

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sr. No.	ITA/IT(SS)A	Asstt. Year	Name of Appellant	Name of Respondent
1-2	ITA Nos.1370-1371/Ahd/2016	2007-08 & 2008-09	Smt. Bhavnaben Maheshbhai Patel, B-202, Maruti Tower, Nr. Shivranjani Cross Road, Satellite, Ahmedabad-380015. PAN:AJDPP4583F	D.C.I.T., Central Circle-1(2) Ahmedabad.
3.	ITA No.1366/Ahd/2016	2007-08	Shri Atit Maheshbhai Patel, B-202, Maruti Tower, Nr. Shivranjani Cross Road, Satellite, Ahmedabad-380015. PAN:AHPPP4257J	D.C.I.T., Central Circle-1(2) Ahmedabad.
4.	ITA No.1368/Ahd/2016	2007-08	Shri Maheshbhai S. Patel, B-202, Maruti Tower, Nr. Shivranjani Cross Road, Satellite, Ahmedabad-380015. PAN:ABXPP3026F	D.C.I.T., Central Circle-1(2) Ahmedabad.
5.	IT(SS)A No.242/Ahd/2016	2008-09	Shri Atit Maheshbhai Patel, PAN:AHPPP4257J	D.C.I.T., Central Circle-1(2) Ahmedabad.
6.	ITA No.1363/Ahd/2016	2007-08	Shri Shantilal Prabhudas Patel,	D.C.I.T., Central

			B-202, Maruti Tower, Nr. Shivranjani Cross Road, Satellite, Ahmedabad-380015. PAN:ABXPP3041Q	Circle-1(2) Ahmedabad.
7.	IT(SS)A No.244/Ahd/2016	2008-09	Shri Maheshbhai S. Patel, B-202, Maruti Tower, Nr. Shivranjani Cross Road, Satellite, Ahmedabad-380015. PAN:ABXPP3026F	D.C.I.T., Central Circle-1(2) Ahmedabad.
8.	ITA No.1364/Ahd/2016	2011-12	Shri Laxmanbhai Prabhudas Patel, 8, Maruti Hills Bunglows, Satellite, Ahmedabad-380015. PAN:AKXPP8563C	D.C.I.T., Central Circle-1(2) Ahmedabad.

(Applicant)		(Responent)	
Assessee by	:	Shri S.N. Soparkar, Sr. Advocate with Shri Parin Shah, A.R	
Revenue by	:	Shri Sanjeev Jain, C.I.T. D.R with Shri James Kurian, Sr. D.R	

सुनवाई की तारीख/**Date of Hearing** : 25/03/2021

घोषणा की तारीख /**Date of Pronouncement**: 12/04/2021

आदेश/O R D E R

PER BENCH :

The above appeals have been filed by the different assessee against the orders of Id.Commissioner of Income-Tax (Appeals) involving respective assessment years. The issues raised by the different assessee in all these appeals

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are common. Therefore, for the purpose of the adjudication, we take up first ITA No.1370/Ahd/2016 (Bhavnaben M. Patel) by the assessee for the A.Y. 2007-08 as the lead year.

2. The assessee in the memo of appeal has raised as many as 11 grounds of appeal. However the learned AR at the time of hearing submitted that he has been instructed by the assessee not to press ground Nos. 1, 2, 7, 8 & 9, raised in the grounds of appeals. Accordingly we dismiss the same as not pressed.

3. Likewise the issues raised by the assessee in ground Nos. 10 and 11 are either consequential or premature to decide. Therefore we dismiss the same as infructuous.

4. Thus the effective issues, remaining for adjudication are stated in ground Nos. 3, 4, 5 and 6 which are reproduced as under:

3. *Ld.CIT(A) erred in law in and on facts confirming the view taken by AO that Long Term Capital Gain of Rs.62,46,790/- on sale of Vejalput land was taxable in full in A.Y. 2006/07 only. Ld.CIT(A) ought to have granted spread over of capital gains u/s.45(3) of the Act as shown by the appellant.*
4. *Without prejudice to the above, ld.CIT(A) erred in law and on facts in confirming capital contributing of Rs.62,46,790/- by AO in place of Rs.17,57,000/- in the partnership firm. Ld.CIT(A) ought to have quashed such computation contrary to the provisions of sec. 45(3) of the Act.*
5. *Ld.CIT(A) erred in law and on facts confirming addition made by AO of Rs.1,50,000/- share profit from undisclosed profits of partnership firm. Ld.CIT(A) ought to have held that once land became property of the firm from the date of partners' contribution then any income subsequently earned by the firm, partner is not liable to tax on share of profit from firm.*
6. *Ld.CIT(A) erred in law and on facts in confirming above addition of unaccounted profit in the hands of the appellant ignoring the fact that the said profit was already offered by the firm before settlement commission.*

5. The interconnected issue raised by the assessee in ground No. 3 and 4 is that the learned CIT (A) erred in confirming the addition made by the AO for ₹6,46,790/- under the head capital gain.

