

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.622/Ahd/2014
(Assessment Year : 2008-09)

Hasmukh S. Patel, Vs. ITO,
Kosh Investment, 232, Ward – 2(3),
Paradise Complex, Baroda.
Sayajigunj, Vadodara.

[PAN No. ACXPP 5125 E]

(Appellant)

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(Respondent)

Appellant by : Shri Deepak Shah, A.R.
Respondent by : Shri S. K. Dev, Sr. D.R.

Date of Hearing 22/01/2019

Date of Pronouncement 30/01/2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is against the order dated 30.07.2012 passed by the Commissioner of Income Tax (Appeals)-II, Baroda arising out of the order dated 01.10.2010 for the Assessment Year 2008-09 passed by the ITO, Ward-2(3) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “The Act”) with the following grounds:

- 1. The ld CIT(A) erred on law in Conforming the Assessment Rs. 1930168/- as Long term capital gain.*

The learned A.O. failed to appreciate the facts. That the value of the property was not fetched by your appellant but the same was encashed by bank as defaulted guarantor.

Your appellant therefore prays that the additions of Rs.1930168/- be deleted in the interest of justice.

2. *The learned CIT (A), erred in Conforming the non setting of brought forward short capital Loss of Rs.418604/- and Rs. 1183/- of Long term capital loss.*
3. *On the facts and circumstances of the case the learned CIT (A) erred in conforming the ex-party order of the A. O.*

The learned A.O fail to appreciate the facts along with the appeal papers your appellant, did filed the authority letter of council Shri A.A jain giving fulll particulars and address of the of the said council

Your appellant therefore prays that in the interest of justice and equity the order of the C.I.T. be set aside.

The appellant request leaves to add to or alter the grounds of appeal at or before the time of hearing of the appeal.

2. The assessee, an individual filed its return of income on 30.09.2008 declaring A total income of Rs.90,010/-. The return was duly processed u/s 143(1) on 22.12.2009. Subsequently, under scrutiny the notice u/s 143(2) dated 15.09.2009 was duly served upon the assessee followed by a detailed questionnaire dated 14.06.2010 upon which details was furnished by the assessee before the Learned AO. The AIR information so gathered is this that the assessee shown as sold immovable property valued at Rs.30,12,000/- during the financial year. Therefore, Long Term Capital Gain (LTCG) was calculated at Rs.19,30,168/- by the Learned AO. Subsequently, the assessee was asked as to why such LTCG was not shown in the return of income and same was finally added to the total income of the assessee against which appeal was preferred. It appears from the record that in respect of giving several opportunities of hearing to the assessee the matter was finally cannot be taken up as hearing due to adjournment applications filed in almost all occasions on behalf of the assessee. Neither any submission was made during the appellate proceeding as it appears from the recording of the Learned CIT(A). Hence, the order passed by the Learned AO was confirmed in appeal.

3. When the matter was taken up for hearing before us, the Learned Advocate appearing for the assessee contended before us that the said property was mortgaged with the Kalupur Co. Co.Op Bank Ltd. by the assessee who was a guarantor of loan with the said bank. Ultimately, the loan to the tune of Rs.9,00,000/- could not be paid and the total outstanding amount of Rs.16,40,204/- since not paid by the debtors. The possession of the said property was taken over by the said bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act-2002 to recover the price of the property and to deposit the same in the account of the debtors. Ultimately, the assessee did not get any receipt out of the sale of such property. Therefore, capital gain out of the sale of such property cannot be added to the total income of the assessee. He thus prayed for deletion of addition made by authorities below. On the other hand, Learned Representative of the Revenue relied upon the order passed by the authorities below.

4. We have heard the respective parties, perused the relevant materials available on record. The facts as narrated by the Learned AR seems to be correct as it appears from the documents placed on record by way of Paper Book filed by the Learned AR before us. The memo dated 10.10.2013 written by Chief Manager, Kalupur Co. Co-Op. Bank Ltd., Ashram Road, Ahmedabad depicts such fact. The Certificate dated 02.08.2014 by the Kalupur Co. Co-Op. Bank Ltd. certifying that the assessee has mortgaged Flat No.2, situated at Mouje Khanpur Shekhpur on Plot No.287, 292, 293, 297, 299, etc known as Shrimali Co-operative Society Ltd. The assessee was a guarantor for certain loans with the said Bank against the said flat known as Siddhant Apartment of Sashi Association. The loanee since defaulted in effective payment, the assessee was forced to handover the vacant possession of the property as mentioned above. It was also contended before us that all those documents were filed before the lower authorities for their consideration. Such statement has also been certified by the Learned Counsel appearing for the assessee being part of the Paper Book.

Having heard the Learned Counsel appearing for the parties and having regard to the facts and circumstances of the case, we are of the view that the matter requires proper adjudication on the basis of the documents as mentioned hereinabove relating to the Bank loan and a fact of disposing of the said property by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act-2002. In that view of the matter, we find it fit and proper to set aside the issue to the Learned AO for fresh adjudication of the same upon taking into consideration the evidences so placed by the assessee before us. The Learned AO is further directed to taking into consideration any other evidence and/or judgment passed by the Court of law which the assessee may choose to file at the time of the hearing of the appeal.

5. In the result, assessee's appeal is allowed for statistical purposes.

This Order pronounced in Open Court on

30/01/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 30/01/2019
Priti Yadav, 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)-XX, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad