

INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No.568/SRT/2018 (AY 2009-10)  
(Hearing in Virtual Court)

Shri Mathur B. Sojitra, 18/377-379, Kohinoor Society, Varachha Road, Surat. PAN : AKMPS 7567 A	Vs.	Income Tax Officer, Ward- 3(3)(3), Aayakar Bhavan, Majura Gate, Surat.
Applicant		Respondent

Assessee by	Mr. Sapnesh Sheth, CA
Revenue by	Ms. Anupama Singla, Sr-DR
Date of hearing	02/07/2021
Date of pronouncement	02/07/2021

**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 Id. Commissioner of Income tax (Appeals)-3, Surat dated 14.06.2018 for the assessment year (AY) 2009-10. The grounds of appeal raised by the assessee are summarized as under:

1. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in passing ex-parte order without providing reasonable opportunity of hearing to assessee.*
2. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in dismissing the appeal filed by assessee without even considering the submissions made in statement of facts annexed with Form 35.*
3. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the IT. Act, 1961.*
4. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of*

*assessing officer in taxing the income from capital gain in A.Y. 2009-10 although the same is already offered for tax in A.Y. 2008-09.*

5. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.11,16,787/- as LTCG u/s 50C of the IT. Act.*
  6. *It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*
  7. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal..”*
2. Brief facts of the case are that the assessment for the year under consideration was completed on 27/12/2016 under section 143(3) read with section 147. The assessment was reopened on the basis of information that the assessee along with other co-owner sold property and shown the sale consideration of Rs. 27,72,500/-. The Jantri value of the land was Rs. 141,17,292/-, thus, there was wide difference in the value shown by the assessee and his co-owner. After completing the formalities of re-assessment the assessing officer proceeded for assessment. During the assessment the assessing officer made reference to Departmental Valuation officer (DVO). On the basis of value suggested by DVO, the assessing officer made addition of long term capital gain (LTCG) of Rs. 11,16,787/-. On appeal before Id.CIT(A) the action of the assessing officer was affirmed. The Id CIT(A) confirmed the order of assessing officer in ex-party order by taking view that despite granting a number of opportunity the assessee failed to comply the notices. Further aggrieved, the assessee has filed present appeal before this Tribunal.
3. We have heard the learned authorised representative (AR) of the assessee and the learned departmental representative (SR DR) for the revenue. The Id

AR for the assessee submits that during the first appellate stage the assessee sought adjournment on two occasions as recorded in para-3 of the impugned order. The assessee could not make compliance for the date fixed on 13.03.2018 and on 14.03.2018 nor adjournment was sought and the ld CIT(A) passed the order in ex-parte order. The ld AR for the assessee submits assessee has good case on merit and is likely to succeed if the assessee is heard on merit. The learned AR for the assessee undertake on behalf of the assessee to be more vigilant in future and the assessee will furnish his email address as well as telephone number for communication of the hearing before ld. CIT(A).

4. The ld. Sr. DR for the Revenue submits that the assessee was given four opportunities as recorded in page 4 of the order passed by the ld. CIT(A). The assessee failed to comply with the notice issued by the ld.CIT(A). The ld. CIT(A) left with no option, except to proceed to decide the issue and in absence of any evidence or explanation affirm the action of AO. The ld CIT(A) passed the order on merit after considering the material available on record. In alternative submission, the ld. Sr. DR for the Revenue submits that in case the Hon'ble Tribunal is deemed appropriate, the assessee be directed to be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld.CIT(A).
5. We have considered the rival submission of ld. AR for the assessee and the learned DR for the revenue and have gone through the orders of Lower

Authorities. We find that the ld. CIT(A) fixed the hearing on various occasions as mentioned in para 3 of the impugned order. It is recorded by ld. CIT(A) that no compliance was made by the assessee on 13.03.2019 and on 14.03.2018. However, we find that the ld. CIT(A) while fixing the date of hearing has not kept sufficient margin of time for date of hearing. Further, we also find the ld CIT(A) has not recorded his satisfaction that the notice sent through speed post was duly served on the assessee or not. We find that the assessee was not provided reasonable and sufficient opportunity of hearing before deciding his appeal. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the ld.CIT(A) to decide all the grounds of appeal on merit in accordance with law. Needless to order that before passing the order the ld. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the ld.CIT(A) as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The assessee is further directed to provide his e-mail address and telephone number to make communication with him or his representative. The assessee shall file his latest address and e-mail address and his telephone number or of his representative, within fifteen days of receipt of this notice in the office of assessing officer as well as before jurisdictional CIT(A). Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose. No order as to cost.

Order announced on 02<sup>nd</sup> July 2021 at the time of hearing in virtual court hearing.

Sd/-

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 02/07/2021  
*Self*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar, ITAT, Surat