

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 2968/AHD/2013 (AY 2007-08)
(Hearing in Virtual Court)

Rohit P. Patel (HUF), 2, Thakor Niwas, Near Navyug College, Rander Road, Surat. [PAN : AALHR 0456 C]	Vs	The Income Tax Officer, Ward-3(4), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Sh.Manish J Shah - Advocate
Revenue by	Ms Usha Shrote - Sr DR
Date of hearing	06-04-2021
Date of pronouncement	06-04-2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the orders of ld. Commissioner of income tax (Appeals)-IV, Surat dated 20.09.2013 in for assessment year (AY) 2007-08. The assessee has raised following grounds of appeals;

- (1) *That on the facts and in law the ld. CIT(A) has grievously erred in confirming the addition of Rs.2,51,598/- being agriculture income treated as unexplained income.*
- (2) *That on the facts and in law the ld. CIT(A) has grievously erred in confirming the addition of Rs.10,24,475/- by working out capital gain by applying the rate of DVO.*
- (3) *That on the facts and in law the ld. CIT(A) has grievously erred in partly confirming the addition of payment of NA Charges of Rs.10,16,076/- (instead of Rs.6,86,474/-) by considering it as unexplained income.*
- (4) *The appellant craves leave to add, alter amend any ground of appeal.*

2. At the outset of the hearing the learned Counsel for the assessee submits that all the grounds of appeals raised by the assessee are covered in favour of the assessee by the decision of the Tribunal in assessee's co-owners case in ITA's No. 2643, 2967, & 2969/AHD/2013 dated 16.11.2018. The learned Counsel for the assessee further submits that in co-owners case, all identical grounds of appeal has been restored to the file of assessing officer for adjudications of the issues afresh, copy of which is filed on record. The learned Counsel prayed that this appeal may also be restored to the file of assessing officer with similar direction, with the liberty to the assessee to file necessary information and evidence before him.
3. On the other hand the learned Senior departmental representative for the revenue submits that she support the order of the lower authorities.
4. We have considered the rival submissions of both the parties and have perused the order of the Tribunal in assessee's co-owners case in ITA's No. 2643, 2967 & 2969/ AHD/2013 dated 16.11.2018. We have noted that on identical facts and on similar issues the coordinate bench have restored the similar claim/ issues to the file of assessing officer. For completeness of this order the relevant part of the order dated 16.11.2018 is extracted below;

“2. Brief fact of the case is that during the course of assessment proceedings in the case of Shri Mayurbhai R. Patel, it was noticed

by the AO that the assessee HUF along with other three HUFs, co-owners had sold non-agricultural land during the year under consideration. However, it is found that the assessee has not shown sale consideration as per the provisions of section 50C of the Act, therefore the case of the assessee was re-opened on the ground that the income to the extent of 1/4th share in the ancestral land to the amount of Rs.17,53,025/- has escaped assessment. Therefore, the notice u/s.148 of the Act was issued on 7/02/2011, the AO treated that assessee has sold non-agricultural land at R.S. No.47/3 Moje Bhatha, Block No.142, area 28325 Sq. Mtr, and land at R.S.No.47/3-Moje Bhatha, Block No. 142, Area 4421 sq.rntr for Rs.60 lacs and 30 lacs respectively. It was further stated by the AO that in the return of income in the year under consideration assessee has not shown sale consideration as per the valuation made by the Stamp Valuation Authorities as per the provision of section 50C of the Act. Further facts of the case are discussed under the respective grounds of appeals as under.

3. First ground of appeal. In the first ground of appeal, the AO erred in issuing notice u/s.148 of the Act, was not pressed during the course of appellate proceedings. Therefore, the same is dismissed as not pressed.

4. The second and fourth ground of appeal. In the second ground of appeal addition of Rs.1,68,904/- on account of agriculture income treated as unexplained income and in the fourth ground of appeal the addition of Rs.38,812/- on account of disallowance of N.A charges. During the course of assessment proceedings the AO has noticed that assessee has shown agriculture income of Rs.1,68,904/-. In its support of earning the aforesaid agriculture income the assessee has furnished co[opies of form no.7/12 and copies of sale bills etc. The assessee has also submitted the details of year-wise agriculture income from the

Financial Year 2000-01 to 2007-08 which amounts to Rs.28,22,067/- However, the AO has not accepted the details furnished by the assessee stating that there was discrepancies in the copies of sales bills produced by the assessee, as there was no signature of sellers on the bill and prices shown in the bill was appeared to be unrealistically on higher side etc. In view of this facts and circumstances the AO has concluded that the assessee could not furnished any supporting evidence in support of his claim of agriculture income of Rs.1,68,904/- therefore the same was treated as income from undisclosed sources and added to the total income of the assessee. During the course of assessment proceedings the AO has stated that the assessee has not submitted any documentary evidences with regard to the source of payments made towards N.A. charges of Rs.6,86,474/- therefore the same was treated as unexplained and added to the total income of the assessee.

