

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

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

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2750/Ahd/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

Bhudarbhai M Prajapati 31, Jawaharnagar Society, Near Abhilash Char Rasta, New Sama Road, Baroda- 390008	बनाम/ Vs.	ITO Ward-3(1), Aaykar Bhavan, Race Course Circle, Baroda- 390007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACP PP2 671 P		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri M. K. Patel, AR
प्रत्यर्थीकीओरसे / Respondent by:	Shri Lalit P. Jain, Sr. DR

सुनवाईकीतारीख/Date of Hearing	24/07/2019
घोषणाकीतारीख /Date of Pronouncement	16/09/2019

आदेश/O R D E R

PER AMARJIT SINGH - AM:

This appeal filed by the Assessee for A.Y. 2010-11, arise from order of the CIT(A)-II, Baroda dated 05.08.2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The grounds of appeal raised by the assessee are read as under:-

"1. The order of the Learned Commissioner of Income Tax (Appeals) is against law and facts of the case.

2. The Learned Commissioner of Income Tax (Appeals)-II, Baroda erred in confirming the order of the Assessing Officer assessing the appellant on a total income of Rs. 66,94,242/- u/s. 143(3) of the IT Act, 1961.

3. *The Learned Commissioner of Income Tax erred in summarily holding that the appellant has not rebutted the findings of the assessing officer with any reliable evidence.*

4. *The Learned Commissioner of Income Tax, erred in not deciding upon following alternative grounds of appeal raised by the appellant.*

a. Ground No. vi)

The Learned Assessing Officer erred in holding that the Appellant is not entitled to the deduction for Rs. 42,29,500/- paid by the purchaser in government account for converting the land from under new condition to under old condition.

b. Ground No. vii)

The Learned Assessing Officer erred in not allowing deduction u/s 54B of the Income Tax Act, 1961 in respect of agricultural land purchased by the Appellant within the time limit prescribed u/s. 54B.

5. *The Learned Commissioner of Income Tax (Appeals)-II, erred in not properly appreciating the facts of the case and submissions made on behalf of the appellant.*

6. *It is prayed that the addition of Rs. 64,35,862/- on account of long term capital gain be deleted.”*

3. The fact in brief is that return of income declaring income of Rs. 2,58,380/- was filed on 28.10.2010. The AO has finalized the assessment u/s. 143(3) of the Act, on 01.03.2013 and determined the total income at Rs. 66,94,242/- after making addition on account of long term capital gain of Rs. 64,35,862/-.

The fact pertained to the addition made is that there was an AIR information articulating that assessee has sold immovable property for the consideration of Rs. 57,29,500/- on 27.08.2009 and this transaction was not reflected in the return of income. During the assessment the assessee was show-caused for not showing any transaction of capital gain on the sale of the said property. On verification of the detail submitted by the assessee, it was discerned to the AO that the immovable property was in the name of Shri Surendrabhai Jashbhai Amin and Shri Jitendra Jashbhai Amin. This owners of the immovable property have executed irrevocable power of attorney in favour of assessee on 15.06.1998. The immovable property bearing R.S. No. 477 has been sold by the assessee as a Power of Attorney holder for consideration of Rs. 57,29,500/- vide sale deed executed on 27.08.2009. The sale

value of the property as per stamp duty paid was to the amount of Rs. 84,95,000/-. The assessee contended that he had sold the said land as a Power of Attorney holder of the land on behalf of the owners Shri Surendra Jashbhai Amin and Shri Jitendra Jashbhai Amin both residing at village Sama, District Vadodara. The AO has not agreed with the contention of the assessee and observed that assessee has taken over the full ownership of the land by irrevocable Power of Attorney executed on 15.07.1998. The AO has also observed that assessee has executed the sale deed in the capacity of Power of Attorney holder and there was no signature or approval of the land owner on the sale deed and the buyer of the property have also confirmed in their statement that they have purchased the aforesaid immovable property from the assessee. Consequently, the AO has made addition of Rs. 64,35,862/- as long term capital gain earned on the sale of the aforesaid property as per provision of Sec. 50C (1) of the Act in the hand of the assessee. The AO has also stated that assessee will not get any benefit u/s. 54B of the Act as the land which was sold on 27.08.2009 having R.S. No. 477 was not being used for agriculture purpose and also held that assessee will not get benefit on deduction of sale consideration of the premium paid for the change from new condition to old condition amounting to Rs. 42,29,500/- as the payment has been made by the purchaser directly to the Government account.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee retreating the finding of the AO.

5. During the course of appellate proceeding before us the Ld. Counsel has furnished Paper Book comprising details and copies of documents filed before the AO and CIT(A) at the time of hearing. The Ld. Counsel has contended that Ld. CIT(A) has simply dismissed the appeal of the assessee by retreating the finding of the AO without considering the submission and detail furnished by the assessee against the addition made by the AO. He has further stated that Ld. CIT(A) has not passed speaking order while adjudicating the appeal of the assessee. The relevant decision of the Ld. CIT(A) is reproduced as under:-

“3.2.3. During the appellate proceedings before me, the findings of the Assessing Officer have not been rebutted with any reliable evidence. The appellant has not been able to demonstrate as to how the so called owners have shown the income in their hands. Even the wife of the assessee Smt. Hansa Bhudarbhai Prajapati has received sum of Rs. 15,00,000/- on 27.08.2009 as part of sale consideration in whose name the assessee had made one “banakhat” on 28.08.1998. This has not been disputed by the appellant. However, on verification of the Return of income of Smt. Hansa Bhudarbhai Prajapati for A.Y. 2010-11, it is seen that she has not offered this amount of Rs. 15,00,000/- for tax in view of the detailed facts mentioned in para 3.2.2 above, the contention of the assessee is not acceptable and the addition made by the Assessing Officer is confirmed.”

6. On the other hand, the Ld. DR has supported the order of the lower authorities.

7. We have heard both the sides and perused the material on record. The issue in the appeal filed by the assessee is pertained to the addition of Rs. 64,35,862/- of long term capital gain on sale of agricultural land by the assessee acting under Power of Attorney granted by the owner of agricultural land. The Ld. Counsel has brought to our notice that at the time of assessment proceeding and appellate proceeding the assessee has explained that he has exclusively exercised the power on the behalf of land owner and he has not been conferred any right of ownership to the sold property and the entire sale consideration was paid in to the State Bank of India by the purchasers on behalf of the sellers for conversion of land for new condition to old condition and no part of consideration was paid to the assessee in any manner. The assessee has also submitted a copy of order of Collector of Vadodara on the application made by the both the land owner for depositing minimum amount of Rs. 42,29,500/- placed at Page No. 39 and 40 of the Paper Book. The assessee has also furnished before the Ld. CIT(A) a copy of index from the sub-Register Office showing the name of person who have sold the property as well as the name of person who have purchased the property and the same was also placed in the Paper Book. The Ld. Counsel has also submitted that lower authorities have not considered the supporting evidences that the sold land was also being used for agriculture purpose and on assumption basis the alternative claim of the assessee for deduction u/s. 54B was denied.

In the light of the above facts and circumstances we observe that Ld. CIT(A) has not adjudicated the case of the assessee by passing a speaking order. It is clear from the above facts that all the issues and material furnished by the assessee during the course of appellate proceeding before the Ld. CIT(A) has not been considered by the Ld. CIT(A) while adjudicating the appeal of the assessee. The provision of Sec. 250(6) of the Act which require that while disposing the appeal of the assessee the order of the CIT(A) shall be in writing and shall state the points for determination the decision thereon and raising further decision.

In the light of the above facts and circumstances we restore this appeal to the file of the Ld. CIT(A) for deciding a fresh after by passing a speaking order after considering the relevant detail and information furnished by the assessee. Therefore, the appeal of the assessee is allowed for statistical purpose.

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

This Order pronounced in Open Court on 16/09/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 16/09/2019

TANMAY

TRUE COPY

आदेश की प्रतिलिपि अगेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।