

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH
(Conducted Through Virtual Court)
Before: **Shri Rajpal Yadav, Vice President**
And **Shri Amarjit Singh, Accountant Member**

ITA No. 1316/Ahd/2017
Assessment Year 2012-13

Ishwarbhai V. Desai, 5A, 2 nd Floor Jaltarang Co. Op. Housing Soc. Opp Shankar Bhuvan Shahpur, Ahmedabad PAN: AKMPD7386E (Appellant)	Vs	The ITO, Ward-1(2)(2), Ahmedabad (Respondent)
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Revenue by: Shri R.R. Makwana, Sr. D.R.
Assessee by: Shri S.N. Divatia, A.R.

Date of hearing : 17-08-2021
Date of pronouncement : 24-08-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2012-13, arises from order of the CIT(A)-10, Ahmedabad dated 03-03-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

“1.1 The order passed u/s.250 on 03.03.2017 for A.Y.2012-13 by CIT(A)-10, Abad upholding the additions aggregating to Rs.69,20,161 /- made by AO is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned additions.

2.1 The Ld. CTT(A) has grievously erred in law and on facts in rejecting the additional evidence though the conditions provided under Rule-46A were fully complied with and even a remand report was called him from AO. The Ld. CIT(A) has grievously erred in rejecting the additional evidence on the ground that the same could have been produced during the assessment proceedings. The CIT(A) has failed to appreciate that when the circumstances stated in Rule-46A(l) were satisfied, the additional evidence ought to have been admitted.

2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have rejected the additional evidence, though the conditions provided under Rule-46A were fully complied with and even a remand report was called him from AO..

3.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the following additions:

- a) LTCG of Plot no.10 at Khambhaliya Nagar Rs.17,39,870/-*
- b) STCG of Plot No.4 at Khambhaliya Nagar Rs.41,75,000/-*
- c) Agriculture income treated as income from other Rs. 1,11,000/-sources*
- d) Unexplained credit in bank Rs. 8,94,291/-*
- e) FMV as on 01.04.1981*

3.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have confirmed above said additions.

It is, therefore, prayed that the additions aggregating to Rs. 69,20,161/- upheld by the CIT(A) may kindly be deleted.”

3. The fact in brief is that return of income declaring income of Rs. 3,67,230/- was filed on 27th March, 2012. The case was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 4th Sep, 2014. During the course of assessment, the Assessing Officer noticed that assessee has earned long term capital gain of Rs. 1,84,977/- from the sale of co-owned property for Rs. 62,66,000/- on 28th Nov, 2011. The assessee has claimed to have received total consideration of Rs. 25,84,725/- out of the total sale proceeds of Rs. 62,66,000/-. The proportionate indexed cost of the property was shown at Rs. 53,678/-. The Assessing Officer pointed out that assessee has claimed cost of improvement in sold property at Rs. 10,48,757/- . But in spite of providing opportunities he has not furnished the relevant

evidences in support of his claim. The Assessing Officer also mentioned that assessee has claimed transfer cost of Rs. 12,97,313/- but the supporting evidences has not been filed. Therefore, the Assessing Officer has determined the long term capital gain earned by the assessee at Rs. 19,24,847/- and made an addition of Rs. 17,39,870/- to the total income of the assessee.

3.1 The Assessing Officer has also stated that assessee has earned short term capital gain to Rs. 1,41,000/- from the sale of property for Rs. 62,66,000/- on 15th Sep, 2011. The assessee claimed to have purchased the sold property for Rs. 61,25,000/- but he could furnish the supporting evidences to the extent of Rs. 19,50,000/- only. Therefore, the Assessing Officer has recomputed the short term capital gain at Rs. 43,16,000/- and made an addition to Rs. 41,75,000/- to the total income of the assessee.

4. During the course of assessment, the Assessing Officer also noticed that assessee has earned agricultural income to Rs. 1,11,000/-. The Assessing Officer stated that assessee has not furnished the supporting evidences of earning of the aforesaid income from the agricultural activity, therefore, the Assessing Officer has made an addition of Rs. 1,11,000/- to total income of the assessee.

4.1 During the course of assessment, the Assessing Officer noticed that assessee was having saving bank account with Central Bank of India, Ahmedabad. On verification of the entries, the Assessing Officer observed that there was credit/deposit entries amounting to Rs. 8,94,291/-. The

Assessing Officer stated that assessee has not furnished any explanation about the source of the amount credited therefore an addition of Rs. 8,94,291/- was made to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

6. During the course of appellate proceedings before us, Id. counsel has filed five paper books comprising copies of documents and details furnished at the time of assessment and appellate proceedings before the lower authorities. The Id. counsel has vehemently contended that Id. CIT(A) was unjustified in rejecting the additional evidences filed under rule 46A in spite of the facts that he has also called remand report on the basis of those evidences from the Assessing Officer and submitted that the case of the assessee was not adjudicated on merit by the Id. CIT(A) as the material facts reported in the additional evidences filed have not been considered. On the other hand, Id. Departmental Representative has supported the order of lower authorities.

7. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above in this order, the Assessing Officer has made addition towards long term capital gain of Rs. 17,39,870/-, short term capital gain of Rs. 41,75,000/-, agricultural income of Rs. 1,11,000/- and addition u/s. 69 of Rs. 8,94,291/-. It is undisputed fact that during the course of appellate proceedings before Id. CIT(A) the assessee has filed additional evidences and made an application under rule 46A of the IT, Rule

1961 for admission of additional evidences. The Id. CIT(A) has called the remand report from the Assessing Officer vide letter dated 12th July, 2016. The Assessing Officer has furnished the remand report and the same is reproduced at page no. 2 & 3 of the appellate proceedings of Id. CIT(A). The Id. CIT(A) has also forwarded the copy of the remand report for the comments/rejoinder of the assessee. The assessee has filed his comments/rejoinder on the remand report which has been produced at page 3 to 5 of the Id. CIT(A)'s order. Thereafter, the Id. CIT(A) has rejected the additional evidences filed by the assessee, it is noticed that while rejecting the additional evidences, the Id. CIT(A) has not considered the material facts reported by the Assessing Officer in his remand report. It is noticed that the Assessing Officer himself has reported in the remand report that sufficient time be provided to enquire into each transaction with respect to fresh evidences of the assessee and requested the Id. CIT(A) that the material may be restored to the Assessing Officer for fresh assessment after giving sufficient opportunity to the assessee. The relevant part of the remand report is reproduced as under:-

“Under the circumstances, to accept to fresh evidence of the assessee with the prove adverse to the revenue. Sufficient time to be provided enquire into each transaction, I, therefore, recommended assessment to be restored back to AO to make fresh assessment after giving sufficient opportunity to the assessee to prove his claimed proper to inspect the correctness of each transaction shown by the assessee.”

Even in his rejoinder the assessee has also submitted to the Id. CIT(A) that he has no objection for giving additional time to the Assessing Officer for making further inquiry. The relevant part of the rejoinder of the assessee is reproduced as under:-

“7) The appellant further wants to state that the Id. Assessing Officer has erred in law and on facts while stating that "sufficient time to be provided to enquire into each

transaction," This suggest that the ld. Assessing Officer rejected the additional evidences without making enquiry of the transactions and now seek time for further enquiry. The appellant has no objection what so ever for giving additional time to the ld. Assessing Officer for making further enquiry but it is humbly prayed to your honour to ensure that the ld. Assessing officer give his conclusive remand report so as to decide whether to accept or reject the additional evidences supplied by the appellant."

It is also noticed that in the remand report the Assessing Officer has specifically reported to the ld. CIT(A) that while framing assessment u/s143(3) of the Act the issue of income arrived from long term capital gain has not been properly, thoroughly verified because either the case or the Assessing Officer has been remained under transit due to restructuring process of the department. The Assessing Officer has also reported to the ld. CIT(A) that the Assessing Officer has received the case record at the end of the December, 2014 and the order of assessment was made on 17th March, 2015 because of limitation as per the provision of the act. The relevant part of the report of the Assessing Officer is as under:-

"In this case, while framing order u/s 143(3) of the I.T. Act, 1961, it appears that the issue of income arrived from Long Term Capital Gain has not been properly, thorley verified. Since either the case or the assessing officer has been remained in transit due to restructuring process of the department. The AO had received the case records at the end of December, 2014 & the the order assessment 17/03/2015 due is limitation of this provision of the Act"

It is demonstrated from the material fact reported in the remand report by the Assessing Officer that proper verification could not be carried out in the case of the assessee while framing assessment u/s. 143(3) of the act since either the case or the Assessing Officer has been remained in transit due to restructuring process of the department. In the light of the above facts and circumstances, the decision of ld. CIT(A) for not admitting the additional evidences is not justified therefore we observe that it is appropriate to restore issues to the file of Assessing Officer for deciding afresh after examination

and verification of the additional evidences furnished by the assessee after providing due opportunity to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24-08-2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad : Dated 24/08/2021

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