आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
''C'' BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं**./ITA No. 170/AHD/2021**

निर्धारण वर्ष/Asstt. Year: 2012-2013

Shri Nilesh Parshotambhai Patel, 9/191, Satyagrah Chhavani, Wiseman House, Satllite Road, Ahmedabad-380015. **PAN: AEHPP7118R**	Vs.	D.C.I.T., International Taxation-1, Ahmedabad.

And

आयकर अपील सं**./ITA No. 171-172/AHD/2021**

निर्धारण वर्ष/Asstt. Year: 2012-13 & 2013-2014

D.C.I.T., International Taxation-1, Ahmedabad.	Vs.	Shri Nilesh Parshotambhai Patel, 9/191, Satyagrah Chhavani, Wiseman House, Satllite Road, Ahmedabad-380015. **PAN: AEHPP7118R**

(Applicant)		(Respondent)

Assessee by	:	Shri Aseem L Thakkar, A.R
Revenue by	:	Shri Ashok Kumar Suthar, Sr.D.R

सुनवाई की तारीख**/Date of Hearing : 19/10/2023**

घोषणा की तारीख **/Date of Pronouncement: 20/12/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned cross appeals have been filed at the instance of the Assessee and the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)13, Ahmedabad, arising in the matter of assessment order passed under

s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013 and 2013-14.

2. First, we take up Revenue's appeal in **ITA No. 171/Ahd/2021,** corresponding to AY 2012-13. The Revenue has raised following grounds of appeal:

1. The learned CIT(A) has erred in law and on facts in accepting the issue of residency of the assessee as Non-Resident completely ignoring the facts of the case wherein the assessee has stayed in India during the previous year for 166 days (which exceeds 60 days) and more than 365 days in preceding four years thereby completely becoming a resident in India as per the provisions of Section 6(1)(c) of the I.T.Act, 1961.

2. The learned CIT(A) has erred in law and on facts by accepting the claim of the assessee that he has left for employment outside India and therefore stay of 182 days in the previous year are required for becoming the resident by completely ignoring the fact that since the assessee has not left India for employment in the previous year relevant to the assessment, this exception is not applicable to the facts of the case.

3. The learned CIT(A) has erred in law and on facts in accepting the claim of the assessee that he has left for employment outside India and therefore, the threshold of 182 days is required to be applied, without calling for any documentary evidence in support of assessee's above mentioned claim which the assessee is duty bound to submit in order to fall in Explanation-1(a) to Section 6(1) of the I.T.Act, 1961.

4. The learned CIT(A) failed to examine the residential status of the assessee i.e. whether a resident or a non-resident as an undisputed fact despite a specific ground has been taken by the assessee which the learned CIT(A) was required to deal/adjudicate with.

5. The learned CIT(A) has erred in law and on facts in extending the benefits of Section 5(2) of the Act to the assessee without verifying the residential status of the assessee in F.Y.2011-12.

6. on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on accounts of lease rent expenses incurred in Singapore as the assessee was not able to prove the source of such expenses which he is bound to by virtue of being resident.

7. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on accounts of tuition fees incurred in Singapore as the assessee was not able to prove the source of such expenses which he is bound to by virtue of being resident.

8. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on accounts of utility bill payment incurred in Singapore as the assessee was not able to prove the source of such expenses which he is bound to by virtue of being resident.

10. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on accounts of cash/credit deposit in Oversea-Chinese Banking Corporation Ltd. (OCBC Bank), Singapore by holding that the assessee is a non-resident and the cash deposits in the bank account in Singapore cannot be brought to tax in India whereas the assessee is a resident as mentioned in Ground No. 2 above.

11. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on accounts of investments made Singapore companies by holding that the assessee is a non-resident and the investment made in Singapore companies cannot be brought to tax in India whereas the assessee is a resident as mentioned in Ground No. 2 above.

12. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the fact that the assessee had substantial business interest in India and the assessee is a resident as mentioned in Ground No. 2 above.

13. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the fact that he was liable to pay tax in India, being a resident as mentioned in Ground No. 2 above, on his global income.

14. The Learned CIT(A) has erred in fact and in law that despite assessee being a resident the assessee failed to furnish his return of income in India as per the provisions of Section 139 of the IT Act and thus failed to offer to tax his global income.

15. Even if it is accepted for argument sake that the assessee was a non resident in relevant assessment year, the learned CIT(A() has failed to appreciate the following facts and legal issues:

(1) Since the assessee was a resident till A.Y.2010-11 which is an admitted fact, huge investments have been made in Singapore in the immediately next year, the assessee is bound to explain the source of income, investments, expenses, cash/credit deposit etc., by providing credible documentary evidence in support of the above which the assessee has failed to submit and the learned CIT(A) has erred in law on this account.

(ii) The learned CIT(A) has erred in law and on facts in accepting the claim of the assessee that that the source of investments/expenses of Rs. 1.64 Cr. is outside India despite a clear finding by the Assessing Officer that the assessee has not filed any return of income outside India which supports the facts that he was not having substantial income for such investments.

(iii) The learned CIT(A) has erred in accepting the claim of the assessee that the source of these investments was from outside India despite clear finding of the AO in the assessment order that the details called for from competent authority in Singapore also suggests that he was not having credible source of income in Singapore.

16. The revenue craves leave to make addition, deletion, modification or alteration in any or all grounds of appeal, as the case may be.

2.1 All the 16 grounds of appeal raised by the revenue are interconnected, therefore we proceed to adjudicate all the grounds of appeal together. The interconnected issue raised by the Revenue is that the ld. CIT-A erred in deleting the addition made by the AO on account of the unexplained income.

3. The facts in brief are that the assessee is an individual and filed return of income for the year under consideration as non-resident. The assessee for the year under consideration declared income of Rs. 23,09,030/- only. A tax evasion petition was filed by the First Secretary (Economic) High commission of India to Singapore against the assessee. An information from competent authority in Singapore also received on 29th January 2015 about lavish lifestyle of the assessee family in Singapore, investment in foreign companies and the expense on the luxurious life is claimed to be sourced from loan received from 3 companies incorporated in Singapore. An inquiry was also conducted by income tax officer (I & CI) Ahmedabad regarding those 3 companies which were found to be in huge debt. Accordingly, the assessment was reopened under section 147/148 of the Act. The AO during the reopening assessment proceedings noticed that the assessee claimed to be non-resident for the year under consideration, but no evidence was provided regarding sources of income outside India. On the other hand, the assessee was having substantial source of income/assets in India and the assessee was resident till A.Y. 2010-11. Accordingly, the AO was of the view that in absence of sources of income outside India, it can be presumed that the expenses incurred, and investment made by the assessee outside India have been met out from the income earned from the business sources/assets in India. Thus, the AO vide show cause notice dated 06th November 2017 proposed to treat the following expenses and investment by the assessee in Singapore as sourced from undisclosed/unexplained income from India:

(1)	Accommodation expenses	Rs. 36,93,600/-
(2)	Tuition fee of the children's	Rs. 44,85,773/-
(3)	Utility bill payment	Rs. 1,09,777/-
(4)	Deposits in OCBC Bank	Rs. 12,36,982/-
(5)	Investment in Global Impex Link Pvt Ltd	USD 70,000/-
(6)	Investment in Global Real Estate Solutions Pte	USD 100,000/-

3.1 The assessee in response submitted that income on account of accommodation expenses, tuition fee of children, utility bill payment and

investment in share has been covered and added to the income of his wife namely Smt. Mona Nilesh Patel, therefore, the same cannot be taxed in his hand. Regarding the deposit in bank accounts in OCBC Bank, it was submitted that the same was deposited out of withdrawal from the companies in which he and his wife are directors and shareholders.

3.2 The AO after considering the submission of the assessee found that the addition in the hands of the assessee's wife Smt. Mona Nilesh Patel was made on account of unsecured loan for Rs. 1,46,51,606/- from where expenses on accommodation, tuition fee, utility bill payments etc was claimed to be met. Thus, the addition of these expenses was covered on account of the addition of an unsecured loan in the hands of the assessee's wife on a substantial basis. However, Smt. Mona Nilesh Patel has not accepted the assessment order and has filed an appeal before the ld. CIT(A)-13 Ahmedabad. Therefore, to protect the interest of Revenue, a protective addition was required to be made in the hand of the assessee. Hence, the AO made protective addition of Rs. 82,89,150/- on account of accommodation (Rs. 36,93,200/-), tuition fee (Rs. 44,85,773/-), utility bill payments (Rs. 1,09,777/-) only.

3.3 Regarding the deposit in OCBC Bank for Rs. 12,36,982/- (30500 SGD), the AO found that the assessee has not provided any supporting evidence, explaining the source of deposit, therefore, the AO added the same to his total income.

3.4 Regarding the investment in shares of Global Impex Link Pvt Ltd and Global Real Estate Solutions Pte, the AO found that the assessee as well as his wife both made separate investment of USD 70000/- and USD 100,000/- each. Therefore, the claim of the assessee that same has been covered in the hands of his wife cannot be accepted. Thus, the AO added the same to the total income of the assessee by converting the same into Rs. 68,94,656/- only.

4. The aggrieved assessee preferred an appeal before the learned CIT(A). The learned CIT(A) after considering submission of the assessee and the facts in totality deleted the addition made by the AO on protective as well as on substantive basis. The relevant finding of the learned CIT(A) reads as under:

> *5.11 The argument that where the additions have already been deleted on substantive basis, no additions on protective basis can survive, cannot be subscribed. However the contention that where the additions have already been deleted and decided on merits, no additions on protective basis can survive, has substance. From the perusal of the appellate order dated 03.02.2020 (a combined order for appeals against the assessment order from 2010-11 to 2014- 15 where Smt. Mona Patel was NR) it has been held that Smt. Mona Patel being NR and having asserted that the expenses in Singapore were made out of the funds in Singapore and that the AO had brought no material on record that Smt. Mona Patel had remitted or diverted income earned in India to meet the expenses in Singapore, the AO had no basis to make the additions of those expenses to the assessed total income merely on the basis of TEP and the surmises that she did not have source of income in Singapore and she had used the undisclosed income in India for those expenses, those substantive additions were deleted. The operating paragraphs from the order for AY 2012-13 in the case of Smt. Mona Patel may be reproduced as under:*
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> > *7.1 During the A.Y. 2012-13 the AO noted that assessee had taken loan of Rs. 1,46,41,606/- from various companies Impex Link Global Pte Ltd., Global Real Estate Solution Pte Ltd. and Global Impex Link Pte Ltd. in Singapore. It is the case of the AO that the onus was on the assessee to establish the genuineness of these sources of fund and the company had huge debt/liabilities and had no fund of own to lend to the assessee. The AO held that loan amount of Rs. 1, 46 ,51,606/. was not explained and thus the amount was added as unaccounted cash credit in the hand of assessee u/s.68.*
> >
> > *7.2 The issues have already been discussed in the decisions for A.Y. 2011-12. Accordingly following the decisions for A.Y. 2010 -11 and A. Y 2011-12 the addition of Rs. 1,46,51,606/- cannot have been added to the total income as done by the AO. The said addition is deleted. The related ground is allowed.*
> >
> > *7.3 Similar to A.Y. 2011-12 the AO has dealt with the issues of various expenses incurred by the appellant such as for accommodation, for investments in shares of companies in Singapore, cash deposits in DBS bank in Singapore, tuition fee for children in Singapore and various utility bills paid by the assessee in Singapore but has not made separate additions on this accounts to the total income to avoid double addition in view of addition of Rs. 1,46,51,606/- already made.*
> >
> > *7.4 The addition of Rs. 1,46,51,606/-having been directed to be deleted, the could be made additions have been considered but in view of the decisions made on those issues for earlier assessment years dealt before, no addition on this account would be legaily tenable*
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> *5.12 On the principles applied in the case of Smt. Mona Patel and there being no evidence on record to show that there were undisclosed income in India, there remains no basis for confirming the additions on protective basis in the hands of the appellant. The appellant is also equally protected from taxation of income or deemed income outside India as per the principles laid in afore paragraphs. The AO is directed to delete the protective additions of Rs.82,89,323/- being aggregate of Utility bill payment of Rs. 1,09,777/-, tuition fees in*

Singapore of Rs.44,85,773/- and lease rent expense in Singapore of Rs.36,93,600/-. The related grounds are allowed.

5.13 The 9th ground of appeal is with regard to making of addition of Rs.12,36,982/- representing converted amount of SGD 30500 as alleged unexplained cash deposit in OCBC Bank account (in Singapore). The AO has referred to the show cause notice dated 06.11.2017 directing the appellant to submit the source of cash / credit deposited in the OCBC Bank account with supporting documents and to the reply of the appellant on 17.11.2017, wherein it have been stated that the bank deposits were made from the withdrawals made from the companies (which were operated by the appellant or his wife who was the Director) and that a request for copy of bank statements was also made since the same was not available with the appellant (as he had already re-located to Japan at that relevant point of time). It was explained and there is no dispute that the transactions in question related to operations in Singapore and the appellant being NRI, no adverse inference can be drawn. It is stated by the appellant that he had furnished the copies of the business activities at Singapore including the Balance sheet and business files of Global Impex Link PTE. Singapore and Global Real Estate Solution PTE as well as the bank book of OCBC i.e. all possible details available with the appellant had been furnished at the assessment stage. These companies have also been identified in the report of Inland Revenue Authority of Singapore. Therefore, the sources of deposits in the bank accounts stood explained and they have not been discredited by the AO. Thus it is apparent that the AO has made additions with respect to the deposits made in the bank accounts operated with OCBC Bank, Singapore which does not fall within his jurisdiction. Further, detailed information has been given which has not been discredited by the AO at any stage. In view of the above facts and circumstances and the undisputed legal position that income / investments / expenditure made outside India cannot be taxed in the hands of the non-resident in light of the provision of section 5 & section 6 of the Act, the addition deserves to be deleted. The related ground is allowed.

5.14 The 10th ground of appeal is with regards making addition of Rs.68,94,656/- as alleged unexplained investment in Singapore companies. It is the case of the AO that the appellant had made investments in shares in company Global Impex Link P. Ltd in Singapore of USD 70000 and in Global Real Estate Solution PTE Ltd in Singapore of USD 100000. Reference has also been made to the show cause notice dated 06.11.2017 wherein, the appellant was directed to submit the source of income used by the appellant to invest in these companies and to the appellant's submission dated 17.11.2017 wherein it had been contended that similar additions had come to be made in the hands of his wife, Smt. Mona Patel and hence the same may not be added again. The AO held that the reply had not been satisfactory as investment was separately made by his wife and by him for the USD 70000 and USD 100000 in the two companies and no amount of unexplained investment of Shri Nilesh Patel has been added in his wife's hand. Adopting the conversion rate for USD to INR at Rs.40.5568 and an addition of Rs.68,94,656/- came to be made.

5.15 In the case of this issue also the appellant is protected by the provisions Section 5 and Section 6 as he is a non resident and impugned activities and transactions have been undertaken in and with entities in Singapore. The documents of the companies have been filed with the "Accounting and Corporate Regulatory Authority, Singapore" (ACRA). The AO has also conducted independent enquires and reference was made to the Competent Authority Singapore, under DTAA, through the Competent Authority of India, CBDT, New Delhi. No facts and evidences have been brought on record by the AO which could have in any way dented the legal protection to the appellant being an NRI who would not be taxable in respect of any income arising or accruing outside India.

5. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

6. The learned DR before us contended that the assessee was resident in India for the year under consideration and therefore, global income of the assessee is subject tax in India.

7. On the other hand, the learned AR contended that the revenue itself has accepted that the assessee is a non-resident which can be verified from the assessment order available on record. Thus, in the case of non-resident, the income shall be taxable in India if it is accrued or arose in India or deemed to accrue or arise in India. But there was no such finding of the AO arising from the assessment order that income accrued/received or arose in India or deemed to accrue or arise in India. Accordingly, it was submitted by the learned AR that transactions in dispute were carried out in a country outside India which cannot be made subject to tax in India.

7.1 Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee family is living in Singapore where huge expenses were incurred on accommodations and education. Besides, the deposits in bank account maintained there as well as made investments in the shares of the companies operated in Singapore were made. The AO held that sources of expenses incurred, and investment made by the assessee in Singapore were not explained and accordingly the AO made addition on protective as well on substantive basis. The learned CIT(A) deleted the above additions made by AO mainly on the reasoning that the assessee is a non-resident for purpose of the Act. Therefore, the expenditures incurred, or investment made outside India cannot be taxed in India

unless it is established income accrued or arose in India. The revenue against the finding of the learned CIT(A) raised various grounds of appeal which are interconnected. Accordingly, we proceed to adjudicate the same one by one in the following paragraphs.

8.1 The first ground or contention of the revenue is that the learned CIT(A) wrongly held that the assessee as non-resident under the provisions of section 6 of the Act. The contention of the revenue in the ground of appeal is that the assessee in the previous year relevant to assessment year under consideration was in India for 166 (i.e. more than 60 days) and for more than 365 days in the last 4 years. Therefore, as per the provision of clause (c) of sub-section 1 to section 6 the assessee shall be treated as resident under the Act. Further, the contention of the revenue that the provisions of explanation (1)(a) below section (6)(1) provides that "citizen of India leaves India for the purpose of employment outside India, the word 60 days under clause (c) of subsection shall be replaced with 182" cannot be applied in the case of the assessee as there is no evidence submitted by the assessee establishing that the assessee leaves India for employment purpose. Before going into specific contention of the revenue, we note that the AO himself, while finalizing the assessment order, has treated the assessee as non-resident. Therefore, in our considered view there no dispute remains on this issue. Hence, as per the provision of section 5 of the Act only those income which accrues or arises or deemed to accrue or arise in India will be brought to tax under this Act.

8.2 Coming to the issue of protective addition made on account of the expenses incurred on the accommodation, tuition fee and utility bills in Singapore. In this regard, we note that wife of the assessee Smt. Mona Patel has admitted having incurred impugned expenses out of the loan taken from the companies incorporated in the Singapore in which the assessee and his wife are shareholders and directors. The AO, in the case of Smt. Mona Patel, has not accepted the explanation and added the loan amount to her total income by holding that the

companies from which loan claimed to be taken are loss making. On appeal by Smt. Mona Patel to the first appellate authority, the learned CIT(A) accepted the source of the loan amount and deleted the addition on merit of case. Once the substantive addition deleted on merit of the case the consequent addition on protective does not hold ground. In holding, so we draw support and guidance from the judgment of Hon'ble Delhi High Court in case of PCIT vs. Panchmukhi Management Services (P.) Ltd. reported in 153 taxmann.com 297 where it was held as under:

> *"Further, this Court by a separate order in a batch of appeals has upheld the order of the Tribunal deleting the substantive addition on merit made in different concerns of M Group. Consequently, the issue of protective addition in the hand of the respondent-assessee does not arise.[Para 9]"*

8.3 Thus, in view of the above we do not find any infirmity in the order of the learned CIT(A) with respect to protective addition deleted by him. Moreover, once the assessee has been accepted as Non-resident by Revenue, then the addition in the hands of the cannot be made unless there it is accrued or arose/ deemed to accrue and arise India.

8.4 The next issue is addition on account of deposit in the bank account of the assessee in Singapore, in this regard, we note that the assessee before the AO claimed that the cash deposit/account transfer was made out of withdrawal from the companies in which he has been shareholder and director. However, in absence of bank statement of companies, the AO treated the same as unexplained cash/ income of the assess. The learned CIT(A) found that that the assessee has provided balance sheets and business file of the companies from where withdrawal has been made and deposited in his account. The bank statement was not arranged since at that time, the assessee moved from Singapore to Japan. The fact that assessee has business operation in Singapore through multiple companies incorporated by him in Singapore was doubted. The bank account in question is also maintained in Singapore. The assessee is also a non-resident. Thus, considering the status of the assessee and his business operation in Singapore, the deposit made/amount credited in bank account maintained outside

India cannot be taxed in India unless the revenue brings corroborative material that the amount deposited outside India were accrued or arose or deemed to accrue or arise to the assessee in India. However, no such material has been brought on record by the AO. Hence the learned CIT(A) rightly deleted the addition of Rs. 12,36,982/- made by AO on account of deposit/ amount credited in the bank account of the assessee held in Singapore.

8.5 The next issue is investment in the shares of companies based in Singapore, in this regard, we note that the assessee is shareholder and director in several companies based in Singapore. The assessee claimed that investment was made from the loan sourced from Singapore companies. From the order of the learned CIT(A), we note that the assessee during the assessment proceeding furnished copy of financial statement of Singapore companies. All these documents were also submitted by the assessee before "Accounting and Regulatory Authority Singapore". The AO also made independent inquiry by referring to Competent Authority of India in Singapore. However, no adverse material resulted from such enquiry for holding the investment made by the assessee was sourced from the income accrued or arose in India. There was no material before us brought by the learned DR contrary to finding of the learned CIT(A). Therefore, considering categorical finding of the learned CIT(A) and the status of the assessee being non-resident the investment made outside India cannot be brought to tax in India for the reasoning discussed above. In view of the above discussion, we hereby confirm the finding of the learned CIT(A). Hence, the grounds of appeals raised by the Revenue are hereby dismissed.

9. In the result, the appeal of the revenue is hereby dismissed.

Coming to the ITA No. 170/Ahd/2021, an appeal by the assessee for A.Y. 2012-13

10. The assessee has raised the following grounds of appeal:

1. The Ld. CIT(A) has erred in confirming the action of the Assessing Officer in issuing notice u/s.148 of Income Tax act, 1961 which is illegal and bad in law hence the assessment so made requires to be quashed.

2. The Ld. CIT(A) has erred in confirming the action of the Assessing Officer in reopening the assessment only on the basis of inquiry conducted by the ITO (I & CI, Ahmedabad) and passing an order u/ s . 143(3) r.w.s.147 of the I.T.Act, 1961.

3. The Ld. CIT(A) has erred in confirming the action of the Assessing Officer in passing order u/s.143(3) r.w.s.147 of the I.T. Act, 1961 reopening the assessment on doubts and suspicions and not on the basis of reasons to believe that there is escapement of income hence the same is illegal and bad in law requires to be cancelled.

4. The Ld. CIT(A) has erred in confirming the addition of Rs.34,50,000/- by making disallowance of business expenditure being land filling expenses applying the provisions of sec.40(a)(ia) of the Act holding that payments has been made to the contractor and no TDS has been deducted and deposited by the Appellant.

The appellant craves leave to add, alter, amend or modify all or any of the grounds of appeal before or at the time of hearing.

11. The assessee vide ground Nos. 1 to 3 of its appeal challenged the validity of the assessment order framed under section 143(3) r.w.s. 147 of the Act.

12. At the outset, we note that learned AR of the assessee before us submitted that he was instructed by the assessee not to press the issue raised in the captioned ground of appeal. Hence, the same is hereby dismissed as not pressed.

13. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of land filling expense of Rs. 34.5 Lakhs on account of non-deduction of tax at source.

14. The assessee during the year under consideration sold land property against which claimed land leveling cost of Rs. 34.5 Lakhs. The assessee before the AO submitted that he entered contract for land leveling with one Shri Bharatbhai Devshibhai Ukani. As per such MOU, the assessee paid an amount of Rs. 34.50 Lakh through banking channel.

14.1 However the AO found that impugned land property was sold by the assessee vide sale deed dated 14-07-2011 whereas payment to contractor Shri

Bharatbhai was made after expiry of 8 months of execution of sale. Likewise, the MOU furnished by the assessee was not signed. There was no PAN detail of the party mentioned in the MOU, and no detail regarding deduction of tax was furnished. Accordingly, the AO disallowed the claim of cost incurred on land leveling for Rs. 34.5 Lakh.

15. The aggrieved assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), it was contended that the necessary details of the work carried out by the party were furnished before the AO, the payment to party was made through banking channel and acknowledgement of receipt of payment by the party was also furnished. It was further contended that the individual assessee who is not subject to audit under section 44AB of the Act is not required to deduct TDS. The AO rejected the documentary evidence merely for the reason that the payment to contractor was made after execution of sale deed and on the date of payment assessee was not India which is nothing but surmises and presumption of the AO. The AO also did not make any cross verification or inquiry from the party. Accordingly, the assessee prayed to the learned CIT(A) that the disallowance made by the AO should be deleted.

16. The learned CIT(A) after considering the submission of the assessee held that the AO was not justified rejecting the documentary evidence merely on his premises and conjecture. However, the learned CIT(A) confirmed the disallowances made by the AO for the reason that assessee failed to deduct tax under section 194C of the Act.

17. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

18. The learned AR before us contended that the assessee was not subject to tax audit under the provisions of section 44AB of the Act. Therefore, the question

of deducting the TDS under the provisions of section 194C of the Act does not arise.

19. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

20. We have heard the rival contentions of both the parties and perused the materials available on record. The learned CIT (A) in his order has not doubted the veracity of land leveling expenses claimed by the assessee but made the disallowance on account of non-deduction of TDS. In this regard, we note that the assessee before the learned CIT(A) has submitted that the assessee was not subject to the provisions of audit under section 44 AB of the Act for the immediately preceding assessment year and therefore the assessee cannot be held as assessee in default on account of non-deduction of TDS. The relevant contention raised by the assessee before the learned CIT-A is reproduced as under:

> *Coming to the issue of non deduction of TDS, the same would be applicable only if the assessee is subject to tax audit in the earlier years. The provisions of section 194 of the Act do not apply to an individual unless he has been subjected to audit u/s.44AB of the Act in the immediately preceding previous year.*

21. The above contention of the assessee has nowhere been doubted by the learned CIT-A. As such the order of the learned CIT(A) on the contention raised by the assessee is silent. Thus, we can presume that the assessee was not subject to the provisions of section 44AB of the Act in the immediately preceding year and therefore the assessee cannot be made liable to deduct the TDS under section 194C of the Act on account of land levelling expenses. Accordingly, we set aside the finding of learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

22. In the result, the appeal of the assessee is hereby partly allowed

Coming to ITA No. 172/Ahd/2021, an appeal by the revenue for A.Y. 2013-14

23. At the outset, we note that the issues raised by the revenue in the captioned appeal are identical to the issues raised by the revenue in ITA No. 171/AHD/2021 for the assessment year 2012-13. Therefore, the findings given in ITA No. 171/AHD/2021 shall also be applicable for the year under consideration i.e. AY 2013-14. The grounds of appeal of the revenue for the assessment 2012-13 has been decided by us vide paragraph No. 8 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2012-13 shall also be applied for the year under consideration i.e. AY 2013-14. Hence, the grounds of appeal filed by the revenue are hereby dismissed.

24. In the result appeal of the appeal of the Revenue hereby dismissed.

25. In the combined result both the revenue's appeals are dismissed whereas the assessee's appeal is partly allowed.

Order pronounced in the Court on 20/12/2023 at Ahmedabad.

Sd/-	**Sd/-**
(T R SENTHIL KUMAR)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 20/12/2023
Manish