

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.94/Ind/2016
Assessment Year: 2006-07**

Bhagwandas Baheti s/o Shri Laxminaryan Baheti Near Dashahra Maidan, Neemuch (Appellant)	<u>बनाम/</u> Vs.	ITO, 4(1), Neemuch (Revenue)
PAN: AAOPB9624R		
Appellant by	Shri Rakesh Dafria, CA	
Revenue by	Shri Rajiv Jain, Sr. DR	
Date of Hearing:	26.11.2018	
Date of Pronouncement:	27.11.2018	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal of Assessee pertaining to A.Y. 2006-07 is directed against the order of Ld. Commissioner of Income Tax(Appeals), Ujjain, (in short 'CIT(A)'), dated 30.10.2015 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on

24.12.2009 by ITO, Neemuch. The assessee has raised following grounds of appeal:

- “1. The Ld CIT has erred in dismissing the appeal without appreciating the facts of the case that assessee has made many times request for keeping the appeal in abeyance till the decision of revenue Board which has crucial impact on the case.*
- 2. The AO has erred making additions of Rs. 48,80,053/- on A/c of Long term capital Gain as per provisions of Section 50-C and Ld CIT(A) has erred in confirming the same. Appellant has sold the Land on 14.6.2005 and received sum of Rs. 11.00,000/- and events occurred thereafter is not in his knowledge and order of the collector of stamp came approx 20 months late from the date of registration.*
- 3. That Buyer of the property has filed appeal against the judgment of the Ld. Commissioner before the Revenue Board and the judgment of the same is still awaited.*
- 4. The Basis of Valuation made by the Stamp authority is purely based upon presumption and surmises and there is no differentiation in distance of Land from the main road. Further Ld. Collector of Stamp has valued the cost of Godown @ Rs. 4,989/- per Sq Meter for 20 years old godown and allowed only 10% Depreciation for 20 years.*
- 5. The Valuation made by the Stamp Valuation authority is not correct to the facts and bears various anomaly like construction cost of 1st st Floor is taken at 4500/- per Sq meter while Ground floor cost is taken at 4,989/- per Sq Meter. Further Ld Collector of Stamp failed to explain how he derived amount of depreciation at Rs.1,59,000/- .*
- 6. The Ld. AO and Ld CIT has erred in not considering the facts of conversion of the land into stock in trade without any basis. Your appellant has converted the said land into stock in trade and planned for construction shops and applied to respective agencies for necessary permissions, therefore provisions of section 50-C is not applicable to him.”*

2. At the outset, Ld. counsel for the assessee submitted that the order of Ld. CIT(A) is ex-parte and sufficient opportunity for hearing was not provided.

3. He also submitted that on the very same issue in the case of assessee's brother, Narayandas Baheti the order of Ld. CIT(A) in that case was also ex-parte and Coordinate Bench vide ITANo. 24/Ind/2016 dated 12th June, 2017 set aside the order of the Ld. CIT(A) and restored the matter to the file of assessing officer to decide afresh.

4. Ld. counsel for the assessee, therefore, prayed that the issues in the instant case may also be set aside and the order of the Ld. CIT(A) restored to the file of assessing officer for fresh adjudication.

5. Per Contra ld. Departmental Representative (DR) raised no objection to the request of setting aside all the issues to the file of assessing officer.

6. We have heard the rival contentions, perused the record placed before us. Request made by the Ld. counsel for the assessee for setting aside the issues raised in this appeal to the file of assessing officer, goes unopposed by the Departmental Representatives(DR). We find that similar issues as well as the facts came up before Coordinate Bench in the case of Narayandas Baheti (brother of assessee) relating to the application of provisions of section 50C of the Act on the sale of property jointly owned by the assessee along with Mr. Narayandas Baheti. Tribunal vide

order dated 12th June 2017 in ITANo.24/Ind/2016 restored the issues to the file of assessing officer for de novo adjudication.

7. We therefore, in the given facts and circumstances of the case, similarity of the issues and facts are of the considered view that the order of the Ld. CIT(A) needs to be set aside and the issues raised in this appeal needs to be restored to the file of the assessing officer with a direction to decide the same *de novo* without being prejudiced by the appellate order or the impugned order passed by the assessing officer. Needless to mention that adequate opportunity of being heard to be provided to the assessee. We also direct the assessee to remain compliant and vigilant to the notice of hearing issued by the assessing officer and should not to take any adjournment unless otherwise required in abnormal circumstances. This direction to the assessee is on account of our observation that he did not comply to the notice of hearing issued by Ld. CIT(A) on eleven occasions which shows the careless approach of the assessee. We also direct the assessing officer not to give the assessee more than two adjournments and in case assessee does not appear on the third occasion, Ld. Assessing Officer shall

decide the issues as per the merits of the case and best of his judgment.

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

Order was pronounced in the open court on 27.11.2018.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 27/11/2018

Patel. P. S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar