

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER AND  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.1457/Ahd/2018  
Assessment Year: 2011-12**

Assistant Commissioner of Income Tax, Circle – 5(2), 1 <sup>st</sup> Floor, Narayan Chambers, Nehru Bridge Corner, Ashram Road, Ahmedabad – 380 009.	Vs.	M/s. Pushparaj Corporation, 5 <sup>th</sup> Floor, Agarwal Complex, Nr. Municipal Market, C.G. Road, Ahmedabad - 380 009. <b>[PAN – AAJFP 5519 Q]</b>
(Appellant)		(Respondent)
Assessee by	Shri Mehul K. Patel, AR	
Revenue by	Shri Hargovind Singh, Sr. DR	
Date of Hearing	16.06.2025	
Date of Pronouncement	26.06.2025	

**ORDER**

**PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:**

This appeal is filed by the Revenue against order of the Commissioner of Income Tax (Appeals), Ahmedabad-5 (in short ‘the CIT(A)’), dated 23.03.2018 for the Assessment Year 2011-12 in the proceeding under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. The following grounds have been taken in this appeal: -

- “1) *The Ld. CIT(A) has erred in law and on facts in allowing the disallowance of Rs.1,52,90,000/- on account of material expenses while as per MOU signed between the assessee and Ravi (Hansol) NTC the said expenses were paid by Ravi (Hansol) NTC but debited in the books of the assessee.*

- 2) *The Ld. CIT(A) has erred in law and on facts in allowing the disallowance of Rs.2,40,00,000/- on account of plot development expenses while as per MOU signed between the assessee and Ravi (Hansol) NTC the said expenses were paid by Ravi (Hansol) NTC but debited in the books of the assessee.*
- 3) *The Ld. CIT(A) has erred in law and on facts in allowing the disallowance of Rs.30,30,000/- on account of commission/brokerage expenses plot development expenses.*
- 4) *It is therefore prayed that the order of the Id. CIT(A) may be set aside and that of the order of the Assessing Officer be restored to the above extent."*

### **Brief facts of the case**

3. The brief facts of the case are that the assessee is a partnership firm engaged in the activities of purchase of agricultural land in the name of partners. Thereafter, the agricultural land was converted into non-agricultural land. The assessee had entered into a development agreement dated 27.12.2008 with *Ravi (Hansol) Non Trading Corporation* (in short "RNTC"), as per which RNTC had decided to purchase the land of various Survey numbers of Kundal Village including the land already purchased by the assessee. Further, the assessee was also assigned the work of development of the land. As per the agreement, the sale consideration was fixed at Rs.200/- per sq. meter for the land to be sold by the assessee to RNTC. Further, the assessee company was made responsible for construction of roads, common amenities, streetlights, club house, garden etc., the expenditure for which was to be reimbursed to the assessee by RNTC.

3.1 In the course of assessment, the Assessing Officer (in short 'the AO') noticed that the assessee had claimed expenditure of Rs.5.96 Crores under the head "purchase" and Rs.3.46 Crores under the head "direct expense" in Schedule-14 of the Profit & Loss account, the details of which was called for and examined. The AO found that the total expense for the

material purchased was Rs.1,91,00,181/-, out of which Rs.38,10,181/- was capitalised and balance Rs.1,52,90,000/- was claimed as deduction in P&L account. Further, in Schedule-15 of 'direct expense', the assessee had debited Rs.38,15,718/- on account of labour charges which was capitalised and deduction of Rs.2.60 Crores on account of "plot development charges" was claimed in the P&L account. On verification of the details of the expenses, the AO found that these expenses were incurred in contravention to the terms and conditions of the Memorandum of Understanding for development of land executed on 27.12.2008 between the assessee and the RNTC. Therefore, the material expense of Rs.1,52,90,000/- and plot development expenses of Rs.2.60 Crores was disallowed by the AO and added to income.

3.2 The AO further noticed that the assessee had claimed deduction of Rs.30.30 Lakhs on account of commission and brokerage expense paid for four persons. On examination, the AO found that there was wide variation in rate of commission from Rs.50/- per sq. yard to Rs.200/- per sq. yard and the commission paid was @ 31% of the sale consideration, which was abnormally high. The AO further noticed that since the RNTC was the actual owner of the plots sold, no commission was required to be incurred by the assessee for the sale of the plots. The AO was also not convinced with the genuineness of the expense. He, therefore, disallowed the commission and brokerage expense of Rs.30.30 Lakhs. As the commission expenses was capitalised by the assessee in closing stock of land, the closing stock was accordingly reduced by the amount of Rs.30.30 lakhs. The assessment was completed under Section 143(3) of the Act on 31.03.2014 at a total income of Rs.4,54,00,220/-.

4. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority which was decided by the Ld. CIT(A) vide the impugned order and the additions as made by the AO were deleted.

Grounds 1 and 2

5. The first two grounds taken by the Revenue pertain to disallowance of Rs.1,52,90,000/- on account of material expense and disallowance of Rs.2,40,00,000/- on account of plot development expense.

6. Shri Hargovind Singh, Ld. Sr. DR submitted that as per the MOU dated 27.12.2018 entered into by the assessee with RNTC, the assessee was not obliged to incur these expenses. He submitted that RNTC had claimed expenses in their books of account for common work such as development of common amenities, club house, road construction etc. and that as per the development agreement, the role of the assessee was to execute those work on behalf of RNTC. As the expenses for these works were to be borne by RNTC, the assessee was not correct in claiming the same in its own books of account. The Ld. Sr. DR has taken us through the assessment order and justified the additions as made by the AO on account of material expense and plot development expenses.

7. Per contra, Shri Mehul K. Patel, Ld. AR of the assessee submitted that the AO did not consider the supplementary development agreement made by the assessee with RNTC as per which the assessee was authorised to undertake certain work for individual plots. He explained that the expenditure was incurred in connection with the work done by the assessee in respect of individual plot-owners and income derived therefrom was separately disclosed in Schedule -S12 of the Profit & Loss

Account as 'administrative and development income' of Rs.4,97,18,400/- . The Ld. AR explained that, against this income, the assessee had incurred expenses aggregating to Rs.4,51,00,181/- and thus earned net income of Rs.46,00,000/- approximately. The Ld. AR submitted that the Ld. CIT(A) had correctly appreciated the facts of the case as well as examined the account of income and expenditure of the assessee and thereafter had correctly allowed relief to the assessee. He, therefore, strongly supported the order of the Ld. CIT(A).

8. We have carefully considered the rival submissions. As per the development agreement between the assessee and RNTC, at the first stage, the assessee was required to make the even level surface of land, obtain the NA permission from the authorities and then sell the land to RNTC at a consideration of Rs.200/- per sq. meter. In the second stage, the assessee was required to create and develop common road, common amenities, streetlight, club house, garden and other development. As per the agreement, the expenses for the development was to be paid separately by RNTC to the assessee. The Assessing Officer had disallowed material expense of Rs.1,52,90,000/- and plot development expense of Rs.2,60,00,000/- on the understanding that these expenses pertained to second stage of the development agreement which were required to be incurred by the RNTC. According to the AO, these expenses were incurred for construction of sample bungalow, club house, construction/development of swimming pool, roads, common amenities etc. From the perusal of ledger account of RNTC brought on record in the paper-book, it is found that the assessee had debited the account of RNTC in respect of Garden Expense, Common Amenity Expense, Club House Preparing Expense and Road Construction Labour to the total amount of Rs.2,23,42,961/-. Thus, the common expenditure of

Rs.2,23,42,961/- for the development of common facilities such as road, common amenities, garden, clubhouse etc. was borne by RNTC and not by the assessee company. Therefore, the finding as given by the AO in this respect is not found correct.

8.1 The assessee had brought on record supplementary agreement dated 29.01.2009 between the assessee and RNTC which was not considered by the AO. As per the supplementary agreement, certain expenses such as construction including compound wall, land filling and levelling as per the customer requirement of individual plots, was to be incurred by the assessee for which it was entitled to charge Rs.100/- per sq. meter from the respective plot owners. From the Profit & Loss Account, it is found that apart from sale consideration of Rs.2,13,78,500/- in respect of sale of land, the assessee had disclosed administrative and development income of Rs.4,90,18,400/- which was received from the members / plot owners at the rate of Rs.100/- per sq. yard towards the various expenditures as incurred as per the requirement of the members. The ledger account of the administrative and development income brought on record in the paper-book reflects the party-wise details of income received from various parties towards development charges. Against this income, the assessee had incurred total expenses of Rs.4,51,00,181/- (Rs.1,91,00,181/- for material purchased as per the Schedule S-14 + Rs.2.62 Crores towards plot development expense as per Schedule S-15). The assessee had accordingly earned net income of Rs.46 Lakhs out of administrative and development income. In view of these facts, the disallowance of material expense of Rs.1,50,90,000/- and plot development expenses of Rs.2.60 Crores as made by the AO was totally misconceived. The disallowance was made on wrong presumption and without correctly appreciating the facts of the case and the

supplementary development agreement. In fact, the expenditure incurred by the assessee was also verified by the AO in the course of assessment by issue of notice/summon under Section 133(6)/131 of the Act and most of the parties, barring few, has confirmed the transactions. Merely because some of the parties did not respond to the notice of the AO, the entire expenditure cannot be held as non-genuine. It is found that the Ld. CIT(A) had correctly appreciated the facts of the case and thereafter had rightly allowed the relief to the assessee. We do not find anything wrong with the findings as given by the Ld. CIT(A) in respect of these two additions. Accordingly, the deletion of additions made by the AO in respect of material expense of Rs.1,52,90,000/- and development expense of Rs.2.60 Crores, by the Ld. CIT(A), is upheld. The ground nos.1 & 2 taken by the Revenue are dismissed.

### Ground-3

9. The ground no.3 pertains to disallowance of commission/brokerage expense of Rs.30,30,000/-. Shri Hargovind Singh, the Ld. Sr. DR submitted that this brokerage was paid to four parties at varying rates from Rs.50/- per sq. yard to Rs.200/- per sq. yard of plot area sold. He submitted that as per the development agreement between the assessee and RNTC, the land was sold by the assessee to RNTC at the rate of Rs.200/- per sq. meter. Considering the land rate, the commission paid was too high. He further submitted that the commission was paid to family members and also to the parties who had themselves purchased the land. The Ld. Sr. DR further submitted that as per the development agreement, RNTC was the actual owner of the land and, therefore, commission paid was to be claimed as deduction by RNTC and not by the assessee. Therefore, the Sr. DR strongly supported the order of the AO.

10. Per contra, Shri Mehul Patel, the Ld. AR of the assessee has drawn our attention to Clause 7 of the development agreement as per which the assessee was entitled to incur such expenditure. He submitted that the Ld. CIT(A) had correctly appreciated the facts of the case and allowed relief to the assessee.

11. We have carefully considered the rival submissions. The commission of Rs.30,30,000/- paid to four parties was capitalised and included in the working of closing stock valuation. Before the AO, the assessee had submitted that the commission can be considered as discount towards purchase of plots in bulk. It was explained that the expense was not commission but discount or reduction in price towards purchase in bulk. A plea was also taken since the commission expense of Rs.30.30 lakhs was capitalised and the value of closing stock was increased to that extent, the treatment given by the assessee was revenue neutral. It is found that the Ld. CIT(A) had allowed relief to the assessee on the ground that genuineness of commission payment was not under dispute. According to the Ld. CIT(A), the commission expenditure was duly confirmed by the respective parties with complete details of their address and PAN, no. of plot sold through them, area of plot, rate of commission plus amount paid, TDS deducted thereon and that all the recipients had confirmed receipt of commission, in the course of enquiries conducted by the AO in this regard.

11.1 The moot question to be decided here is, whether the assessee was required to pay any commission at all, in these transactions. As per the development agreement, the entire land owned by the assessee was purchased by RNTC. If so, there was no question of payment of any commission for the sale of land as made by the assessee. The Ld. AR



has referred to clause-7 of the development agreement which reads as under: -

*“7. The second party may launch the scheme on the prescribed land according to his choice and may develop and construct according his choice. It can promote the scheme by hanging sign board at the site may advertise in the newspapers, may distribute pamphlets, may display the advertisement on board at the site. It may employ or appoint a person as his Agent who can register the new members, and all the activities should be carried out with his own expenses.”*

11.2 As per this clause, the assessee was entitled to launch the scheme on the prescribed land and develop and construct according to his choice. For this purpose, the assessee was entitled to advertise in the newspapers, distribution of pamphlets, display the advertisement on board etc. Further, it can appoint a person as agent for registering few members. Thus, the expenditure incurred as per clause-7 of the agreement was for registration of new members and not for the sale of plot of land, which was already sold by the assessee to RNTC as per the development agreement. Since the ownership of the land was vested with RNTC, the commission for sale of individual plots was to be borne by the RNTC and not by the assessee. Under the circumstances, we do not find any justification for claim of expenditure of commission/brokerage of Rs.30.30 Lakhs towards sale of land. The contention of the assessee that this commission was, in essence, discount towards bulk purchase of land is self-contradictory and cannot be held as correct. If it was discount, the same was required to be deducted from the sale consideration of land and there was no requirement for deduction of any TDS on such discount. Further, as per the development agreement, there was no clause for allowing any discount as such. Therefore, the contention of the assessee was rightly rejected by the AO. In view of the above facts, the decision of Ld. CIT(A) to delete the addition of Rs.30.30 Lakhs in respect of

commission expense cannot be held as correct. The action of the AO in disallowing the commission expense and reducing the same from the capitalized closing stock of land is upheld. The ground taken by the Revenue is allowed.

12. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open Court on this 26 <sup>th</sup> June, 2025.
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*Sd/-*  
**(T.R. SENTHIL KUMAR)**  
Judicial Member

*Sd/-*  
**(NARENDRA PRASAD SINHA)**  
Accountant Member

**Ahmedabad, the 26<sup>th</sup> June, 2025**

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*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
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*By order*  
  
*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*