

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 204 of 2015**

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PRINCIPAL COMMISSIONER OF INCOME TAX 5....Appellant(s)

Versus

ASHWIN KANTILAL RAVAL....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE S.H.VORA

Date : 31/03/2015

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad, 'C' Bench (hereinafter referred to as the 'Tribunal') dated 05.09.2014 passed in ITA No.314/Ahd/2013 for A.Y. 2009-2010 by which, the learned Tribunal has dismissed the appeal preferred by the Revenue confirming the order passed by the learned CIT(A) deleting the additions made by the Assessing Officer of Rs.56,04,681/- claimed as indirect expenses including interest on Reliance Capital loan and deleting the addition of Rs.73,48,000/- made by the Assessing Officer, the Revenue has preferred the present tax appeal with the following proposed substantial questions of law:-

“(A) Whether the Appellate Tribunal has substantially erred in deleting the addition of Rs.56,04,681/- claimed as indirect expenses including interest on Reliance Capital loan when the assessee has not shown any business income?

(B) Whether the Appellate Tribunal has substantially erred in deleting the addition of Rs.73,48,000/- on the premise that the valuation of work-in-progress was supported by the certificate of Engineer without appreciating that the assessee has arranged a false certificate from such an engineer who has stated on oath that he is unable to assess the valuation of work-in-progress and when the assessee was provided with an opportunity to cross examine the engineer but chose not avail it?”

2. That the assessee, a civil engineer and also engaged in the business of construction activities, filed return of income for A.Y. 2009-2010 declaring total income at Rs.12,76,320/-. The case was selected for scrutiny and notice under Sections 143(2) and 142(1) of the Income Tax Act along with the detailed questionnaire were issued. That the assessee claimed and shown indirect expenses of Rs.56,04,681/- which includes interest on Reliance Capital Bond of Rs.27,41,274/-. That the assessee also shown work in progress of Rs.1,01,52,000/- relying upon the certificate of structural engineer. That the Assessing Officer doubted the certificate of work in progress issued by the structural engineer certifying that the work in progress was of Rs.1,01,52,000/-. That the Assessing Officer disallowed the claim of the assessee that the work in progress was of Rs.1,1,52,000/-. The Assessing Officer framed the assessment and denied the expenditure of Rs.56.04 lacs and the claim of the assessee that the work in progress was of Rs.1,01,52,000/- and consequently, directed to make addition of Rs.56.04 lacs as well as Rs.73,48,000/-.

2.1. Feeling aggrieved and dissatisfied with the assessment order passed by the Assessing Officer in making the aforesaid additions, the assessee preferred the appeal before the learned CIT(A) and the learned CIT(A) allowed the appeal preferred by the assessee deleting the aforesaid additions.

2.2. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A) deleting the additions made by the Assessing Officer, the Revenue has preferred the appeal before the learned Tribunal and by impugned judgment and order, the learned Tribunal has dismissed the said appeal confirming the order passed by the learned CIT(A).

3. We have heard Shri M.R. Bhatt, learned counsel appearing for the Revenue at length. We have also perused and considered, in detail, order passed by the Assessing Officer as well as the order passed by the learned CIT(A) as well as the impugned judgment and order passed by the learned Tribunal.

4. Now, so far as the question No.1 relating to disallowance of Rs.56,04,681/- as bogus expenses and addition of the aforesaid amount made by the Assessing Officer is concerned, from the order passed by the learned CIT(A) while deleting the aforesaid addition, it appears that the learned CIT(A) has considered, in detail, and given cogent reasons in paragraph No.5.3. What is weighed with the learned CIT(A) is seems to be that the assessee used the said income for the business purpose and, in fact, even paid the TDS on the income of interest on Reliance Capital Bond. The aforesaid deletion has been confirmed by the learned Tribunal by observing in