5. The aggrieved assessee filed an appeal before the Ld.CIT(A). During the course of appellate proceedings before Ld.CIT(A) the assessee has submitted that he has earned agriculture income since 1990 and has earned approximately Rs.28lacs during the period of 17-18 years. It was also stated that part of the N.A charges were paid by the buyers M/s. Swapna Enerpirses which was adjusted against total sale consideration. The Ld.CIT(A) has not accepted the contentions of the assessee stating that no evidence of such payment or confirmation of such advance from M/s. Swapna Enterprises was produced before the AO. In respect of agricultural income he has stated that the same has not been accepted in the preceding year therefore the agriculture income is not genuine. The assessee has made alternative plea to allow telescoping of this addition with undisclosed income of preceding year and current year on account of agriculture income. Ld.CIT(A) has held that telescoping was advisable to the extent of Rs.647662 (Rs.478758

+ Rs. 168904). Therefore addition was made restricting to the extent of Rs.38,812/-.

6. During the course of appellate proceedings before us the ld. counsel has submitted that the similar issue on identical facts has been restored to the file of AO for re-adjudication after verification of the detailed submitted by the assessee, therefore, he has requested that these issues pertaining to year under consideration should also be set aside to the file of the AO to decide *denovo* after considering the details filed by the assessee. The Ld.DR on the other hand, relied on the order of LD.CIT(A).

7. We have heard both the sides and perused the material available on record carefully. The relevant copies of 7/12 documents indicating that assessee was agriculturist and copies of sale bill and other details were furnished before the AO. However, the AO has not considered such evidences to determine the agricultural income and sources of IN.A charges. The decision of the Co-ordinate Bench, in the case of assessee vide ITA No.1S3/Ahd/2014 dated 01/03/2017, is reproduced as under:

"2. When this appeal was called out for hearing, learned counsel for the assessee pointed out that there is no dispute that the assessee did own the agricultural land but /lie income declared by the assessee has been rejected on the ground that agricultural income, as disclosed, has not been substantiated and the evidence filed in support of the income disclosed suffers from patent infirmities. He submits that what has been missed out is that admittedly the assessee does own tin: agricultural land, and even if the income shown by the assessee is rejected as not supported by acceptable evidence, agricultural income is to be estimated nevertheless on some reasonable basis. Learned counsel prays that the matter be restored to the file of the CIT(A) for this purposes, and for re-adjudication in light of Iris findings on estimated income from agricultural sources. That is the short point pressed by the learned counsel.

5. *Learned Departmental Representative fairly submits that even if agricultural income, as shown by the assessee. is*

to be rejected, there has to be an estimation of income from the agricultural land owned have the assessee and he does not object to the matter being remitted to the file of the CIT(A) for this purpose.

6. In view of the above discussions, I deem it fit and proper to remit the matter to the file of learned CIT(A) for adjudication de-novo in the light of the above observations. While doing so, learned CIT(A) will give a fresh opportunity of hearing to the assessee and shall take into account such submissions as the assessee may make in the remanded proceedings and decide the matter in accordance with law and by way of a speaking order. I order accordingly.

8. Respectfully following the decision of Co-ordinate Bench we restored the matter to the file of AO for deciding afresh after considering the details filed by the assessee as directed in the above decision of the Co-ordinate Bench. Therefore, ground no. 2 and 4 of the assessee's appeal are allowed for statistical purposes

9. Third ground of appeal. Coming to the ground no.3 addition of Rs.10,24,475/- on account of long term capital gain.. During the year the assessee had sold Non-Agricultural land at R.S No.47/3 Moje Bhatha, Block No.142, Area 28325 Sq.Mtr. and Sale deed registered in the office of the Sub-Registrar-1 (Athwa) Surat vide No.SRT/1/ATV No. 13242 of 2006 for Rs.60,00,000/-. The Stamp Valuation Authority has valued the same at Rs.84,97,500/- and has collected Additional Stamp Duty of Rs. 1,45,602/-. The assessee has requested to make reference to the Valuation Officer u/s 55A. The Valuation Officer has passes order u/s 55A vide No.6(3)/VOS/11- 12/245 dated 22.12.2011. The Valuation Officer has taken fair market value of the property at Rs.71,37,900/-The assessee had also sold Non-Agricultural land at R.S. No.47/3 - Moje Bhatha, Block No.142, Area 44212 Sq.Mtr. sale deed registered in the office of the Sub-Registrar-1 (Athwa) Surat vide No.SRT/1/ATV No. 12804 of 2007 for Rs.30,00,000/-. The Stamp Valuation Authority has valued

the same at Rs.75,14,600/- and has collected Additional Stamp Duty of Rs.2,23,000/-. The assessee has requested to make reference to the Valuation Officer u/s 55A. The Valuation Officer has passes order u/s 55A vide No.6(3)/VOS/11-12/245 dated 22.12.2011. The Valuation Officer has taken fair market value of the property at Rs.55,60,000/-.The AO has determined long term capital gain to the amount of Rs.10,24,475/- and added to the total income of the assessee.

