accordingly vide Agreement to cancel, dated 17.03.2011, the said Agreement dated 17.09.2010 was abandoned and the assessee received the said advance money of Rs.50,00,000/- paid by it. Further, vide aforesaid Agreement to cancel dated 17.03.2011, both the parties entered into a Memorandum of Understanding dated 18.03.2011, whereby the said seller, Mr. Thakkar, paid Rs.65 lacs as compensation to the assessee. The assessee submitted that the said compensation was received subsequent to 31.03.2011, but since the right of the assessee arose to the said compensation during the year ending 31.03.2011, relevant to A.Y. 2011-12, the said compensation was included in the return of income, and the assessee filed the revised return of income reducing the loss to Rs. (-) 21,11,000/- on 29.09.2012, for the year under consideration.

4. The Assessing Officer ("AO") vide order dated 27.03.2014 passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that since the original return was processed under section 143(1) of the Act on 15.01.2012, therefore, the revised return of income filed by the assessee on 29.09.2012 is beyond the specified time period provided under the Act.

5. During the assessment proceedings, it was noticed that the assessee company has undertaken transaction in respect of agricultural land located at Village Gota, District – Ahmedabad, Gujarat and has computed the business loss on the following transactions:

"a) Agriculture land bearing Survey No. 127 & 128 admeasuring Hec 0.91.02 and 0.49.61 respectively at Village Gota, Tal Dakroi, Dist Ahmedabad, Gujarat purchased from Pravin T Kotak & Others vide agreement dated 08/02/08 for Rs. 2,52,29,022/-. The said land was sold vide agreement dated 03/06/10 to Mansukhlal Thakkar for a consideration of Rs. 3,25,00,000/-.

b) Agriculture land bearing Survey No. 130-2 admeasuring Hec 0.0.87.99 at Village Gota, Tal Daskroi, Dist. Ahmedabad, Gujarat purchased from Pravin T. Kotak & Others vide agreement dated 08/02/08 for Rs. 1,57,85,406/-. The said land was sold vide agreement dated 17/09/10 to Mansukhlal Thakkar for a consideration of Rs. 2,03,00,000/-

c) It was further claimed that the Agreement dated 17/09/10 was cancelled on the same date, 17/09/2010 and a Re-purchase deed was executed by both the parties to the said agreement viz. between the assessee company's director(s) and the said Mansukhlal Thakkar, the original purchaser. It was further stated that the assessee company repurchased the land for a consideration of Rs. 2,50,00,000/- as against Rs. 2,03,00,000/- sold earlier to Mansukhlal Thakkar.

d) It was also claimed that subsequently another Memorandum of Understanding was executed by the parties to the agreement wherein the purchase deed was again cancelled by the parties, but the said seller (Mansukhlal Thakkar) agreed to pay a compensation of Rs. 90 lakhs to the assessee company through its directors and the MOU contains the details of the payment made."

6. Accordingly, the assessee was asked to furnish the details of the transaction and also to furnish other details of the aforesaid transactions undertaken by the assessee. During the assessment proceedings, the AO raised the following queries from the assessee: -

"a) Is the assessee company engaged in business of dealing in Agriculture land(s) as per the terms and clauses of the Memorandum & Article of Association and whether the assessee company proves that the said transaction undertaken by the assessee company was within the objects of the assessee company.

b) Whether the assessed company establishes that the said land is not located within the Municipal limits of the City of Ahmedabad and is beyond the boundaries of the local limits.

c) Whether the assessee company justifies the aforesaid transaction with corroborative documents so as to establishes the genuineness of the claim made in the Return of Income and whether the transaction qualifies to be a Business transaction or is otherwise.

d) Whether the assessee company justifies the allowability and reasonability of the various expenses claimed in the Return of Income and the consequential loss computed in the Return of Income filed with the department.

e) Whether the assessee company justifies the receipt of Compensation on account of Cancellation of the Deed and whether the said receipts are to be treated as Business Receipts or is to be treated as Receipts akin to Gifts and is taxable as Income from Other Sources."

7. The AO vide order passed under section 143(3) of the Act after perusing the Memorandum and Articles of Association of the assessee concluded that the main object and other ancillary objects of the assessee do not contain any clause in respect of conducting the business in relation to agricultural land etc. and therefore, dealing in agricultural land is in contravention to the main objects and/or the ancillary objects for which the company has been incorporated. Accordingly, the AO held that the aforesaid transactions entered into by the assessee in relation to agricultural lands cannot be termed as business transactions. Further, by applying the provisions of section 50C of

the Act and treating the sale transaction of Rs.2.50 crore as the Fair Market Value, the AO computed the gain of Rs.2,33,11,012/- on the sale of the properties and treated the same as income of the assessee under the head '*income from other sources*' under section 56(1) of the Act. The AO also disallowed various expenses claimed by the assessee on the basis that the assessee has failed to substantiate that the same have been incurred wholly and exclusively for the purpose of business. Further, by referring to the Memorandum of Understanding dated 18.03.2011 entered into between the assessee and Mr. Thakkar, the AO concluded that the compensation amount mutually agreed by and between the two parties stood at Rs.90 lakh and the compensation figure is not Rs.65 lakh as claimed and computed in the return of income filed by the assessee. Accordingly, the AO added the entire sum of Rs.90 lakh to the total income of the assessee under the head "*income from other sources*".

8. The learned CIT(A), vide impugned order, granted partial relief to the assessee and after perusing the relevant clauses of the Memorandum and Articles of Association of the assessee held that the AO misguided himself to infer that the action of the assessee in acquiring agricultural land is not permitted by its object. Accordingly, the learned CIT(A) held that the transactions done by the assessee in agricultural land are to be treated as having been made in the course of business activity and duly in pursuance of the objects of the company. Hence, the computation of capital gains made by the AO and its subsequent action of treating the same as income from other sources was held to be incorrect and improper by the learned CIT(A). Further,

after considering the detailed submission of the assessee, and the remand report filed by the AO, the learned CIT(A) allowed the expenditure claimed by the assessee. As regards the compensation received from Mr. Thakkar, the learned CIT(A) decided the issue against the assessee and held that the entire amount of Rs.90 lakh accrues in the hands of the assessee instead of Rs.65 lakh as disclosed by the assessee in its return. However, the learned CIT(A) treated the entire compensation amounting to Rs.90 lakh as the business income of the assessee instead of income from other sources as treated by the AO. Further, by relying upon various judicial pronouncements, as noted in page 29 of the impugned order, the learned CIT(A) directed the AO to consider the revised return of income filed by the assessee as a valid return of income.

9. Being aggrieved, only Revenue is in the appeal before us and has challenged the findings of the learned CIT(A) in treating the income/compensation received from the transaction in agricultural land as business income instead of income from other sources as treated by the AO.

10. We have considered the submissions of both sides and perused the material available on record. In the present case, as noted in the foregoing paragraphs, the assessee entered into transactions to acquire agricultural lands which according to the AO are capital assets and the said transaction resulted in capital gains which the AO taxed under the head '*income from other sources*' after considering the Memorandum and Articles of Association of the assessee. Similarly, the compensation accrued under the Memorandum of Understanding entered with Mr. Thakkar was also taxed as '*income from other sources*' by the AO. In order to decide the issue of whether the objects

of the assessee cover transactions in agricultural land, it is relevant to analyse the Memorandum and Articles of Association of the assessee. From the perusal of the Memorandum of Association of the assessee, forming part of the paper book, we find that the assessee was incorporated to pursue the following object as its main object: -

"To engage in the business of infrastructure development, Real Estate Promoters, builders, contractors, developers, constructors, repairs of buildings, houses, apartments, structures, developers of housing schemes, townships and holiday resorts and slums development and to act as surveyors, designers and architects and surveying preparing, building sites, laying out, designing, building constructing, reconstructing, pulling down, altering, improving, enlarging, repairing, replacing, developing, decorating, furnishing, hotels, motels, clubs, restaurants, baths, place of worships, place of amusement, reading rooms, flats, houses, factories, mills, stores, shops, office, garages, godowns, dams, bundhs, canals, bridges, irrigation works, powerhouse or stations, reservoirs and structures and work for residential, office, industrial, commercial education, cultural and other purpose and uses and also streets, roads, squares, pleasure grounds, parks gardens and other works & Project Management-Association including civil, mechanical, electrical, and all other types of erection, commissioning projects, project trading as well as consultant for execution of projects on turnkey basis for equipment of industrial, domestic and other purposes in India & abroad and to acquire flats and offices and sell them and to acquire land and building on leasehold or freehold."