paragraph No.4 as under:-

“4. We have considered rival submissions and perused the orders of the AO and the CIT(A). We find that the CIT(A) has elaborately discussed the issue. He has recorded that the assessee was involved in the business of “sub-letting” of properties, and during the relevant year, it had taken 45 properties on rent and paid Rs.49.20 lacs, and while on subletting he received Rs.56.24 lacs resulting into net surplus of rent shown as business income of Rs.7.04 lacs. Assessee has utilized Rs.47.60 lacs was earned as rent and shown under the head “income from house property”. The balance amount of Rs.114.34 lacs was claimed by the assessee to have been utilized for business of construction. The CIT(A) has further recorded that this fund flow has substance to show clear nexus of utilization of borrowed fund for earning income in the form of interest, rent income and business income of construction, and has paid TDS on the interest payment wherever applicable. There being no material before us to controvert these findings of the CIT(A), we hold that there is no mistake in the order of the CIT(A) in deciding the issue in favour of the assessee, and accordingly, we hold that it could not be proved by the Revenue that the assessee’s expenditure were bogus or not incurred for business construction, and accordingly, ground no.1 of the Revenue is dismissed.”

4.1. We are in complete agreement with the views taken by the learned CIT(A) as well as the learned Tribunal insofar as the order passed by the learned CIT(A) deleting addition of Rs.56,04,681/- which were made on considering the same as bogus expenses. Therefore, proposed question No.1 is answered against the Revenue.

5. So far as the question No.2 with respect to the addition of Rs.73,48,000/- made by the Assessing Officer being difference in valuation of closing work in progress is concerned, it is required to be noted that the Assessing Officer made the

aforesaid addition rejecting the certificate issued by the Structural Engineer certifying the work in progress at Rs.1,01,52,000/-. However, it is required to be noted and it is not in dispute that after doubting the certificate issued by the structural engineer, the Assessing Officer neither rejected the books of account nor even referred the matter to the DVO. While confirming the order passed by the learned CIT(A) deleting the aforesaid addition made by the Assessing Officer of Rs.73,48,000/-, the learned Tribunal has observed in paragraph No.7 as under:-

“7. We have considered rival submissions and orders of the AO and the CIT(A). We find that the CIT(A) has passed a well reasoned speaking order on this issue. The CIT(A) has recorded that the AO has not rejected books of accounts of the assessee and has made addition to closing stock based on the statement of Shri J.P. Shah and inquiry from Inspector without confronting to the assessee. We are unable to appreciate the stand of the AO that structural engineer, Shri J.P. Shah, being 77 years of age, and suffering from blood pressure sugar and other diseases, his certificate could not be relied upon. The CIT(A) has further recorded that the AO's exercise of such estimation will not result into any substantial Revenue gaining exercise because the assessee after following proper method and accounting standard already reflected profit in respective year and paid taxes thereon. In reply to a specific query from the Bench, the learned counsel for the assessee submitted that project has already completed and its final profit & loss has already been declared and taxed as such by the department. We find that there is no material before us to reject the valuation of work-in-progress which was also supported by certificate of structural engineer, Shri J.P. Shah. In these facts of the case, we hold that there is no mistake in the order of the AO to accept the valuation of closing work-in-progress as certified by the structural engineer in his certificate, and in deleting the addition, and accordingly, the ground no.2 of the Revenue is dismissed.”

6. At this stage, it is required to be noted that it is not in dispute that subsequently, the project was also completed and its final profit and loss was already declared and the tax assessed by the Department.

6.1. We are in complete agreement with the view taken by the Tribunal as well as the learned CIT(A) in deleting the addition of Rs.73,48,000/-.

7. In view of the above, no substantial question of law arises in the present tax appeal. No interference of this Court is called for with the impugned judgment and order passed by the learned Tribunal.

8. In view of the above and for the reasons stated above, the appeal fails and the same deserves to be dismissed and is accordingly dismissed.

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THE HIGH COURT
OF GUJARAT

(M.R.SHAH, J.)

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(S.H.VORA, J.)

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