

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

**ITA No. 254/SRT/2019**

(Assessment Year: 2014-15)

(Virtual Court)

|                                  |     |                                                                                                                        |
|----------------------------------|-----|------------------------------------------------------------------------------------------------------------------------|
| The ITO, Ward-2(1)(4),<br>Surat. | Vs. | M/s. Vesta Exim Private Limited,<br>Victoriya Palms, Opp. Unnati Gas<br>Godown, Dumas Road, Surat-<br>395002, Gujarat. |
| REVENUE                          |     | ASSESSEE                                                                                                               |

|                       |                             |
|-----------------------|-----------------------------|
| Revenue by            | Shri Ritesh Mishra, CIT(DR) |
| Appellant by          | Shri Rasesh Shah, CA        |
| Date of hearing       | 01/10/2021                  |
| Date of pronouncement | 09/11/2021                  |

**ORDER**

**PER PAWAN SINGH, JM:**

1. This appeal by Revenue is directed against the order of Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”] dated 26.02.2019 for Assessment Year (AY) 2014-15. The Revenue has raised following grounds of appeal:

- (i) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,77,44,000/- made by the AO on account of proportionate disallowance of expenses claimed on the income admitted during the course of survey by the assessee.*
- (ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that in the assessment order the AO has correctly observed that the explanation given to show cause was not acceptable due to the fact the assessee has claimed*

*expenses against the unaccounted income offered in the course of survey and promised to pay tax on said income.*

*(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that the assessee admitted during the course of survey that the unaccounted income admitted was over and above the regular income registered in the books of account and same has not fully offered for tax in his return of income.*

*(iv) On the facts and circumstances of the case and in Law, the Ld.CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld.CIT(A)-1 Surat may be set-aside and that of the Assessing Officer's order may be restored.*

- 2.** Brief facts of the case are that the assessee is engaged in the business of Real Estate Developer. The assessee filed its return of income for AY.2014-15 showing total income of Rs. Nil on 29.11.2014. The return was revised on 04.02.2015 declaring nil income. For the financial year ended on 31.03.2014, the assessee declared profit of Rs. 3.48 Crore. After setting off earlier year losses the assessee declared nil income. The case was selected for scrutiny. The assessment was completed under section 143(3) dated 28.03.2016. During the assessment, the Assessing Officer noted that a survey under section 133A was carried out as the business premises of the assessee in February, 2014. During the course of survey, a loose paper file found which was inventorised as BF-1 at page no.27 of Annexure BF-1, the audited undisclosed income was recorded. In respect of project developed by assessee namely "Victoria

Palms” of about Rs.5.00 crores. During the course of survey, the statement of Shri Viren Shah Director of assessee-company was recorded. In the statement of Shri Viren Shah admitted Rs.5.00 crore as an additional income received from sale price during relevant assessment year, which was not accounted in the regular books of account. During the assessment, on perusal of profit and loss account, the Assessing Officer noted that assessee had shown profit of Rs.2.25 crore against the income of Rs.5.00 crore disclosed during the course of survey. The Assessing Officer on the basis of statement/disclosure of Rs.5.00 crore as additional sale price of bungalows and plots over and above the regular business income. The Assessing Officer worked out proportionate expenses of Rs.3.77 crore in the following manner;

$$\frac{\text{“Expenses incurred in respect of real estate/ construction activity”}}{\text{Turnover from real estate / construction activities}} \times \text{discloser made by assessee}$$

(Rs. In lakhs)

$$\frac{(1282.96 - 314.46)}{1282.96} \times 500 = 377.44 \text{ ( i.e. Rs. 3,77,44,000)"}$$

- 3.** On appeal before ld. CIT(A), the assessee filed written detailed submission. The detailed submission recorded by Assessing Officer within para no.6 of ld. CIT(A). In the written submission, the assessee submitted that the assessee purchased land at Dumas Road, Surat, developed in the project of Victoria Palms by dividing the some plots and bungalows. During the survey proceeding, a

loose paper pertaining to the assessee related to the year was found and seized. The Director of the assessee-company in his statement, recorded in the post-survey inquiries stated that they are in the business of selling plots and also plots with bungalows constructed thereon. The noting (writing) of the said loose paper found and seized are the detail of additional sale price received during the course of business. The Assessing Officer disallowed Rs.3.77 crore at the proportionate expenses alleging that the same are claimed on sale price. The foundation of addition of proportionate expenditure that admission made by assessee to Rs.5.00 crore and the additional sale price on bungalows and plots is over and above the regular business income. The assessee submitted that allegation of Assessing Officer in para no.6 of the assessment order that Rs.5.00 crore is disclosed as additional sale price over and above of the regular income is incorrect and devoid of facts and is not in consonance with the reply of Director to Question No.9 of the statement recording during the survey. In Question No.9, which deals with the loose paper pertaining to assessee. The assessee further stated that the Director in very unequivocal terms have simply admitted Rs.5.00 crore as additional sale price received/receivable during the year and that there is no such admission of disclosure over and above regular income as alleged and based on such allegations, Assessing Officer made addition by

disallowing proportionate expenditure. The additional sale price on bungalow during the year not over and above the regular income. The assessee further submitted that net profit of Rs.3.48 core is as per profit and loss account on the basis of audited books. The assessee submitted that allegations by Assessing Officer that assessee claimed expenses against disclosed income and which tantamounts to retraction is thoroughly misplaced and misconceived. The assessee submitted that they had not been claimed any separate expenses *per se* against the said disclosed income. Assessing Officer has not pointed out any such expenses *per se* claimed against undisclosed income. The Assessing Officer resorted to mere guess work and disallowed Rs.3.77 crore as proportionate expenses alleging the same to have been claimed against the additional sale price, all expenses debited to profit and loss account were necessary and would have been otherwise incurred during the year under appeal. No evidences were brought by Assessing Officer to establish that any of the expenses debited to profit and loss account are not allowable. The assessee also relied on certain case laws. The ld. CIT(A) after considering the submission and necessary details held that in last two years, the assessee has returned losses of Rs.1.72 crore in AY.2012-13 and Rs.2.29 crore in AY.2013-14. While filing return of subject assessment year, the assessee declared Nil income. The assessee

offered Rs.5.00 crore during survey as additional sale price. The assessee shown book profit of Rs.3.59 crore and claimed set off brought forward losses of earlier years thereby declared Nil income.

4. The ld. CIT(A) after considering the submissions of assessee held that there is no dispute regarding set off losses by the Assessing Officer, as he has been allowed brought forward losses. The Assessing Officer assessed the amount disclosed/undisclosed survey as business income after raising query and examining the idea of taxing it under section 68. The Assessing Officer disclosed the expenses any proportionate Rs.5.00 crore to total turnover. The ld. CIT(A) held that only dispute regarding proportionate disallowance of expenses made by AO by applying formula as per para no. 6 of assessment order. The ld. CIT(A) recorded that assessee mentioned that there is no expenses claimed against the undisclosed income. And that expenses incurred and claimed in the audited statement were actually incurred against the turnover and would have been incurred even without income admitted in survey. The ld. CIT(A) recorded that it was the contention of the assessee that expenses can only be disallowed after giving categorical finding on the basis of evidence that expenses are not allowable. The ld. CIT(A) held that Assessing Officer has accepted and treated the additional income as business income and allowed the set off brought forward losses. The Assessing Officer has not given any

finding on allowability or otherwise of expenses. There is no finding of Assessing Officer that expenses are bogus and non-genuine. The ld. CIT(A) also examined the comparative chart of expenses for three years and post survey. The ld CIT(A) on perusal of such details held that it is not a case that inflation of expenses or excessive booking of expenses in post survey period or no case of booking of extra ordinary expenses comparative to earlier years. The ld. CIT(A) held that ad-hock proportionate disallowance is not permissible and directed to delete the disallowances. Aggrieved by the order of ld. CIT(A), the Revenue has filed present appeal before Tribunal.

5. We have heard the submission of ld. CIT-DR for the Revenue and ld. AR of the assessee. The ld. CIT-DR for the Revenue supported the order of Assessing Officer. The CIT-DR submits that during the survey proceeding, the assessee admitted unaccounted income over and above the regular income registered in the books of account. The assessee has not offered the unaccounted income, admitted during the course of survey action while filing return of income. The assessee claimed expenses on the income offered during the survey and as shown loss income comparative to admitted income. The ld. CIT(A) simply relied the contention of the assessee while deciding the appeal.

