

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD  
(CONDUCTING THROUGH VIRTUAL COURT)**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.929/Ahd/2015  
(Assessment Years: 2011-12)

Naresh Gopaldas Bhojwani 1 <sup>st</sup> Floor, A Wing, Gopal Palace, Opp. Ocean Park, Nehrunagar, Satellite Road, Ahmedabad- 380015	Vs.	ITO Ward-5(2)(3) Ahmedabad
[PAN No. ABLPB3567B]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Pritesh Shah, AR
<b>Respondent by:</b>	Shri Purushottam Kumar, Sr. DR

<b>Date of Hearing:</b>	29/09/2021
<b>Date of Pronouncement:</b>	05/10/2021

ORDER

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the assessee is directed against the order dated 13.03.2015 passed by the Ld. CIT(A)-5, Ahmedabad arising out of the order dated 27.03.2014 passed by the ITO, Ward-10(3), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2011-12 with the following grounds:-

“1. The learned CIT(A) erred in confirming the addition of Rs. 82,95,183/- in respect of Long Term Capital Gain, such addition is requested to be deleted.

2. The learned CIT(A) erred in confirming the addition of cash deposited to bank of Rs. 14,36,000/- as unexplained unaccounted income, such addition is requested to be deleted.”

**Ground No. 1:-**

2. The brief facts leading to the case is this that during the year under consideration the assessee sold a joint property amounting to Rs.2,62,00,000/-. The

assessee's share in such properties one half. Upon selling of the said property the Long Term Capital Gain is the issue before us. According to the assessee due to investment in the new residential house the assessee was entitled to the deduction under Section 54 of the Act resulting the Long Term Capital Gain to NIL. Fact remains that the appellant received the sale consideration of Rs.1,81,00,000/- and the other co-owner Shri Mukesh Bhojwani received only Rs.81,00,000/-. The Ld. AO concluded the assessment proceeding with the observation that the appellant was not the owner of 50% but of 69% of the property and accordingly the sale consideration was taken at Rs.1,81,00,000/-. On the basis the assessment proceeding was finally concluded by the Ld. AO accordingly.

3. It is also the case of the Revenue that in support of the claim of the appellant of having 50% of share no supporting details and/or evidences have been placed before the authorities below which have been placed before us by annexing the same in the paper book. This documents includes the payment breakup of the flat purchased, the bank statement of subsequent year which was in the position of the accountant commencing from the period 28.09.2011 to 04.07.2012 appearing at pages 147 to 157 of the paper book filed before us. The explanation rendered by the Ld. AO for not been able to submit those documents before the authorities below is this that there was some family disputes particularly between the two brothers, moreso, the accountant of the assessee left the job at the asking of the assessee's brother. Whereas the documents were lying with the said accountant and thus could not be placed before the authorities below at the relevant point of time. Subsequently by the intervention of the father of the assessee the disputes were resolved and the evidences mentioned above could be obtained from the said accountant. Such plea taken by the assessee seems to be genuine and hence we admit those additional documents placed before us.

However since the authorities below didn't get the chance to deal with those documents as filed before us the contentions made by the appellatn in support of his claim Could not be verified. Under these facts and circumstances of the case we find it just and proper to set aside the issue to the file of the Ld. AO to reconsider the matter afresh upon giving a reasonable opportunity of being heard to the assessee and upon considering the evidences as placed before us and any other evidence which the assessee may choose to file at the time of hearing of the matter.

**Ground No. 2:-**

4. The addition of cash deposit to bank of Rs. 14,36,000/- on account of unexplained unaccounted income is the subject matter before us.

5. The case of the assessee is this the cash deposits were made from cash withdrawals made from time to time. The Revenue's case is this such submissions of the assessee is general in nature and the cash flow statement which are submitted by the assessee revealed that cash deposits made from time to time do not tally with cash withdrawals. Neither any reason was forthcoming from the assessee as to how can one withdraw money from the bank and again deposit the same into bank. The Ld. AR contended before us that the assessee filed written submission in support of the contentions along with the documents substantiating that cash withdrawals are far more than cash deposits. However, such plea and the evidences as well were not taken into consideration in its proper perspective by the Revenue. Hence, the matter be remitted to the file of the Ld. AO for reconsideration of the same as submitted by the Ld. AR.

6. However, the Ld. DR relied upon the order passed by the authorities below.

7. Having heard the Ld. Counsel appearing for the parties, having regard to the facts and circumstances of the case we find that matter needs a fresh consideration by

the Revenue and hence we remit the issue to the file of the Ld. AO to reconsider the same afresh upon providing an opportunity of being heard to the assessee and upon considering the evidence which the assessee may choose to file at the time of hearing of the matter. Hence, assessee's appeal is, therefore, allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on**

**05/10/2021**

Sd/-  
(AMARJIT SINGH)  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 05/10/2021  
*Tanmay*

Sd/-  
(Ms. MADHUMITA ROY)  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अद्येषित/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 PCIT- Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

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