

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.725/SRT/2024**

**Assessment Year : 2016-17**

**(Hybrid hearing)**

Monarch Corporation F.P. 40, T.P. 10, Beside Kalpvrukha Garden, Gauravpath Pal, Surat-394230	<b>बनाम/ Vs.</b>	Deputy Commissioner of Income- tax, Circle-2(3), Surat/Assistant Commissioner of Income-tax, Circle-2(1)(1), Surat Aayakar Bhawan, Near Majura Gate, Opp. New Civil Hospital, Surat-395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAZFM 1036 B</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Appellant by	Shri Hiren M. Diwan, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	20/03/2025
उद्घोषणा की तारीख/Date of Pronouncement	30/05/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 29.04.2024 by the Commissioner of Income-tax (Appeals)/Addl.JCIT(A)-12, Mumbai [in short, 'CIT(A)'] for the Assessment Year (AY) 2016-17, which in turn arises from the assessment order passed by Assessing Officer (in short, 'AO') u/s 143(3) of the Act on 09.12.2018. Grounds of appeal raised by the assessee are as under:

*"1) The Id. CIT(A) has erred in law and on facts in upholding the action of the Id.AO of disallowing the total expenses claimed by the appellant of Rs.14,62,736/-.*

*2) The Id. CIT(A) has erred in law and on facts in upholding the action of the Id. AO of treating the income of Rs.98,00,000/- as income from other sources.*

*3) The Id. CIT(A) has erred in law and on facts in upholding the action of the Id. AO of subjecting to tax the business income of Rs,.98,00,000/- under the provisions of sec. 115BBE of the Act.*

*4) The appellant craves leaves to add, amend, alter, modify, substitute, delete, change or vary as all or any of the ground or grounds of appeal.”*

2. Brief facts of the case are that assessee filed its return of income for A.Y 2016-17 declaring total income at Rs.85,30,940/- on 05.08.2016. The case was selected for limited scrutiny. The assessee is in the business of construction and real estate. The AO noted that assessee had credited Rs.98,00,000/- as direct income to its profit and loss account. However, in Schedule-9 of tax audit report, it was shown as additional business income. In response to the show cause notice as to why the above income should not be treated as “income from other sources” the assessee submitted that the above amount represents income from real estate. The assessee had negotiated to purchase a piece of land which was sold on the next day by receiving Rs.98,00,000/- more. The new buyer was introduced to the seller and the purchaser paid assessee Rs.98,00,000/- for withdrawing its involvement from the land. The assessee also submitted that it has not claimed any expenditure against the above receipt. Assessee has claimed expenses which are mainly in administrative in nature for the purpose of carrying on the project of construction and sale of commercial units in the complex titled as “Monarch”. The assessee also submitted that provisions of Section 68 are not attracted because assessee had offered the impugned amount for taxation. The assessee relied on the decisions in the following cases: (i) PCIT vs. Swapna Enterprise (2018) 91 taxmann.com 12 (Guj), (ii) CIT vs. Sudhir Jain (2014) 41 taxmann.com 234 (Del), (iii) CIT vs. Sidh Nath Goel (2013) 38 taxmann.com 260 (All), (iv) CIT vs. B. Venkatesam (2013) 31 taxmann.com 224 (AP), (v) ACIT vs. Akashar Developers (2017) 86 taxmann.com 251 (Mum), (vi) CIT vs. Margaret’s Hope Tea Co. Ltd. (1993) 71 taxmann.com 574 (Cal), (vii) Smt. Kaviit Sanghi vs. CIT

(1982) 133 ITR 48 MPHC and (ix) Daulatram Rawatmull vs. CIT (1967) 64 ITR 593 (Cal).

2.1 The assessee also submitted that provisions of u/s 115BBE is not applicable in case of the assessee. The AO did not accept the contention of the assessee by stating that assessee could not establish identity and genuineness of the transaction of Rs.98,00,000/-. The AO also did not accept the contention of the assessee that no expenditure was claimed against the above amount because total income for the year offered by the assessee was Rs.85,30,940/- instead of Rs.98,00,000/-. The AO added Rs.98,00,000/- as income from other sources and levied tax u/s 115BBE of the Act. The total income was determined at Rs.99,93,672/- as against returned income of Rs.85,30,940/-.

3. Aggrieved by the order of AO, assessee filed appeal before CIT(A). The CIT(A) observed that AO has rightly reclassified the income of Rs.98,00,000/- as income from other sources and correctly taxed the same u/s 68 r.w.s. 115BBE of the Act. He also held that assessee is not eligible for set off of the expenses.

4. Further aggrieved by the order of CIT(A), the appellant filed present appeal before the Tribunal. The Ld. AR submitted a paper book including the written submission report before CIT(A), CBDT Circular No.11/2019 dated 19.06.2019, auditor report etc. He submitted that assessee is engaged business of real estate and construction. The assessee has offered Rs.98,00,000/- as business income which is clear from the audited account at page 11 of the paper book. The additional business income is disclosed under direct income in the Schedule-9 of the Audit Report (page 17 of PB). All direct expenses are debited to the work-in-progress which stood at Rs.17,35,50,845/- for the year under consideration. Only administrative expenses of Rs.13,85,093/- and bank charges of Rs.14,473/- has been claimed by the assessee. The administrative expenses include salary, advertising, computer repairing, conveyance, rent,

stationery, VAT expenses etc. and the individual expenses under various categories are small amounts. He submitted that since assessee had offered the income, the same cannot be taxed u/s 68 of the Act. Further, provisions of Section 115BBE is not applicable for the subject AY 2016-17, which is supported by CBDT Circular 11/2019 (supra).

5. On the other hand, Ld.Sr-DR for the Revenue supported the order of lower authorities. He submitted that no expenses should be allowed and the provisions of Section 68 r.w.s. 115BBE of the Act have been rightly applied by the AO.

6. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We have deliberated on the decisions relied upon by the Ld.AR. The Ground No.1 pertains to disallowance of expenses of Rs.14,62,736/-. It is seen that assessee is engaged in the business of construction and real estate. The assessee was carrying on its business during the year under consideration. All direct expenses have been debited to the work-in-progress. Only indirect expenses i.e., administrative expenses of Rs.13,85,093/- and financial expenses of Rs.14,473/- have been debited to the profit and loss account. Unlike direct expenses, indirect expenses are those which cannot be linked with specific product or service. These are certain necessary costs which a business entity must bear for its day-to-day business to run smoothly. Rent, rates, taxes, telephone and postage expenses, general expenses, salary, office expenses are a few examples of indirect expenses. These are necessary for smooth running of the office and business of the assessee. Hence, they have been expended wholly and exclusively for the purposes of the business and hence the same cannot be disallowed. Accordingly, the AO is directed to delete the same and the ground is allowed.

7. Next Ground No.2 is treating the income of Rs.98,00,000/- as income from other sources. The appellant had offered the above income under the head "profits and gains from business and profession". There is no dispute that assessee is engaged in the business of construction and real estate. It is seen from the paper book that assessee had received advances from customers amounting to Rs.2,44,06,543/- which is reflected under the head "Current Liabilities" in the balance-sheet. The assessee has also shown work-in-progress of Rs.17,35,50,485/-. As the assessee is also engaged in the business of real estate, the impugned amount of Rs.98,00,000/- received from the purchaser of a piece of land, which had been earlier negotiated by the appellant for purchase has rightly been offered as business income. We do not find any valid reason to reclassify such income as income from other sources. Hence, we allowed the ground No.2 is allowed.

8. Ground No.3 pertains to tax the income of Rs.98,00,000/- u/s 115BBE of the Act. We have already held that the impugned sum is liable to be taxed under the head "income from business and profession". Hence, the same is liable for taxation at the normal rate and not at the enhanced rate u/s 115BEE of the Act. Further, the CBDT in its Circular No.11/2019 (supra) has also clarified that provisions of Section 115BBE(2) is applicable from AY 2017-18. Hence, it is not applicable for the subject AY 2016-17. The ground No.3 is allowed accordingly.

9. The last ground is general in nature and does not require any adjudication.

10. In the result, assessee's appeal is allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 30/05/2025 in the open court.

**Sd/-**  
**(SANJAY GARG)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

सूरत /Surat

दिनांक/ Date: 30/05/2025

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

**Dkp Outsourcing Sr.P.S\***

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण, सूरत