

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.819/Ahd/2019
निर्धारण वर्ष /Assessment Year : 2012-13

The DCIT Udhyog Bhavan, Sector-11 Gandhinagar Circle	<u>बनाम/</u> <u>v/s.</u>	M/s.Tourism Corporation of Gujarat Ltd. Block No.17, 4 th Floor Udyog Bhavan, Sector-11 Gandhinagar - 382 011
स्थायी लेखा सं./PAN: AAAC 7252 J		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Tushar Heman, Sr. Advocate & Shri Parimalsinh B. Parmar, ARs	
Revenue by :	Shri Rignesh Das, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 25/09/2024
घोषणा की तारीख /Date of Pronouncement: 03/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the Revenue is directed against the order dated 18-03-2019 passed by the Ld.Commissioner of Income Tax (Appeals)-Gandhinagar, [hereinafter referred to as "CIT(A)"] for the Assessment Year (AY) 2012-13 arising from the order dated 22/12/2017 passed by the Assessing Officer (hereinafter referred to as "AO") u/s. 143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Facts of the case:

2. The assessee, M/s Tourism Corporation of Gujarat Ltd. (TCGL), engaged in the promotion and development of tourism in Gujarat, was initially assessed under section 143(3) of the Act, with an income of Rs. 36,70,08,460/- on 31/12/2014. The assessment was later reopened under section 147 due to discrepancies identified by the AO. A notice under section 148 was issued on 22/09/2016, to which the assessee filed its return of income on 28/12/2016.

2.1. During the course of assessment proceedings, the AO observed that the statutory auditors highlighted that the company consistently recognizes 15% of the grants received from the Government of Gujarat as income for administrative overheads, as authorized by Government Resolution. However, for the assessment year in question, the amount paid to District Collectors and other implementing agencies (Rs.13,39,91,645/-) was not considered while calculating the grant utilization, leading to an understatement of income by Rs.2,00,98,747/-. The AO issued a notice under section 142(1) dated 26/09/2017, asking the assessee to show-cause why Rs.2,00,98,747/- should not be added to the total income, citing the alleged understatement of income. The assessee argued that TCGL is a nodal agency acting on behalf of the Government of Gujarat (GOG) to disburse funds for various tourism-related projects. The 15% administrative overhead charge is applicable only when TCGL incurs actual overhead expenses, which was not the case for funds disbursed directly to District Collectors and other agencies. The assessee claimed that these funds were merely passed through and did not constitute TCGL's income. The assessee relied heavily on the concept of

real income, arguing that the amount in question never actually accrued to TCGL but was pass-through. The assessee cited judgments such as, **Shoorji Vallabhdas (1962) 46 ITR 144 (SC)** to assert that notional or hypothetical income cannot be taxed unless it meets the test of real income. The AO emphasized that TCGL had consistently recognized 15% of grants utilized as income in prior years, without differentiation between direct and indirect utilizations. The AO concluded that there was no tangible reason to exclude the Rs.13,39,91,645/- paid to District Collectors from the calculation of utilized grants. Therefore, the AO added Rs.2,00,98,747/- to the total income, asserting that the consistent recognition method should not be changed arbitrarily without evidence.

2.2. The AO also noted a delay in the payment of employees' contributions towards EPF, which was paid well beyond the due date. Therefore, the delayed payment of Rs.7,39,238/- was added to the income, as it was paid beyond the stipulated time frame.

3. The assessee preferred an appeal before the CIT(A), who partly allowed the appeal of the assessee. While doing so, the CIT(A) directed the AO to delete the addition of Rs.2,00,98,747/-. The CIT(A) upheld that the assessee followed a consistent and reasonable policy in recognizing income, and the amount in question was rightfully excluded from taxable income.

4. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us with following grounds of appeal:

- i. *Whether, the Ld. Commissioner of Income-Tax(appeals) has erred in law and on facts in deleting the addition made on account of 15% grants utilized as income of assessee*

as per GOG resolution dated 27.05. 1998 which the assessee offered in the previous years.

- ii. It is, therefore prayed that the order of the Ld. Commissioner of Income-tax (Appeals) may be set aside and that of the Assessing Officer be restored.*
- iii. The appellant prays for leave, to amend or alter any ground or add a new ground which may be necessary.*

5. During the course of hearing before us, the Departmental Representative (DR) placed reliance on the order of AO and stated that the assessee had consistently charged 15% of the grants utilized as income in previous years and this charge was authorized by the Government of Gujarat's Resolution, which allowed the assessee to offset its administrative and salary expenses associated with tourism development activities by recognizing 15% of the grants received as income. The DR also stated that the statutory auditor commented that while calculating the grants utilized, assessee did not include Rs.13,39,91,645/- that was passed on to District Collectors and other implementing agencies and accordingly there is an understatement of income by Rs.2,00,98,747/- (i.e., 15% of Rs.13,39,91,645/-).

6. The Authorised Representative (AR) of the assessee, stated that the assessee is fully owned by the Government of Gujarat and acts as a nodal single-window authority responsible for the promotion and development of tourism in Gujarat. The corporation receives grants from GOG, which are utilized for various tourism-related activities, including administrative expenses, salaries, and infrastructure maintenance. As per the GOG's Government Resolution (GR) dated 27.05.1998, TCGL is authorized to charge 15% of the grants utilized as income to cover overhead costs. The AR also

stated that the assessee has consistently recognized 15% of the grants utilized as income in accordance with the GOG resolution. The same method was followed for the assessment year under consideration, and income was offered to tax accordingly. The AR further stated that with the expansion of tourism activities, GOG decentralized certain projects, assigning them to other state government agencies such as District Collectors. The AR gave example, of the Kutch Ranotsav Programme, which was entirely managed by the Kutch District Collector. The AR stated that the assessee did not carry out any activities related to the grants relating to 15 decentralized projects amounting to Rs.13,39,91,645/- and acted solely as a pass-through agency, transferring funds without incurring any overhead expenses. The AR further stated that the CIT(A) has reproduced the relevant portion of the resolution of the Government of Gujarat.

6.1. The AR pointed out that the AO relied solely on the statutory auditor's observation that the 15% charge was not applied to the decentralized grants, resulting in an alleged understatement of income. However, the AO made the addition without any independent verification of the facts or the underlying nature of the grants. The AR clarified that there was no change in its method of income recognition and the exclusion of the 15% charge on the decentralised grants was consistent with the policy of charging income only on grants **actually utilized by the assessee, not those merely transferred to other agencies.**

6.2. The AR argued that only real income, not notional income, can be subjected to tax. Since the Rs.2,00,98,747/- represented a hypothetical charge on funds that were not utilized by TCGL, it did not constitute real income.

The assessee cited Hon'ble Supreme Court's judgment in *Godhra Electricity Co. Ltd. Vs. CIT (225 ITR 746)* to support the principle that only actual income that accrues to the taxpayer can be taxed.

7. Upon careful consideration of the facts, grounds of appeal, and submissions made by both parties, we conclude that the AO did not undertake any independent verification to ascertain the nature of the grants passed through TCGL from the Government of Gujarat. The AO's reliance solely on the statutory auditor's remarks, without conducting any factual inquiry or obtaining corroborative evidence from GOG, undermines the addition made. The AO's failure to establish the factual basis of the alleged income renders the addition unsustainable. The assessee furnished documentary evidence, including the GOG resolution dated 27.05.1998 and audited financial statements, to demonstrate the consistent and appropriate application of the 15% charge only to grants utilized by TCGL. The records clearly indicate that the decentralized grants, amounting to Rs. 13,39,91,645/-, were merely routed through TCGL and were directly managed and utilized by other government agencies, such as District Collectors. These pass-through funds did not impact TCGL's operational finances and, therefore, were not subject to the 15% charge. We find that the assessee's treatment of these funds is in line with the established accounting practices and the terms of the GOG Resolution.

7.1. The CIT(A) conducted a thorough examination of the facts, submissions, and relevant financial records. The CIT(A) rightly observed that the AO's addition was based on assumptions and conjecture, without any substantive evidence to support the contention that TCGL was obligated to

charge 15% of the decentralized grants as income. The CIT(A)'s findings are well-reasoned and supported by the consistent policy followed by the assessee in recognizing income. The principle that only real income can be taxed, and not notional or hypothetical income, is well-settled in law. The alleged income of Rs.2,00,98,747/- was never accrued to TCGL, nor did it represent real income as the funds were never utilized by TCGL but were simply transferred to other government agencies as per GOG's directions. The addition made by the AO goes against the basic tenet of income tax law, which mandates that taxation must be based on income that has actually accrued or arisen.

7.2. In view of the foregoing, the appeal filed by the Revenue is dismissed, and the order of the CIT(A) is upheld. We find no reason to interfere with the well-reasoned decision of the CIT(A).

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 3rd October , 2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 03/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-Gandhinagar
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad