

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 28/Jodh/2019
(ASSESSMENT YEAR-2014-15)**

Kishan Mehta, D-19-20, Shiv Park Colony, Durga Nursery Road, Udaipur-313001.	Vs	A.C.I.T., Circle-1, Udaipur.
(Appellant)		(Respondent)
PAN: ACIPM 6039 R		

**SA No. 01/Jodh/2020
(Arising out of ITA No. 28/Jodh/2019)
(ASSESSMENT YEAR-2014-15)**

Kishan Mehta, D-19-20, Shiv Park Colony, Durga Nursery Road, Udaipur-313001.	Vs	A.C.I.T., Circle-1, Udaipur.
(Appellant)		(Respondent)
PAN: ACIPM 6039 R		

Assessee By	Shri Amit Kothari (CA) & Shri Abhinav Kothari (CA)
Revenue By	Shri K.C. Badhok (CIT-DR)
Date of hearing	17/03/2020
Date of Pronouncement	20/03/2020

ORDER

PER: R.C. SHARMA, AM

This is an appeal filed by the assessee against the order of the CIT(A)-1, Udaipur dated 20/12/2018 for the A.Y. 2014-15 in the matter of order passed u/s 143(3) of

the Income-tax Act, 1961 [hereinafter referred to as 'the Act', for short]. Following grounds have been taken by the assessee.

- “1. Under the facts and circumstances of the case, the Id. CIT(A)-1, Udaipur has erred in disallowing improvement expenses of Rs. 2,50,000/- incurred in financial year 2003-04 though paid long back is illegal and bad in law.
2. Under the facts and circumstances of the case, the Id. CIT(A)-1, Udaipur has further erred in disallowing transfer expenses of Rs. 7,00,000/- as brokerage paid is illegal and bad in law.
3. Under the facts and circumstances of the case, the Id. CIT(A)-1, Udaipur has also erred in disallowing construction expenses of Rs. 2,32,28,644/- is illegal and bad in law.
4. The appellant reserves its right to add, amend, alter or substitute any of the grounds of appeal on or before hearing of appeal.
5. Necessary cost be allowed to the appellant.”

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of trading in the name of Ratan Tata Layland. During the course of scrutiny assessment out of capital gains offered by the assessee, the A.O. made disallowance of improvement expenses of Rs. 2.50 lacs, transfer expenses of Rs. 7.00 lacs paid as brokerage and construction expenditure of Rs. 2,32,28,644/-.

3. From the record, we found that during the year under consideration the assessee sold property. Long Term Capital Gains (LTCG) arrived on sale of property by considering sales consideration

and deducting eligible expenses thereto i.e. cost of land, construction cost thereon and transfer expenses, filed return of income with LTCG and other regular income. The A.O. had assessed total income of Rs. 6,02,39,248/- against returned income of Rs. 358,03,585/- by making following additions:

Particular of Activities		Additions	Total
Income as per Return of Income-As submitted online			3,58,03,585
Add:	Improvement expenses- FY 2003-04 Rs. 250000		
	Indexed Cost – $250000/463 * 939$	5,07,019	
b)	Transfer Expenses	7,00,000	
c)	Construction Expenses	2,32,28,644	2,44,35,663
Total Income assessed by A.O. U/s 143(3)			6,02,39,248

4. The issue with regard to decline of improvement expenses of Rs. 2.50 lacs, the A.O. has discussed the issue at page 4 para 3.3 of the assessment order. We found that the land under consideration situated at village Nahar Magra (Dhunimata), Panchayat Nandwel, Tehsil Mavli, district-Udaipur which was purchased as agricultural land vide sale deed dated 08/03/2001. Being the land was not used for a long period after purchase, incurred expenses for levelling, filling holes and other various work mostly labour oriented thereon in the year 2003-04. After that considering the use for business, said agricultural land was converted for commercial purpose and deposited various charges on 12/02/2007 as directed by the government department. During assessment proceedings, the AO demanded original vouchers and bills of material, labour, etc. in

support of improvement expenses purely labour work, claimed Rs. 2,50,000/- incurred in the year 2003-04. Despite of the fact that matter is old one and consisting mostly of labour work, produced receipt showing payment made from time of time against contract given for various work at the site, which has also been acknowledged by the A.O. in the assessment order.

5. We also found that on production of evidence of improvement expenses of more than 10 years old, the A.O. further asked to produce the contractor in person. In that response, the assessee tried to contact that work contractor but meanwhile assessment order was passed by disallowing whole expenses mainly labour work, without considering the facts and basic requirement of expenses on agricultural land in village. We have verified the details of improvement expenses of Rs. 2.50 lacs so incurred by the assessee. Genuineness of these expenses were not doubted by the A.O. nor the work alone at site was disputed, accordingly above, we do not find any merit in the A.O's action for making disallowance of improvement expenses of Rs. 2.50 lacs as incurred by the assessee without pointing out any defect in the nature and quantum of expenditure so incurred. We found that the expenses were genuinely incurred and the same deserves to be allowed in view of the following judicial pronouncements:

- (a) A Rajendran & ors. Vs ACIT (Mad) 2006(155) Taxmann 0364- Mad; 2006-(204)-CTR-0009-Mad

Hon'ble High Court held that - When the assessee have established all the requirements of IT Act,... rejection of those explanations is definitely due to arbitrary and unreasonable exercise of power."

- (b) CIT Vs Smt P K Noorjahan [1999] 237 ITR 570 (SC)

... to treat the..... the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.

- (c) Lal Chand Bhagat Ambika Ram Vs. Commissioner of Income Tax, 37 ITR 288 (SC) –

... that burden to prove the source ... was on the assessee and such onus had been discharged by her by producing of relevant record'. ..

- (d) CIT vs. Daya Chand Jain Vaidhya 98 ITR 280 (All.); Narndra G. Goradia (HUF) Vs. CIT (234 ITR 571) (Bom); decision in the case of Sumiti Dayal

conclusion that The revenue had failed to bring on record any evidence to show that the explanation of the assessee was incorrect.

comment: Merely asking for identity of the person after passing of more than ten years without considering the facts of actual work and improvement at the site.

In the case of Ravi Marketing (P) Ltd vs CID [2006] 280 ITR 519 (Cal.)

It is held therein that the scope for the authorities under the Act or the court is confined only to examining the purpose and the genuineness of the expenditure, neither the expedience nor the quantum.

7. The A.O. has also disallowed Rs. 7.00 lacs incurred as brokerage. The A.O. has dealt with the issue at page 3 and 4 para 3.2 under the heading expenses relate to LTCG.

8. We have considered the rival contention and found that the said land was purchased by the assessee as agricultural land in the year 2001 being the land was not used for a long period after purchase, incurred expenses for levelling and filling holes and other various work mostly labour oriented in the year 2003-04. After that considering the use for business, said agricultural land was converted for commercial purposes and deposited various charges on 12/02/2007 as directed by the government department. The assessee has given this land for the hotel project to M/s Ratan Jyoti Village Resorts P Ltd.. Total consideration on sale of assessee's property inclusive construction cost on land was received through bank aggregating to Rs. 610.00 lacs. To explore higher realization personal efforts was put on by the assessee and for that purpose assessee took services of person who arranged buyer of the property with reasonable rates. It is a well known fact that this type of expenses of brokerage are essential in normal course also, whereas present case was of possession of property with lending institution and incomplete project. The brokerage expenses so incurred by the assessee was accepted by the A.O. and no where the A.O. has mentioned such

expenses as false or wrong or excessive. Thus, the brokerage of Rs. 7.00 lacs paid by the assessee which is found to be genuine and deserves to be allowed. We direct accordingly.

9. With regard to construction expenditure of Rs. 2,32,28,644/-, we found that the AO has discussed the issue at page 4 to 8 in para 3.4 to 3.6 of the assessment order under the heading Expenses related to LTCG. The land under consideration situated at village Nahar Magra (Dhunimata), Panchayat Nandwel, Tehsil Mavli, District Udaipur which was purchased as agricultural land vide sale deed dated 08/03/2001. Being the land was not used for a long period after purchase, incurred expenses for levelling, filling holes and other various work mostly labour oriented thereon in the year 2003-04. After that considering the use for business, said agricultural land was converted for commercial purpose and deposited various charges on 12/02/2007 as directed by the government department. Details of cost of improvement, conversion charges and construction cost has been stated in computation of total income. Adjoining to this land, the assessee brother late Shri Sushil Kumar Mehta was also having land. Considering development in the area, assessee's brother planned to set up hotel project on this total land in the name of company styled as Ratan Jyoti Village Resorts P Ltd. (RJVRPL). For this hotel project, the assessee given the land on lease to the

company RJVRPL for 18 years vide lease deed dated 05/02/2010 with the condition that total construction cost would be borne by company and on vacation after completion of lease period shall handover to the assessee on "AS IT IS CONDITION".