10. Aggrieved assessee has filed an appeal before the Id.CIT(A). He has submitted that before the Id.CIT(A) that the valuation officer has valued similar piece of land at different rate within gap of a few month in selling of these two lands as per the details given below.

Sr. No.	Details of land	Area of land (sq. Mt.)	Date of Sale	Sale consideration	Value as per stamp valuation authority (?)		Value as per DVO (?)	
					Amount	Rate	Amount	Rate
1	RS No.47/3, Moje Bhatha Block No.142	28325	2.11.06	60,00,000	84,97,500/-	300/- per sqm	71,37,900/-	252/- Per sqm.
2	RS No.47/3, Moje Bhatha Block No.142	15887	28.3.07	30,00,000	75,14,600/-	473/- per sqm.	55,60,000/-	350/- per sqm.

Further the assessee has submitted that DVO has also not taken into consideration that the land of assessee was situated near Khadi of Tapi River and faced erosion. It was also mentioned that DVO has not considered comparable land sale (plot No.589 on 21/09/20116 at Rs.100 per sqm. on the ground that land was badly effected due to flood which was sold by the assessee on 02/11/2006. It was also stated that the comparable sale consideration considered by the DVO (plot no. 141 and plot no.256) were not comparable as they did not face Khadi of Tapi.

However, Id.CIT(A) has not accepted the submission of the assessee and stated that the rate adopted by the DVO was reasonable.

11. During the course of appellate proceedings before us Id. Counsel contended that the Ld.CIT(A) has not considered the various discrepancies noticed in the report of the DVO as he has not taken into consideration the various factors stated in para 10 of the orders while determining the fair market value in respect of two non-agriculture land sold by the assessee. On the other hand Ld.DR has supported the order of Ld.CIT(A).

12. We have heard both the side and perused the material available on record it is noticed that assessee has sold two non-agriculture plot of land which was part of the same property and the sale was made to the same person and there was only difference of few month in the sale of these two properties as one plot of land was sold on 02/11/2006 and second plot was sold on 28/03/2007. However, DVO has adopted the fair market value of these plots at 252 per sq.mtr and Rs.350 per sq. mtr. After considering the above facts we restore this issue to the file of AO for deciding afresh after obtaining report of the DVO on the technical objection raised before the Id.CIT(A) as mentioned in the para 3.2 in the order of the Ld.CIT(A). Accordingly this issue is restored to the file of the AO to be decided *denovo* as directed above after affording adequate opportunity to the assessee. Accordingly, this ground of the assessee is allowed for statistical purpose.

13. In the result appeal raised by the assessee in ground no.1 is dismissed and ground no. 2 to 4 are allowed for statistical purposes. In respect of grounds of appeal pertaining to ITA No.2967/Ahd/2013 and ITA NO.2967/Ahd/2013 for A.Y. 2007-08 are also allowed for statistical purpose since the findings of

appeal of ITA No.2643/Ahd/2013 is also applicable to both the appeals.”

5. In our view there is no variance in the facts and the grounds raised by assessee’s co-owners *vis-a vis* Grounds No.1 to 3 in assessee’s appeal. The Id CIT(A) while deciding assessee’s appeal also followed his order own order passed in assessee’s co-owners cases, which has been subject matter in ITA’s No. 2643, 2967, & 2969/ AHD/2013. Therefore, respectfully following the order of the coordinate bench and to avoid the conflicting decision and further to maintain the consistency, the appeal of the assessee is also restored to the file of assessing officer to re-consider all the issues afresh as per order dated 16.11.2018 passed in ITA’s No. 2643, 2967, & 2969/ AHD/2013 and pass the order in accordance with law. Needless to order that before passing the order the assessing officer shall grant opportunity to the assessee to file the requisite information and the documents if so desired.
6. In the result the appeal of the assessee is allowed for statistical purpose.

Order announced at the time of hearing of appeal on 6th April, 2021 in the Virtual Court hearing.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 06/04/2021

Copy to:

1. Appellant
2. Respondent

3. CIT(A)
4. CIT
5. DR

By order

/ / True copy / /

Assistant Registrar, ITAT, Surat