6. At the outset the learned AR before us submitted as under:

During course of survey, one annexure was impounded (Annexure A1/20) and pursuant to that statement of Shri Mahesh Shantilal Patel was recorded on 29.07.2011 u/s 131 of the Act and he admitted actual sale consideration agreed for Vejalpur land was Rs. 3.17 crores and capital gain of Rs. 3.12 crores have been earned in sale of land by all co-owners together. The contention of the above-mentioned appellants was that as amount from Savvy Construction Co, was received in A.Y. 2007-08 & 2008-09 and accordingly, capital gain should be required to be offered in A.Y. 2007-08 & A.Y. 2008-09. However, revenue taxed the same in A.Y. 2006-07 i.e. in the year of transfer as per section 45(3) of the Act. Based on that addition of Rs. 62,46,790/- (share of appellant) has been made in A.Y. 2006-07 on substantive basis and on protective basis in A.Y. 2007-08 & A.Y. 2008-09.

It is submitted that following appellants have settled the dispute by opting Vivad Se Vishwas Scheme for A.Y. 2006-07, so contention to make addition in A.Y. 2007-08 & A.Y. 2008-09 is no longer required to be adjudicated and this ground became academic. Appellant also submitted Form No.3 of Vivad Se Vishwas Act for above mentioned assessee on 23/03/2021.

The details of appeals for A.Y. 2007-08 & 2008-09 are tabulated hereunder:

Appellant	Assessment Year	ITA / ITSS Nos.
<i>Bhavnaben M Patel</i>	<i>2007-08 2008-09</i>	<i>1370/Ahd/2016 1371/Ahd/2016</i>
<i>Atit M Patel</i>	<i>2007-08 2008-09</i>	<i>1366/Ahd/2016 242/Ahd/2016</i>
<i>Maheshbhai S Patel</i>	<i>2007-08 2008-09</i>	<i>1368/Ahd/2016 244/Ahd/2016</i>
<i>Shantibhai P Patel</i>	<i>2007-08</i>	<i>1363/Ahd/2016</i>

7. On the other the learned DR fairly agreed that the appeals filed by the assessee do not require any separate adjudication in the circumstances narrated by the learned AR for the assessee.

8. We have heard the rival contentions of both the parties and perused the materials available. From the preceding discussion, we note that there is no dispute qua the amount of capital gain earned by the assessee along with other parties. As per the assessee the amount of capital gain was taxable in the assessment year 2007-08 and 2008-09 whereas the revenue had taxed the entire

amount of capital gain in the assessment year 2006-07 as contended by the learned AR.

8.1 At the time of hearing, it was pointed out by the learned AR that the assessee has settled his dispute for the assessment year 2006-07 under VSV scheme 2020. For this purpose, the learned AR has filed form 3 issued by the Income Tax Department showing the settlement of the dispute under VSV scheme 2020.

8.2 As the dispute relating to the year under consideration has been settled under VSV scheme 2020, we hold that no separate adjudication is required. Accordingly, we dismiss the ground of appeal raised by the assessee as infructuous.

9. The interconnected issue raised by the assessee in ground Nos. 5 & 6 is that the learned CIT (A) erred in confirming the addition made by the AO for ₹ 1.50 lakhs representing the share of profit from the undisclosed sources of income of the partnership firm.

10. Briefly stated facts are that the assessee in the present case is an individual and deriving his income from house property, share of profit from the firm, capital gain and income from other sources. There was a search u/s 132 of the Act carried out in the case of Savvy Group, a partnership firm dated 27.04.2011 and on subsequent dates including the assessee. The assessee along with other family members was a partner in the firm. As a result of search proceedings, various documents were found which were incriminating in nature. A statement of Shri Mahesh Shantilal Patel was also recorded u/s 131 of the Act dated 29th of July 2011. In the statement it was admitted by Shri Mahesh Shantilal Patel that a sum of Rs.69 lakhs was received from the firm by the partners which was not disclosed in the income-tax return. This undisclosed income was pertaining to the Assessment Years 2007-08 & 2008-09. The allocation of such undisclosed income has been tabulated by the AO on page No.4 of his order. The AO accordingly

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worked out the share of the assessee in such undisclosed income for Rs. 1,50,000/- which was added to the total income of the assessee.

11. Aggrieved assessee preferred an appeal to the Ld. CIT(A) who confirmed the order of the AO.

12. Being aggrieved by the order of the Ld. CIT(A), the assessee is in second appeal before us.

13. The Ld.AR at the outset before us submitted that a similar kind of addition was made by the AO in the hands of other partners of the firm which was subsequently confirmed by the Ld.CIT(A). However, on further appeal to the Hon'ble ITAT, the matter was remanded back to the file of Ld. CIT(A) for fresh adjudication. The Ld.AR in support of his claim, filed a copy of the order of the Hon'ble ITAT in the case of other partner bearing ITA No.3447/Ahd/2016 for AY 2008-09 & Ors. which is placed on record. Accordingly, the Ld.AR prayed to the Bench to restore the issue to the file of Ld. CIT(A) for fresh adjudication as per the provisions of law.

14. On the other hand, the Ld. DR raised no objection if the matter is referred back to the file of Ld. CIT(A) for fresh adjudication as per the provisions of law.

15. We have heard the rival contentions and perused the materials available on record. At the outset, we note that the ITAT in the identical facts and circumstances in the case of other partners has remanded back the matter to the file of Ld. CIT(A) for fresh adjudication in accordance with the provisions of law. The relevant extract of the order in ITA No.3447/Ahd/2016 for AY 2008-09 & Ors. Is reproduced below:-

"14. We have carefully considered rivals submissions and perused the orders of the authorities below. The taxability of undisclosed income detected in the course of search in the case of partnership firm where the assessee is a partner is in question. We shall first take a look into the second proposition raised on behalf of the assessee. On behalf of the assessee, it is sought to be contended that the alleged undisclosed income has already been included in the taxable income of the partnership firm in the course of settlement proceedings and thus the same income cannot be taxed again in hands of the partners.

We find ourselves in complete agreement, in principle, with the said proposition raised on behalf of the assessee-partner that the undisclosed income once already considered for taxation in the hands of the partnership firm cannot be taxed once again in the hands of the partner. However, in the same vein, we find that question as to whether the undisclosed income in controversy, forms part of the additional income declared before the Settlement Commission or not, is essentially a question of fact. This aspect has not been raised before the lower authorities, and thus remained unanswered. Hence, as a measure of fair-play, the issue requires to be remanded back and restored to the file of CIT(A) to re-appreciate the limited aspect as to whether income in dispute has already been included in the additional income offered by the partnership firm before the Settlement Commission, directly or indirectly. Therefore, we consider it expedient to set aside the issue to the file of the CIT(A) for examination of this limited aspect of assessment of undisclosed income in the hands of the partnership firm. Needless to say, the assessee cannot be taxed on the undisclosed where the undisclosed income is already found to be taxed in the hands of the partnership firm.

15. *We shall now advert to the first proposition raised on behalf of the assessee that the income can be taxed only in the hands of the partnership firm. It is true that income is required to be taxed in the hands of right person only. However, we also bear in mind that the partnership firm is only a creature of agreement and partners are intrinsically connected contractually under the Partnership Act. Partners (assessee herein) hold mutual agency on behalf of the firm and are liable and responsible for the acts of the assessee-firm. A firm is merely a compendious expression for its partners. This apart, the undisclosed income of the partnership firm ultimately goes to the partners by way of share of their undisclosed income. Therefore, a strict adherence of taxability that too of an undisclosed income in the hands of the partnership firm as insisted upon, would not, in our view, change the ground reality. Besides, the inclusion of undisclosed income in the hands of partnership firm in exercise of powers vested under erstwhile provisions 153(3) is also plausible. However, since the matter has already been set aside and remanded to the file of the CIT(A), we do not consider it necessary to delineate into this aspect of revenue neutral exercise any further.*

16. *In view of the aforesaid discussion, the issue is set aside and remanded back to the file of the CIT(A) for adjudication of the issue afresh in terms of directions noted above in accordance with law."*

16. Respectfully following the same, we are inclined to remand this matter to the file of Ld. CIT(A) for fresh adjudication in accordance with the provisions of law. Hence, the ground raised by the assessee is allowed for statistical purposes.

17. In the result, Assessee's appeal is partly **allowed for statistical purposes.**

18. Coming to following appeals filed by the different assessee.

Sr.No.	Appeal No.	A.Y	Name of the assessee
1.	ITA No.1371/Ahd/2016	2008-09	Smt. Bhavanben M. Patel

2.	1366/Ahd/2016	2007-08	Shri Atit Maheshbhai Patel
3.	IT(SS)A No.242/Ahd/2016	2008-09	Shri Atit Maheshbhai Patel
4.	ITA No.1368/Ahd/2016	2007-08	Shri Maheshbhai S. Patel
5.	IT(SS)A No.244/Ahd/2016	2008-09	Shri Maheshbhai S. Patel
6.	ITA No.1363/Ahd/2016	2007-08	Shri Shantilal Prabhudas Patel

19. At the outset we note that similar grounds were raised by the Assessee in ITA No.1370/Ahd/2016 (Bhavnaben M. Patel) corresponding to the A.Y. 2007-08 which has been partly allowed for statistical purposes vide paragraph no. 2 to 12 of this order. For detailed discussion please refer the above mentioned paragraph number of this order. Accordingly we hold that finding given in above paragraphs with regard to ITA No.1370/Ahd/2016 will mutatis mutandis apply in the above mentioned appeals also.

20. In the results, the above six appeals filed by the different Assessee are partly **allowed for statistical purposes.**

Coming to ITA No 1364/Ahd/2016 in the case of Laxmanbhai P. Patel

21. The assessee in the memo of appeal has raised as many as 6 grounds of appeal. However the learned AR at the time of hearing submitted that he has been instructed by the assessee not to press ground No. 1, 2 & 3 raised in the grounds of appeals. Accordingly we dismiss the same as not pressed.

22. Likewise the issues raised by the assessee in ground No. 5 and 6 are either consequential or premature to decide. Therefore we dismiss the same as infructuous.

23. Thus the effective issue, remaining for adjudication is stated in ground No. 4 which is reproduced as under:

Ld.CIT(A) erred in law and on facts in not adjudicating the alternate contention submitted that total investment in new agricultural land being Rs.1,38,33,000/- even if the said improvement cost is added, the LTCG would still be nil as exemption is allowable up to Rs.1,38,22,000/-

24. The issue raised by the assessee is that the learned CIT (A) erred in not adjudicating the alternate contention for allowing the exemption under section 54B of the Act as the investment in the agricultural land purchased stands at ₹ 1,38,22,000.00 which is more than the capital gain even if the benefit of cost of improvement is ignored.

25. The facts in brief are that the assessee in the present case is an individual and deriving income under the head house property, business & profession, capital gain and income from other sources. The assessee along with other co-owners, in the year under consideration, has sold an agricultural land and received his part of consideration amounting to ₹ 1 crores. The assessee against such sale of agricultural land computed the long-term capital gain of ₹ 76,00,166.00 after claiming index cost of acquisition and index cost of improvement. The assessee in the computation of income further claimed exemption under section 54B of the Act on account of investment made in another agricultural land amounting to ₹ 1,38,22,000.00. However, the AO made the observations during the assessment proceedings as detailed under:

- i. The assessee is not eligible for exemption under section 54B of the Act as the land in respect of which the capital gain was generated was not used for the agricultural operations either by the assessee or his parents. Accordingly, the exemption claimed by the assessee under section 54B of the Act was denied.
- ii. The index cost of improvement claimed by the assessee was not available to the assessee as the assessee failed to file the documentary evidence in support of his claim.

26. Aggrieved assessee preferred an appeal to the learned CIT (A) who allowed the exemption to the assessee under section 54B of the Act but denied the benefit for the index cost of improvement claimed by the assessee.

27. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

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28. The learned AR before us contended that the assessee has made investment in the agricultural land for an amount of ₹ 1,38,22,000 against the sale proceeds received by him from the sale of agricultural land amounting to ₹1 crores only. Accordingly, it was contended before the learned CIT (A) that the entire amount of capital gain is eligible for exemption under section 54B of the Act even if the benefit of index cost of improvement is denied. However the learned CIT (A) has not considered the contention raised by the assessee before him. The learned AR in support of his contention filed a paper book running from pages 1 to 16 and drew our attention on page 16 where the contention was raised before the learned CIT (A) for allowing the exemption under section 54B of the Act for the full amount of capital gain earned by the assessee after ignoring the index cost of improvement.

29. On the other hand, the learned DR contended that the contention raised by the assessee before the learned CIT (A) has not been adjudicated on merit. Therefore the same should be restored back to the file of the learned CIT (A) for fresh adjudication as per the provisions of law.

30. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee in his computation of income placed on page 5 of the paper book has shown investment in the agricultural land amounting to ₹ 1,38,22,000.00 which is much more than the capital gain earned by the assessee after ignoring the index cost of improvement. Accordingly, in principle we find force in the contention of the learned AR for the assessee as the investment in the agricultural land exceeds the amount of capital gain. However, this aspect has not been verified by the authorities below. Accordingly we are inclined to set aside the issue to the file of the AO for the limited purpose to verify whether the assessee has made investments in another agricultural land amounting to ₹ 1,38,22,000.00 only. If the contention of the assessee is found correct, then the assessee should be allowed the benefit of exemption under section 54B of the Act as discussed above. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

31. In the result the appeal of the assessee is party allowed for the statistical purposes.

32. In the combined result, the appeals filed by the different assesseees **are partly allowed for statistical purposes.**

Order pronounced in the Court on 12/04/2021 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 12/04/2021

Manish/Tanmay

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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)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

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