11. The other relevant clauses of the Memorandum of Association of the assessee are as follows: -

"3. To develop and tum to account any land acquired by the company or in which the company is interested and in particular by leasing out and preparing the same for building purpose, constructing, altering, pulling down, decorating, maintaining, furnishing, fitting up and improving buildings and or plating paying, draining cultivating, letting on building on lease or building agreement and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others.

5. To acquires by purchase, lease, exchange, hire or otherwise lands and property of any tenure or any interest in the same in India.

22. To purchase, take on lease or in exchange, hire and otherwise acquire any real and personal property, and any rights or privileges

which the Company may think necessary or convenient for the purpose of its business, in particular any land, buildings, easements, plants and stock-in-trade."

12. Thus, from the perusal of the main objects as well as the incidental/ancillary objects of the assessee, it is evident that the assessee was incorporated, *inter alia*, to engage in the business of infrastructure development. Further, the incidental/ancillary objects of the assessee also includes the object of developing and turning to account any land acquired by the assessee by purchase, lease, exchange, hire or otherwise. Thus, the main objects contained in Part A of the Memorandum of Association, and the incidental and ancillary objects contained in Part B of the Memorandum of Association, permit the assessee to engage itself in the business of real estate and also permit it to buy, sell, develop etc. any land, building. In the present case, it is also pertinent to note that the land in which the assessee transacted, the process of conversion of the said agricultural land into non-agricultural land was already being initiated by the erstwhile owners in 2007, by paying necessary fees to the competent authority whose final orders were awaited. Therefore, much before the impugned agreements entered in the year 2008 for the purchase of the land by the assessee, the process for conversion into non-agricultural use had already been initiated. We find that this fact was brought before the notice of the AO by the assessee vide its submission dated 13.02.2014, which is also reproduced in the assessment order, as follows: -

"Object clause as per the same the company is entitled to carry on the business of infrastructure development including construction of commercial and residential houses which will require it to acquire rights in land to construct super structure on the same.

You may refer to para 2 of agreements of purchase of lands dated 08/02/08 (S.No. 127 & 128) and S. No. 130/2 and para No. 2 of agreements of sale of land dated 03/10/2010 (S.No. 127 & 128) and dtd. 17/09/10 (S. No. 130/2) where in it has been mentioned that the proceedings to convert the said lands first into old Sharat and thereafter into Non Agricultural were already initiated in 2007 and necessary premiums of sizeable amounts have been paid by the erstwhile owners as per the Orders and Sanctions of the Competent Authorities and that the final orders were just waited for declaring the said lands as pure Non agricultural and hence the assessee company spent its funds to purchase the said lands for the purpose of its business and accordingly the said transaction of purchases of lands are within parameters of Memorandum of Association of the Company."

13. However, it is evident that the AO did not comment on the assessee's response and the assessment order is silent on this aspect of the matter. Therefore, having considered the relevant clauses of the Memorandum of Association pertaining to the main object and incidental/ancillary object of the assessee, we find no infirmity in the findings of the learned CIT(A) to arrive at the conclusion that the transactions done by the assessee in the agricultural lands were in the course of its business activity pursuant to the objects of the company. Once we have arrived at the conclusion that the transactions form part of the business activity of the assessee, therefore, we find no merits in the conclusion of the AO in treating the income as income from other sources and the said income has rightly been treated by the learned CIT(A) as the business income of the assessee.

14. As regards the compensation pursuant to the Memorandum of Understanding dated 18.03.2011 entered into with Mr. Thakkar, we find that the assessee has accepted the findings of the learned CIT(A) that the entire amount of Rs.90 lakh, as mentioned in the Memorandum of Understanding, be taxed in the hands of the assessee. As regards the issue of whether the said compensation is to be taxed as business income or income from other

sources, in view of our aforesaid findings that the entire transaction was covered within the ambit of business activity of the assessee and was carried out in pursuance of the main/ancillary objects of the company, we are of the considered view that the learned CIT(A) has rightly treated the same as business income.

15. We find that the Revenue is not in an appeal against the other reliefs granted by the learned CIT(A) in respect of allowance of expenditure and treating the revised return of income as a valid return. Therefore, we are not expressing our opinion on the same as these issues do not form part of the subject matter of the present appeal before us. As a result, grounds raised by the Revenue are dismissed.

16. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 02/12/2024

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

MUMBAI, DATED: 02/12/2024

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

By Order

Assistant Registrar
ITAT, Mumbai