

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No.757/SRT/2018 (AY 2012-13)

(Hearing in Virtual Court)

Shri Denish N Patel, 18, Patel Faliyu, Nr. Umiya Appt. Bhestan, Surat. PAN : ARRPP 9157 F	Vs.	The Income Tax Officer, Ward-2(3)(1), Surat.
Applicant		Respondent

Assessee by	Shri Sapnesh R Sheth - C.A
Revenue by	Ms. Anupama Singla – Sr.DR
Date of hearing	03.09.2021
Date of pronouncement	03.09.2021

**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)-1, Surat under section 143(3) r.w.s 147 of the I.T.Act, 1961, dated 04.09.2018 for the assessment year (AY) 2012-

13.The assessee raised the following grounds of appeal:

- “1) *On the facts and in the 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 in the circumstances of the case as well as law on the subject, the learned assessing office has erred in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961*
- 3) *On the facts and in the 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 office in making addition of Rs.6,78,325/- on account of long term capital gains.*
- 4) *On the facts and in the 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 office in adopting*

*indexed cost of acquisition of property sold at only Rs.14,01,225/- as against Rs.25,22,205/- as per valuation report of registered valuer.*

- 5) *It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted”*

2. Brief facts of the case are that the case of assessee was reopened under section 147 of the Act on 18.03.2016. The case was reopened on the basis of information that assessee with his co-owner sold a piece of land for consideration of Rs.2.40 crore. The assessee was having share of 1/20. The documents of sale was registered with Sub-Registrar, Udhana on 29.09.2011. The value of the stamp valuation authority was Rs.9.32 crore, therefore, provision of section 50C is applicable. As assessee is co-owner, thus, amount of Rs.34.60 lakhs escaped from assessment. On verification of record, the Assessing Officer find that no return of income was filed by assessee for the assessment year under consideration, accordingly, notice under section 148 was issued to the assessee. The assessee filed his return of income on 18.03.2016 declaring income of Rs.8,622/-. The Assessing Officer after serving notice under section 143(2) of the Act and 142(1) of the Act, proceeded for reassessment. The assessee filed reply dated 23.09.2016. The contents of reply filed by assessee is not recorded by the Assessing Officer. The Assessing Officer(AO) referred the case to Department Valuation Officer(DVO) for fair determination of value of land as on 01.04.1981. The DVO furnished his report on 09.12.2016. On the basis of report by DVO, the AO made

addition of Long Term Capital Gain of Rs.6,78,325/- in assessment order dated 20.12.2016 passed under section 143(3)/147.

3. On appeal before the ld.CIT(A), the addition was upheld. The ld. CIT(A) upheld the addition in an *ex parte* order. Thus, further aggrieved, the assessee has filed present appeal before this Tribunal.
4. We have heard the submission of Ld. Authorized Representative (AR) for the assessee and Ld. Senior Departmental Representative (DR) for the Revenue and perused the material available on record. The Ld. AR of the assessee submits that he has raised specific grounds of appeal that the Ld. CIT(A) erred in passing *ex parte* order and not adjudicated the grounds of appeal on merit. The Ld.AR for the assessee submits that during the course of hearing before the ld.CIT(A), the Ld CIT(A) asked the assessee to furnish letter of AO through which he made reference under section 55A of the I.T.Act, 1961 to Department Valuation Officer(DVO). As assessee was not having said letter, he requested Assessing Officer to kindly provide the same. The AO asked assessee to deposit challan of copying charges. Assessee accordingly deposited Rs.100/- towards copying charges on 05.10.2018 & furnished said challan along with forwarding letter dated 05.10.2018. Copy of the forwarding letter & challan of Rs.100/- is filed on record. However, before receipt of required papers, ld.CIT(A) passed ex-parte order on 04.09.2018. The ld.AR for the assessee submits that the assessee has good case on merit and is likely to

succeed if the assessee is given opportunity to be heard on merit. The assessee seeks one more opportunity for filing all evidences and explanation against the grounds raised by the assessee before Ld. CIT(A). The Ld.AR further submits that he undertakes on behalf of the assessee to co-operate and not to default and attending proceedings before the Ld. CIT(A).

5. On the other hand, the ld. Sr.DR for the Revenue submits that the assessee was given three opportunities of hearing as recorded in page 3 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. In alternative submission, the ld.Sr.DR for the Revenue submits that in case the Hon'ble Tribunal is deem 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).
6. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities. We find that the ld.CIT(A) fixed the hearing on 29.08.2018 and it is recorded by ld.CIT(A) that no compliance was made by the assessee. However, we find that 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 instead of going into

controversy, whether the assessee defaulted in attending the proceedings despite service of notice or not, before the Id.CIT(A). We find that the order of the Id.CIT(A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT(A) while deciding the appeal is required to pass order on points of determination (grounds of appeals), decision therein on and reasons for such decision. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the Id.CIT(A) to decide all the grounds of appeal on merit in accordance with law. Needless to order that before passing the order the Id.CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the Id.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. Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

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

Order announced on 03 September 2021 at the time of hearing in virtual court hearing.

Sd/-

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

Surat, Dated: 03/09/2021 / SGR\*

Sd/-

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

Copy to:

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

By order

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Sr. Pvt. Secretary, ITAT, Surat