

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member

ITA No. 1676 /Ahd/2016
Assessment Year 2011-12

Shri Amit Laxmanbhai Patel, 8, Maruti Hills Bungalows, Satellite, Ahmedabad-380015 PAN: ABJPP9877A (Appellant)	Vs	The DCIT, Central Circle-1(2), Ahmedabad (Respondent)
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Revenue by: Dr. Shyam Prasad, Sr. D.R.
Assessee by: Shri Parin Shah, A.R.

Date of hearing : 08-06-2021
Date of pronouncement : 12-07-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A)-11, Ahmedabad dated 04-03-2016, in proceedings under section 143(3) r.w.s. 153A of the Income Tax Act, 1961; in short "the Act".

2. The appeal of the assessee pertaining to assessment year 2009-10 to 2012-13 arose from the order of CIT(A) -11 Ahmedabad was adjudicated by the Co-ordinate Bench of the ITAT on 6th December, 2019. Subsequently, the assessee has filed miscellaneous application pointing out in respect of

appeal adjudicated vide ITA No. 1676/Ahd/2016 on 6th December, 2019 inadvertently ground nos. 7 & 8 remained to be adjudicated. Therefore vide order dated 1st December, 2020 the order of the ITAT was recalled to adjudicate the ground nos. 7 & 8 of the aforesaid appeal filed by the assessee. The ground nos. 7 and 8 of the appeal of the assessee is reproduced as under:-

“7. Ld. CIT (A) erred in law in and on facts confirming disallowance made by AO of cost of improvement of Rs. 9, 60, 000/- indexed at Rs. 20, 82, 093/- computing long term capital gain on sale of agricultural land at Makarba. Ld. CIT (A) ought to have allowed cost of improvement incurred and rightfully claimed on land purchased in 1995 by the appellant.

8. Ld. CIT (A) erred in law and on facts in not adjudicating contention raised without prejudice to above ground that disallowance in any case deserved to be deleted since against investment of Rs. 1, 43, 09, 000/- in the new agricultural land LTCG claimed was only to extent of Rs. 1,19, 74, 290/- deducting indexed cost of improvement of Rs. 20, 82, 0937-. Thus even if the said improvement cost is added, LTCG would still be Nil.”

3. During the course of appellate proceedings before us, at the outset the ld. counsel has submitted that identical issue on similar fact pertaining to the claim of cost of improvement for computing long term capital gain on sale of agricultural land at Makarba was adjudicated by the Co-ordinate Bench of the ITAT in the case of the co-owner wherein 50% of the cost of improvement of the agricultural land was allowed. The ld. Departmental Representative is fair enough not to controvert this undisputed fact that the identical issue on similar fact has been adjudicated by the Co-ordinate Bench of the ITAT as referred above.

4. Heard both the sides and perused the material on record. During the course of assessment, assessee along with other 5 co-owners/partners sold

agricultural land situated at Makarkba, Sarkhej District, Ahmedabad admeasuring 14080 square yards for a consideration of Rs. 6 crores (Rs. 1 crore to each partner as their shares). The assessee had shown improvement cost of Rs. 9,60,000/- and claimed indexed cost of improvement at Rs. 20,82,093/- of the said land. The Assessing Officer has disallowed the claim of the assessee for want of supporting evidences.

With the assistance of Id. representatives, we have gone through the decision of Co-ordinate bench of the ITAT Ahmedabad wherein the Bench has adjudicated the similar issue on identical facts in the case of the co-owners Shri Alkesh Laxmanbhai Patel vide ITA Nos. 1678, 1679, 1680 and 1681/Ahd/2016 dated 23-03-2018 wherein the claim of improvement expenditure was allowed to the extent of 50% of the amount. The relevant part of the decision of the Co-ordinate bench is reproduced as under:-

“20. So far ground no. 5 with regard to cost of improvement of Rs. 9,60,000/- indexed at Rs. 20,82,093/- computing long term capital gain on sale of agricultural land at Makarba is concerned.

Ld. AR submitted that cost of improvement incurred rightfully claim on land purchased in 1995 but despite of the fact that several opportunities were given by the lower authorities. Appellant did not discharge his ones by producing bill of the expenses incurred for improvement in support of his claim.

In our considered opinion, we must have spent some amount maintaining the land, therefore, 50% of the amount should be allowed. Therefore, we direct the AO to calculate the 50% cost of-improvement of the agricultural land and give the effect of the same to the appellant.”

Since the impugned issue in the appeal is squarely covered by the decision of Co-ordinate Bench of the ITAT as referred above, therefore, respectfully following the decision of the Co-ordinate Bench, we direct the Assessing Officer to calculate 50% cost of improvement of the agricultural land as directed in the order of the ITAT as mentioned above. Accordingly, this

ground of appeal of the assessee is partly allowed. Since we have adjudicated and allowed the ground no. 7 of the assessee, therefore, ground no. 8 filed by the assessee is dismissed as not pressed.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 12-07-2021

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 12/07/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT 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