

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 704/SRT/2018 (AY 2013-14)
(Hearing in Virtual Court)

Bharatbhai Balubhai Ghelani B-103, Royal Residency, Mahalaxmi Mandir, Anand Mahal Road, Surat-395009 PAN : AAWPG 3437 H	Vs	DCIT, Circle-1(3), Aaykar Bhavan, Majuragate, Surat-395001
Assessee / appellant		Revenue / respondent

Assessee by	Shri Mehul K. Patel Advocate
Revenue by	Ms. Anupama Singla – Sr-DR
Date of hearing	16.07.2021
Date of pronouncement	16.07.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of ld. Commissioner of Income tax (Appeals), “ ld.CIT(A)” Surat dated 27.08.2018 for assessment year (AY) 2013-14.
2. At the outset of hearing the Ld. Authorized Representative (AR) of the assessee submits that a very short issue is involved in the present appeal. The Ld. AR of the assessee submits that initially the assessee sought the exemption under section 54B of the Act in respect of purchase of agricultural land at Vasu/315 Sl.No. 142 for Rs.1.50 crore. However, during the course of assessment, the assessee filed revised computation of long term capital gains and exemption under section 54B and in place of examine

under section 54 in respect of agricultural land at Uhna B No.142. The assessee claimed exemption of Rs.1.91Crores. The Assessing Officer neither discussed the revised claim of exemption nor rejected by express order. Thereby, denied the enhanced/ revised exemption under section 54B. Aggrieved by the action of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) upheld the action of the Assessing Officer by taking view that assessee has not revised return of income as per section 139(5). And in absence of revised return the assessing officer is bound to make the assessment on original return. Further, aggrieved, the assessee come before this Tribunal by way of second appeal. The Ld. AR of the assessee submits that it is settled law, although, assessing officer is not entitled to admit additional claim, however, this power are not restricted to the appellate authority. The appellate authority including Ld. CIT(A) and the Hon'ble Tribunal is entitled to admit the additional ground of appeal for additional claim. To support his submission, the Ld. AR of the assessee relied upon the decision of Hon'ble Supreme Court in the case of Goetz India Ltd. vs. CIT (2006) 284 ITR 323 (SC) and decision of jurisdictional High Court in the case of CIT vs. Mitex Impex, 46 Taxmann.com 30 (Guj).

3. On the basis of aforesaid factual and legal submission, the Ld.AR for the assessee submits that the additional claim of the assessee may be admitted

and the issue may restore to the file of Assessing Officer to consider the revised claim of assessee and grant appropriate relief to the assessee.

4. On the other hand, the Ld. Departmental Representative (DR) for the Revenue supported the order of the lower authorities. The ld DR for the assessee further submits that in absence of the revised return of income the assessee is not entitled to raised fresh claim.
5. We have considered the rival submission of the parties and gone through the orders of the lower authorities. We find that Ld. AR of the assessee has explained the fact in a narrow compass as noted above. The short question for our consideration is whether in absence of revised return of income the Ld. CIT(A), was entitled to admit the additional claim by way of additional ground of appeal or not. It is settled law that the Assessing Officer is not entitled to consider the revised claim in absence of revised return of income under section 139(5) of the Act. However, these powers are not restricted to the appellate authorities as held by Hon'ble Supreme Court in the case of Goetz India Ltd. (supra) and the decision of Hon'ble jurisdictional High Court in the case of Mitex Impex, (supra). Therefore, considering the factual matrix of the case, that assessee has raised additional claim of excess claim of exemption under section 54B, which has not been examined by the lower authorities. Therefore, we admit the additional ground of appeal and remit

the issue back to the Assessing Officer to examine the claim and pass the order in accordance with law. Needless to say, the assessing officer shall grant opportunity of hearing to the assessee. The assessee is also directed to provide necessary detailed information and evidence to the Assessing Officer.

6. In the result, appeal of the assessee is allowed for statistical purposes. The order affix at the time of hearing of appeal

Order announced at the time of hearing of appeal on Friday, 16th July 2021 in the Virtual Court hearing.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 16/07/2021

Dkp. Sr.P.S. O.S

Copy to:

1. Appellant-Bharatbhai B Ghelani, B-103, Royal Residency, Mahalaxi Mandir, Anand Mahel Road, Surast-395009
2. Respondent- DCIT, Cir-1(3), Aaykar Bhavan, Majuragate, Surat-395001
3. CIT(A)-Surat
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Assistant Registrar, ITAT, Surat