

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA Nos. 858, 859 & 860/Ahd/2019
A. Y. 2009-10, 2011-12 & 2014-15**

Vadodara Urban Development Authority, VUDA Bhavan, VIP Road, Nr. LT Circle, Karelibaug, Vadodara (Appellant)	Vs	The DCIT(Exem), Circle-2, Ahmedabad (Respondent)
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**Assessee by: Shri S.N. Soparkar, Sr. A.R. &
Shri Parin Shah, A.R.**

**Revenue by: Shri Sudhendu Das CIT-D.R. &
Shri Ramesh Kumar, Sr. D.R**

Date of hearing : 25-04-2023

Date of pronouncement : 08-05-2023

आदेश/ORDER

PER BENCH:-

These three appeals filed by the assessee are against the order of Ld. CIT(Appeals) for assessment years 2009-10, 2011-12 & 2014-15 vide orders dated 11-08-2017.

2. Since common issues are involved in all the years under consideration, the same are being disposed of by way of a common order.

3. The assessee has taken the following grounds of appeal for assessment year 2009-10:

“1. Ld. CIT (A) erred in law and on facts in confirming action of AO to treat capital receipts as revenue receipts received to be expended against the specific development purpose under the head of BMC Development Charges Rs. 94,03,070/-, VUDA Development Charges Rs. 37,83,074/-. Ld. CIT (A) ought to have considered the submission of the appellant and delete the disallowance. It be so held now.

3 The order passed by AO and confirmed by CIT (A) is illegal and bad in law and required to quashed.

4 Charging of Interest u/s. 234B is unjustifiable.

5 Initiation of penalty proceedings u/s 271(1)(c) is unjustifiable.

Total tax effect Rs. 1,57,05,050/- (with interest)”

4. The assessee has taken the following grounds of appeal for assessment year 2011-12:

“1. Ld. CIT (A) erred in law and on facts in confirming action of AO to treat capital receipts as revenue receipts received to be expended against the specific development purpose under the head of BMC Development Charges Rs. 1,81,75,435/-, VUDA Development Charges Rs. 80,38,674/-. Ld. CIT (A) ought to have

considered the submission of the appellant and delete the disallowance. It be so held now.

3 The order passed by AO and confirmed by CIT (A) is illegal and bad in law and required to quashed.

4 Charging of Interest u/s. 234B is unjustifiable.

5 Initiation of penalty proceedings u/s 271(1)(c) is unjustifiable.

Total tax effect Rs. 3,17,63,960/- (with interest)”

5. The assessee has taken the following grounds of appeal for assessment year 2014-15:

“1. Ld. CIT (A) erred in law and on facts in confirming action of AO to treat capital receipts as revenue receipts received to be expended against the specific development purpose under the head of Amenities Fee of Rs. 35,20,32,264/-, Impact Fees Rs. 19,07,405/-, BMC Development Charges Rs. 90,94,596, VUDA Development Charges Rs. 1,57,60,372/-, Ld. CIT (A) ought to have considered the submission of the appellant and delete the disallowance. It be so held now.

3 The order passed by AO and confirmed by CIT (A) is illegal and bad in law and required to quashed.

4 Charging of Interest u/s. 234B is unjustifiable.

5 Initiation of penalty proceedings u/s 271(1)(c) is unjustifiable.

Total tax effect Rs. 7,11,91,700/- (with interest)”

6. Before going into the merits of the case, it is observed that the appeal of the assessee is time-barred by 554 days. The assessee also filed a letter for condonation of delay in filing of the present appeals, supported by an Affidavit. The reason cited by the assessee for delay in filing of the present appeals was that the assessee filed appeal against the order passed by the AO for assessment years 2009-10, 2011-12 and 2014-15 before Ld. CIT(Appeals). The order passed by the Ld. CIT(Appeals) was received by the assessee on 08-09-2017 and on perusal of the same, the Accounts officer in charge of the assessee Corporation was of the view that the issue had been decided in favour of the assessee and the Ld. CIT(Appeals) had held in favour of the assessee on the issue of applicability of proviso to section 2(15) of the Act. The Department filed appeal against the order before ITAT, who dismissed the appeal of the Department by order dated 05-02-2019 for the impugned assessment years. When the assessee approached the Department for giving appeal effect to the order passed by ITAT, the Department informed the assessee that some issues have been decided by the AO and confirmed by Ld. CIT(Appeals) against the assessee and there may be consequential demand and penalty against the assessee. Thereafter, the assessee obtained professional advice, and the assessee was advised to file appeal against the order of Ld. CIT(Appeals) in respect of certain issues, which had been decided against the assessee. Accordingly, on the advice of the Counsel, the assessee filed appeal before ITAT on 17-05-2019 for assessment years 2009-10, 2011-12 and 2014-15. Accordingly, there was a delay of 554 days in filing of appeal by the assessee for the impugned assessment years. Before us, the counsel for the assessee submitted that there was a bona fide reason for delay in filing of appeal on behalf of the

assessee. As can be seen from the facts placed on record, there was no mala fide intention or deliberate delay on part of the assessee Corporation in filing of the present appeals. On going through the facts of the case, we observe that Ld. CIT(Appeals) had in principle allowed the appeal of the assessee, and it was only with respect to certain limited issues that certain receipts were held to be on revenue account. Accordingly, we are of the view that from the facts it is evident that delay in filing of appeal was owing to mistaken view taken by the concerned accounts officer of the assessee Corporation with regard to the contents of the order passed by Ld. CIT(Appeals). Further, it is seen that as soon as the assessee corporation realised its mistake, on receipt of the advise from the counsel, the assessee Corporation immediately filed appeal before ITAT. The Supreme Court in the case of **State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 (SC)** held that the expression "sufficient cause" for condonation of delay in section 5 of Limitation Act should receive a liberal construction so as to advance the substantial justice **when no negligence or inaction or want of bona fide is imputable to party.** Accordingly, looking into the facts instant case, we are of the considered view that this is a fit case for condonation of delay in filing of the present appeals. The learned DR has also not objected to the delay being condoned, looking into the facts of the instant case. In the result, the delay in filing of appeal for the assessment years under consideration is being condoned.

7. So far as the merits of the case is concerned, the counsel for the assessee drew our attention to page 25, paragraph 5.2 of the order passed by Ld. CIT(Appeals) for assessment year 2009-10, in which relief has been

granted to the assessee on the applicability of proviso to section 2(15) of the Act, by following the decision of which the case of AUDA v. ACIT in ITA numbers 423, 424, 425 of 2016 vide order dated 02-05 2017. Further, our attention was drawn to paragraph 5.3 at page 37 of CIT(Appeals) order in which relief has been granted to the assessee with respect to this issue. The counsel for the assessee submitted that in principle, CIT(Appeals) has allowed the appeal of the assessee on the issue of applicability of proviso to section 2(15) of the Act. However, the counsel for the assessee further drew attention to pages 41-42 at paragraph 9(iii)(a), (b) and (c) where CIT (Appeals) held that certain funds received by the assessee under the category such as development charges, betterment charges, impact fees, amenities fees, scrutiny fees, zoning fees etc. were directed to be treated as income of the assessee, in spite of the fact that the assessee has treated these receipts as balance sheet items. The counsel for the assessee submitted before us that the limited contention of the assessee with respect to the aforesaid items which have been held to be on revenue account by the CIT(Appeals) is that the assessee may be allowed deduction of the corresponding expenditures incurred for earning the same, in accordance with law. The counsel for the assessee submitted that the assessee is not raising any dispute regarding the taxability of the aforesaid receipts as revenue receipts in the hands of the assessee. The only contention of the assessee is that if the same are being treated as revenue receipts in the hands of the assessee, the assessee may be permitted to deduct the corresponding expenses incurred for earning the same, in accordance with law.

8. Before adjudicating on the issue in hand before us, it would be useful to reproduce the relevant extracts of the decision of Ld. CIT(Appeals) while holding that certain receipts be taxed as revenue receipts the hands of assessee.

“(a) During the appellate proceedings it is seen from the Balance Sheet and Income and Expenditure Account of the, appellant that certain receipts have been taken by the appellant directly to the Balance Sheet. The A.G. Audit has been raising audit objection for treating them as revenue receipts” and hence the said receipts have been considered as capital receipts. According to these audit objections for e.g. receipt from 'Betterment Charges' are required to be shown as liabilities in Balance sheet because they should be adjusted against the net amount to be paid by the owners. Similarly as per the Form Q under GTPUD Rules, 1979, 'Development Charges' are required to be shown in the Balance Sheet under the head of 'Capital Receipts'. Audit department also wants the Part Plan Fees, Additional FSI charges etc. to be reflected as 'capital receipts' as per the requirement of Format of Annual Accounts. There are many other issues on which 'Audit' wing had been raising audit objection with regard to classification of receipts. Be as it may, as far as Audit objections are concerned. Here, we are concerned with computation of income under the Income Tax Act.

(b) It is a matter of fact that Appellant has received these funds as per the provisions of GTPUD Act. The GTPUD Act authorizes the appellant to receive funds under various categories such as Development Charges, Betterment charges impact fees, Amenities fees. Scrutiny fees, Zoning fees etc. These fees/funds or the sources of receipts have been received by the appellant during the discharge of its functions. These are recurring and operational receipts of the appellant. The appellant is required to apply these receipts towards its objects. I am of the considered opinion that a capital expenditure by a person need not be a capital receipt of the person receiving that amount. Therefore, A.O. is directed to consider all these receipts as the income of the appellant irrespective of the fact that it has treated them as balance sheet item.

(c) The appellant has to keep in mind that if these receipts are considered as capital receipts as a balance sheet item then appellant would be eligible to claim deduction u/s 11(1)(d) of the Act on such capital receipts. But since these cannot be a part of the income of the appellant, the appellant (a) cannot claim accumulation @ 15% u/s 11(1)(a) of the Act on such capital receipts. The assets creation made out of these receipts would be reflected in the 'balance sheet and the appellant (b) cannot claim capital expenditure out of these receipts as the money applied towards its objects as application of income. Finally, the appellant (c) cannot claim depreciation on fixed assets created out of receipts, as application of income."

9. From the contents of the aforesaid extracts, it is seen that certain receipts have been taken by the assessee directly to the balance sheet viz. betterment charges, impact fees, amenities fees etc. The limited contention of the counsel for the assessee before us is that since the aforesaid receipts have been held to be on revenue account, even though treated by the assessee as a balance sheet item, then the corresponding expenditures incurred for earning the aforesaid income may be allowed in accordance with law. In our considered view, we find force in the contention of the counsel for the assessee that in case certain receipts have been treated by Ld. CIT(Appeals) as revenue receipts, the assessee would be entitled to claim deduction of corresponding expenditure incurred for earning the same. Accordingly, the issue is being set aside to the file of the Ld. Assessing Officer to work out the expenditure incurred by the assessee in earning the aforesaid receipts and allow the same in accordance with law.

10. In the result, the appeal of the assessee is allowed for assessment year 2009-10, for statistical purposes.

11. Since common issues are involved for all year under consideration, the appeal for the assessee is also allowed for assessment years 2011-12 and 2014-15 for statistical purposes.

12. In the combined result, the appeals of the assessee are allowed for assessment years 2009-10, 2011-12 and 2014-15 for statistical purposes.

Order pronounced in the open court on 08-05-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 08/05/2023

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद