

Disallowance on basis of activity of a person engaged on a different business model wasn't justified: ITAT

Summary – The Ahmedabad ITAT in a recent case of Fatehsinh Mohansinh Chauhan, (the Assessee) held that 10% disallowance of land development expenses justified

Facts

- The assessee was engaged in the business of purchasing land, developing it and selling the same. The assessee had debited an amount towards land development expenditure. The assessee submitted that the sum was paid to the nine individuals, who had carried out land development activities on behalf of the assessee. Thus, the expenditures was incurred by the assessee.
- The Assessing Officer held that the assessee failed to furnish sufficient evidence which could buttress his claim for the expenditure claimed by him. Accordingly, he disallowed 25 per cent of the total expenditure.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second appeal:

Held

- A bare reading of section 145 would reveal that it provide the mechanism how to compute the income of the assessee. According to sub-section (1), the income chargeable under the head profit and gains of business or profession or income from other source shall be computed in accordance with the method of accountancy employed by an assessee regularly, subject to sub-section (2) of section 145. Sub-section (2) provides that the Central Government may notify in the official gazette from time to time, the Accounting Standard required to be followed by any class of assessee in respect of any class of income. Thus, it indicates that income has to be computed in accordance with the method of accountancy followed by an assessee *i.e.* cash or mercantile, such method has to be followed keeping in view the Accounting Standard notified by the Central Government from time to time. Sub-clause 3 provides a situation, that is, if the Assessing Officer is unable to deduce the true income, on the basis of method of accountancy followed by an assessee, then, he can reject the book result and assess income according to his estimation or according to his best judgment. The Assessing Officer in that case is required to point out the defects in the accounts of assessee and required to seek explanation of the assessee *qua* those defects. If the assessee failed to explain the defects than on the basis of the book result, income cannot be determined and Assessing Officer would compute the income according to his estimation keeping in view the guiding factor for estimating such income.
- It is pertinent to note that section 144 would suggest that in order to estimate income, Assessing Officer has to exercise his discretion which should be in consonance with best of his judgment. In

various authoritative pronouncements, it has been propounded that in making a best judgment assessment, the Assessing Officer must not act dishonestly or vindictively or capriciously. He must make, what he honestly believe to be a fair estimate of the proper figure of assessment and for this purpose he must be able to take into consideration, local knowledge, reputation of the assessee about his business, the previous history of the assessee or the similarly situated assessee. It is also pertinent to mention that judgment is a faculty to decide matter with wisdom, truly and legally. Judgment does not depend upon the arbitrary, caprice of an adjudicator, but on settled and invariably principles of justice. Thus, in a best judgment, even if, there is an element of guess work, it should not be a wild one, but shall have reasonable nexus to the available material and circumstances of each assessee.

- The finding of Assessing Officer has been extracted Supra. A perusal of these findings would indicate that the Assessing Officer has not drawn inference from case of any assessee who was engaged in the business of land development. The nature of assessee business is altogether different. It is to be seen the nature of expenditure incurred and element of profit involved in the land development activities, it cannot be compared with the manufacturing of oil, cake etc. Thus, decision of *Vijay Proteins Ltd. v. Asstt. CIT* [\[1996\] 58 ITD 428](#) cannot be a guiding factor for estimating disallowance out of expenditure at 25 per cent in a case where activities of assessee is of land development. Section 44AD provides estimation of profit at 8 per cent in the case of assessee who was engaged in construction activities or doing contractual job. Though this guidance of estimation of profit at 8 per cent is for those assessee's whose turnover is less than 40 lacs and it is not strictly used, but for the purpose of exercising discretion as to find out what could be element of inflation in claiming expenditure at the end of assessee, cognizance of this section is taken. Taking into consideration all these aspects, end of justice would meet if the expenditure out of land development could be estimated at 10 per cent for disallowance.