10. From the record we found that for this hotel project company RJVRPL obtained term loan against the security of land from the Udaipur Co-Operative Bank Ltd. (TUUCBL). Land was given to the company on lease of 18 years and to that effect offered as security to bank for company RJVRPL who took the loan. Due to untimely demises of assessee's brother Shri Sushil Mehta in July 2010 and various reasons thereafter, hotel project could not be completed. Meanwhile period of repayment of term loan started and company RJVRPL become defaulter in repayment of loan and as per banking norms loan account become NPA in the books of banker TUUCBL. On company's RJVRPL default in repayment, banker (loanee) TUCCBL took over possession under SARFAESI Act in December, 2012 of whole property with land and sold. After that and before sale of property the TUCCBL took authorisation cum consent for sale of properties by way of Private Treaty sale on 22/02/2013 in which clearly mentioned by the assessee:

i. in page 4.... Sale proceeds for the clearance of the said loan shall be treated as the reimbursement of the cost of

building constructed on the said properties and/or for release of the mortgage of the said properties...”

11. Considering all these stated facts TUUCBL conveyed its acceptance vide letter No. 103 dated 22/02/2013 of assessee's conditions as mentioned in above assessee's private Treaty Consent letter. After adjustment of due loan amount in the account of TUUCBL returned balance realized amount on sale to assessee.

12. Thus, total consideration was received by the assessee being land was in the individual name and sale deed of land with construction thereon executed through bank under SARFAESI Act. Total consideration on sale of assessee's property inclusive construction cost on land was received through bank aggregating to Rs. 610.00 lacs.

13. We also found that before the lower authorities, the assessee had submitted detailed statement for construction/investment cost reimbursed to company Rs. 232,28,644 in FY 2013-14 vide letter dated 08/11/2016 stating expenses and as claimed in return of income. The A.O. observed in page No. 5 at para 3.5 of the assessment order about lease agreement dated 05/02/2010 on para 7, if company taken any loan etc. by mortgage of property, any such loan, interest, other expenses will be beared by the company only. The A.O. further mentioned about Rs. 175,00,000/- on account of

non payment of loan by company, but assessee in its submission stated about the way of payment received through bank only, nothing has been claimed as interest and other expenses in that account, being was to be borne and actually paid by the borrower company RJVRPL. This recovery through assessee sale proceeds by TUCBBL was on account of term loan sanctioned and disbursed for construction of RJVRPL Hotel Project, which itself justify that construction cost has been reimbursed by the assessee to the company not paid to bank on assessee's account. Further the said amount has been considered by RJVRPL as part consideration towards recovery of construction cost in their account.

14. It is clear from the above that the assessee was owning only land under consideration and construction thereon was made by the loanee company RJVRPL. Thus, the sale consideration is inclusive of construction cost on land. The assessee only claimed relevant expenses reimbursed on construction as claimed by the company RJVRPL during the period and which is on account of realization of cost of land with construction cost by the assessee which was incurred by RJVRPL.

15. The sale deed already stated the total property inclusive of construction whereas otherwise the assessee was owning only land

and all construction expenses have been incurred by RJVRPL. Whole construction cost has been borne by the RJVRPL. Due to sale whole property before completion of scheduled construction work by loanee bank whole construction cost as claimed by the company being sale before the agreed lease period of 18 years, was reimbursed by the assessee. On sale realization of property consisting of cost of land and construction, whole amount received by the assessee and on that account only huge long term capital gain was earned, offered and paid income tax thereon.

16. In view of the above facts and circumstances, we direct the A.O. to allow construction expenses of Rs. 2,32,28,644/- so incurred by RJVRPL while computing the capita gains.

17. In the result, appeal of the assessee is allowed.

18. Now we take S.A. No. 01/Jodh/2020

By way of this Stay application, the assessee seeks stay of outstanding demand raised by the department till disposal of the appeal.

19. As we have decided the appeal filed by the assessee from which this stay application arose on merit. Therefore, this Stay application become infructuous.

20. In the result, this stay application is dismissed as infructuous.

21. In the result appeal of the assessee is allowed and S.A. of the assessee is dismissed as infructuous.

Order pronounced in the open court on 20/03/2020.

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Sd/-
(R.C.SHARMA)
Accountant Member

Dated :. 20/03/2020

*Ranjan

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File (ITA 28/Jodh/2019 & SA No. 01/Jodh/2020)

By order

Assistant Registrar
ITAT Jodhpur