**6.** On the other hand, the ld. AR of the assessee supported the order of ld. CIT(A). The ld. AR of the assessee submits that survey period recorded the statement of one the director of assessee. While recording statement of director of assessee, the additional sale price was either received or receivable. The Director of assessee simply admitted Rs.5.00 crore as additional sale price received/receivable during the year and there is no such admission of disclosure over and above the regular income on such allegation, the Assessing Officer made addition by disallowing proportionate expenses. The assessee submitted net profit of Rs.3.48 crore as per profit and loss account. The assessee suffered heavy losses in earlier years which were set off of the income of current year than by the assessee offered Nil income. The ld. AR of the assessee submitted that assessee has no other source of income except development of project namely Victoria Palms. The income offered by assessee is income from business activities, was the business of the assessee is entitled for legitimate business expenses. To support the submission, the ld. AR of the assessee relied upon the following decisions:

- (i) *J. K. Choksi vs. ACIT [Tax Appeal No. 149 of 2003] (Guj. HC).*
- (ii) *Dev Raj Hi-Tech Machines Ltd. vs. DCIT (2015) 45 CCH 0106 (Asr. Trib)*
- (iii) *M/s. Bridal Jewellery Mfg. Co. vs. ITO (2016) 129 DTR 0185 (Del. Trib).*
- (iv) *Madhav Corporation vs. ACIT (2015) 44 CCH 0428 (Ahd. Trib).*

**7.** We have considered the rival submissions and gone through the order of the lower authority. We have also deliberated on various

case laws relied by ld. AR of the assessee. We find that Assessing Officer while passing the assessment made proportionate disallowances of Rs.3.77 crore by taking disclosure of Rs.5.00 crore by applying the formula which we have extracted in para -2 (supra). We find that the assessing officer made disallowance of expenses in ad-hock manner. The assessing officer has wrongly mentioned that the assessee has shown profit of Rs. 2.25 Crore. We find that the assessee has shown profit of Rs. 3.48 Crore. The assessee has set-off the earlier year losses before declaring the profit of the year. All these facts is not discussed by assessing officer in his order. We find that ld CIT(A) during hearing before him call record of expenses in preceding three years and the details of the expenses incurred in post survey period. The ld CIT(A) after considering the material before him held that there is no dispute regarding set off losses suffered by the assessee, which the assessing officer has allowed. The Assessing Officer assessed the amount disclosed/undisclosed survey as business income after raising query and examining the idea of taxing it under section 68. The Assessing Officer worked out disallowance expenses in the ratio Rs.5.00 crore to total turnover. We find that the ld. CIT(A) held that only dispute regarding proportionate disallowance of expenses made by AO by applying formula as per para no. 6 of assessment order. The ld. CIT(A) noted that assessee claimed that there no expenses is claimed against the

undisclosed income. And that expenses incurred and claimed in the audited statement were actually incurred against the turnover and would have been incurred even without income admitted in survey. The ld. CIT(A) recorded that it was the contention of the assessee that expenses can only be disallowed after giving categorical finding on the basis of evidence that expenses are not allowable. The ld CIT(A) recorded that Assessing Officer has not given any finding on allowability or otherwise of expenses and that there is no finding of Assessing Officer that expenses are bogus and non-genuine.

- 8.** We find that the ld. CIT(A) also examined the comparative chart of expenses for three earlier years as well as and post survey period and on perusal of such details held that it is not a case that inflation of expenses or excessive booking of expenses in post survey period or no case of booking of extra ordinary expenses comparative to earlier years. The ld. CIT(A) held that ad-hock proportionate disallowance is not permissible and directed the assessing officer to delete the disallowance made by assessing officer.
- 9.** We have noted that there is no dispute that assessee was engaged for development of project of Victoria Palms, Dumas Road, Surat. The assessee was not having any other source of income. There is no dispute that the assessee is not entitled for set off of losses of earlier year, which have been allowed to the assessee. The Hon'ble

Gujarat High Court in CIT Vs Shilpa Dyeing & Printing Mills (P) Ltd 39 taxmann.com 3 (Guj) also held that income declared in the survey falls under one of the head of income and current year losses be set off against such undisclosed income. Thus, in view of the above factual and legal discussions, we do not find any reason to inter fear with the order of ld CIT(A), which we affirm. In the result the grounds of appeal raised by the revenue are dismissed.

**10.**In the result, appeal of Revenue is dismissed.

Order announced in Court on 09/11/2021 as per Rule 34(5) and by placing result on the notice board.

**Sd/-**

**(Dr. A. L. SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 09/11/2021  
(SAMANTA)

**Copy to:**

1. Appellant
2. Respondent
3. CIT(A)
4. Pr.CIT
5. DR

**Sd/-**

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat