

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.1098 AND 1099/Ahd/2019
निर्धारण वर्ष/ Asstt.Year : 2005-06 AND 2013-14

DCIT, Cent.Cir.1(1) Ahmedabad.	Vs.	M/s.Navratna Organizers & Developers P.Ltd. 2 nd Floor, Kaycrest Opp: Gujarat Gas Company Ltd. Nr.Parimal Crossing Ahmedabad. PAN : AAACN 8151 E
-----------------------------------	-----	---

(Applicant)	(Responent)
Revenue by :	Shri Vidyut Trivedi, Sr.DR
Assessee by :	Shri Tushar Hemani, with Shri P.B. Parmar, AR

सुनवाई की तारीख/Date of Hearing : 09/12/2021
घोषणा की तारीख /Date of Pronouncement: 20/12/2021

आदेश/ORDER

PER RAJPAL YADAV, VICE-PRESIDENT

These appeals are by the Revenue against separate orders of Id.CIT(A)-9 , Ahmedabad of even dated i.e. 2.4.2019 passed for the Asstt.Years 2005-06 and 2013-14. Since identical issues are involved in both the appeals, they are disposed of by this consolidated order.

2. Only ground in Asstt.Year 2005-06 and first ground in the Asstt.Year 2013-14 are identical except variation in quantum of amount. In other words, the grievance of the Revenue in both the above assessment years is that the Id.CIT(A) has erred in law and on facts in deleting the addition of

Rs.3,68,66,552/- for the Asstt.Year 2005-06 and Rs.7,03,93,962/- for the Asstt.Year 2013-14 made on account of estimation of profit @8% of the work-in-progress.

3. We would take a brief fact of the case for adjudication of this common ground. Assessee is a developer and engaged in development of various schemes on the land owned and belonging to different entities. It has filed return of income declaring total income at Rs.11,28,440/- on 4.5.2007 for the Asstt.year 2005-06 and Rs.3,07,88,041/- on 1.10.2013 for the Asstt.Year 2013-14. Both returns were selected for scrutiny assessment, and consequent notices under section 143(2) were issued and served upon the assessee. During the assessment proceedings, the ld.AO observed that the assessee is not following correct accounting method. Though the assessee was following mercantile system of accounting, but on construction/ developmental work, income has to be assessed on accrual basis by applying percentage completion method. Having failed to do so, the assessee has not shown correct figure of profit, though the assessee had involved in all stages of activities from acquisition of land to construction of the project. Not satisfied with the explanation of the assessee, the ld.AO has made addition by estimating the profit at 8% of WIP for both the assessment years. Aggrieved, assessee went in appeal before the ld.first appellate authority. The ld.CIT(A) has allowed claim of the assessee in both the years. The ld.CIT(A) while deciding the issue has relied upon orders of the ITAT in the assessee's own case in ITA No.2634/Ahd/2011 for the Asstt.Year 2008-09 and ITA No.1114/Ahd/2005 for the Asstt.Years 1997-98. The crux of the conclusion in these orders is that the assessee is neither owner of the project nor WIP belonged to it. The assessee has received the booking amount on behalf of the co-operative societies for development activity, and there was no material with the Department to demonstrate that the alleged receipts were meant for the

assessee, and income *qua* this receipt accrued to the assessee. The Id.CIT(A) has substantially reproduced the above orders of the Tribunal while deciding the issue in favour of the assessee in the impugned order. Dissatisfied with order of the Id.CIT(A) in deleting the impugned additions, Revenue is before the Tribunal.

4. The Id.DR relied upon order of the AO, while the Id.counsel for the assessee strongly supported the orders of the Id.CIT(A).

5. We have heard both the sides, and gone through orders of the Revenue authorities. We have also gone through orders of the ITAT in the assessee's own case cited (*supra*) for the assessment years 2008-09 and 1997-98. Copies of both the orders are placed on record. We find that Co-ordinate bench of the Tribunal (in which one of us, Vice-President is party) has examined and discussed at length issue of estimation of net profit at the rate of 8% on the alleged work-in-progress, and came to the conclusion that the assessee was a developer, and the WIP did not belong to it. The assessee is consistently following mercantile system of accounting, where receipts in the form of development fees have been recognized on completion of project. The Id.AO without any basis construed that WIP belonged to the assessee, Accordingly, the Tribunal confirmed claim of the assessee. The Id.CIT(A) has reproduced order of the Tribunal in entirety for appreciating the facts in right perspective. In view of this fact, there is no reason for us to deviate from the findings of the Id.CIT(A) based on findings of the ITAT in the assessee's own case cited (*supra*), and therefore, which we uphold and confirm deletion of additions on account of estimation of work-in-progress for both the years. Thus, ground no.1 of both appeals of the Revenue stand rejected.

6. Now only ground left for our adjudication is ground no.2, i.e. deletion of addition of Rs.3,06,946/- out of total addition of Rs.4,44,107/- made under section 14A of the Act for the Asstt.Year 2013-14.

7. During the assessment proceedings, the Id.AO noticed that the assessee has made substantial investment which yielded tax exempt income. The Id.AO was under a belief that such investment was made out of borrowed funds. The Id.AO accordingly issued show cause notice as to why disallowance of interest expenses under the provisions of section 14A read with Rule 8D of the Act should be made. In response thereof, the assessee explained that the investment was made out of interest free funds available with the assessee, and therefore, no expenditure was incurred by the assessee towards investment for making such investment which yielded exempt income. Assessee had filed details of investment along with balance sheet showing capital and general reserves & surplus available with the assessee during the year period under consideration. However, the Id.AO did not accept the explanation of the assessee and proceeded to compute disallowance under section 14A read with Rule 8D, and based on which disallowance of Rs.4,44,107/- has been made.

9. Aggrieved by action of the Id.AO, the assessee went in appeal before the first appellate authority. The Id.CIT(A) after going through the submissions and books of accounts of the assessee and also based on decision of the Tribunal in the case of the assessee for the Asstt.Year 2012-13, deleted disallowance to the extent of Rs.3,06,946/- being interest expenses, and the balance amount of Rs.1,37,161/- being administrative expenses i.e. 05% of average investment was confirmed. Now Revenue is in appeal before the Tribunal against deletion of disallowance on account of interest component of Rs.3,06,946.

10. Before us, the Id.DR defended in support of order of the Id.AO, while the Id.counsel for the assessee relied upon the order of the Id.CIT(A). The Id.counsel for the assessee further submitted that the assessee has substantial interest free funds available with it in the form of share capital plus reserves & surplus. As on 31.3.2013 the same is Rs.23,92,41,538/- while they were Rs.21,51,05,90/- as on 31.3.2012, and against which investment was only Rs.2,74,32,264/- as on 31.3.2013 whereas it was Rs.2,74,32,264/- on 31.3.2012. He further submitted that ratio of surplus available with the assessee is more than the last year, i.e. in the Asstt.Year 2012-13 it was 7.84 times while in the asstt.Year 2013-14 it was 8.72 times, and therefore, the assessee had sufficient interest free funds in excess of investment made for earning tax free income, and therefore, invocation of provisions section 14A read with rule 8D is not justified.

11. We have heard rivals submissions and gone through the record carefully. We find that action of the Id.AO in making disallowance under section 14A read with Rule 8D was not justified in view of the fact that the assessee has demonstrated that it has sufficient funds for making investment which yielded exempt income. As per the figures demonstrated by the assessee, assessee's interest free funds far exceeded investment made for earning exempt, against which, there is no material with the Department to establish that borrowed funds were utilized by the assessee for the impugned investment. The Id.CIT(A) in the impugned order noticed that the assessee had sufficient interest free funds in excess of investment made for earning tax free income. After examining the explanation of the assessee and based on decision of the Tribunal in assessee's own case for the Asstt.Year 2011-12 cited (supra), the Id.CIT(A) deleted the interest portion of the disallowance and the balance amount was sustained. We do not find any infirmity in the

order of the Id.CIT(A) on this issue, which accordingly confirmed, and this ground of the Revenue stands dismissed.

12. In the result, both appeals of the Revenue are dismissed.

Order pronounced in the Court on 20th December, 2021 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

Ahmedabad; Dated 20/12/2021