

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD "A" BENCH, AHMEDABAD**

[Coram: Pramod Kumar VP and Mahavir Prasad JM]

ITA No. 640/Ahd/2014
Assessment year: 2009-10

Digvijay Gaekwad **Appellant**
Vandan Bungalow,
Lalgaug Road, Baroda
[PAN : ABWPG 2624 H]

Vs

Income Tax Officer **Respondent**
Ward 6(3), Baroda

Appearances by

Urvashi Shodhan, for the appellant
SK Dev, for the respondent

Date of concluding the hearing : September 26, 2018
Date of pronouncement : December 25, 2018

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the learned Commissioner of Income-tax (Appeals)'s order dated 2nd January, 2014, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2009-10.

2. The grievances raised by the assessee are as follows:-

"1. The Learned CIT (A) has erred in law and on facts of the appellant's case in confirming the action of Learned A.O. in taxing the "Income from Long Term Capital Gain" on protective basis.

2. The Learned CIT (A) has erred in law and on facts of the appellant's case in confirming the action of the Learned AO in holding that "Income from Capital Gain" is taxable in AY 2008-09 and not in AY 2009-10 on various erroneous plea.

Both the lower authorities have erred in law and on facts of the appellant's case in not appreciating the fact that the "Income from Capital Gain" is taxable

in AY 2009-10 as subject property has been "transferred" in previous year relevant to AY 2009-10 and prays that Hon'ble Tribunal be pleased to hold so now and direct the Ld. A.O to taxed the same in AY 2009-10 only.

3. *The initiation of penalty proceedings U/s 271(1) (c) of the Act is not justified.*

4. *The levy of interest u/s 234A/B/C of the Act is not justified."*

3. When this appeal was called out for hearing, learned counsel invited our attention to the fact that the CIT(A), vide order dated 8th January 2016, has held that the capital gains in question cannot be brought to tax, in the hands of the assessee, in the assessment year 2008-09, and that Revenue's appeal, against the said order, has been dismissed by a coordinate bench of this Tribunal on 30th July 2018. Copies of both of these orders were also filed before us. On the strength of this factual position, it is contended that since non-taxation of these capital gains in the assessment year 2008-09 has attained finality, this assessment should be confirmed on substantive basis and, therefore, the plea of the assessee should be upheld.

4. Learned Departmental Representative does not dispute the submissions so made by the learned counsel, but reiterates his stand that the capital gain was taxable in the assessment year 2008-09.

5. We see merits in the plea of the learned counsel. Once the non-taxation of capital gains in the assessment year 2008-09 has attained finality, as in the present case, the assessment of this capital gain in the assessment year 2009-10, i.e. year before us, is to be treated as on substantive basis. Any other view of the matter will result in complete non-taxation of capital gains.

6. In view of the above discussions, as also bearing in mind entirety of the case, we uphold the plea of the assessee and direct the Assessing Officer to treat the assessment as capital gain in the present assessment year as on substantive basis.

7. In the result, appeal is allowed in the terms indicated above. Pronounced in the open court today on the 25th day of December, 2018.

Sd/-

Mahavir Prasad
(Judicial Member)

Ahmedabad, dated the 25th day of December, 2018

***Bt*

Sd/-

Pramod Kumar
(Vice President)

Copies to:

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

True Copy

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*