

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

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

ITA No.1588/Ahd/2018
(Assessment Year: 2010-11)

Shaileshkumar Dashrathbhai Patel 53, Tulsi Villa, STR City, Nr. Shivashish School, Bopal, Ahmedabad-380058	Vs.	ITO Ward-3(2)(5) Ahmedabad
[PAN No. AXYPP3975C]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Purushottam Kumar, Sr. DR

Date of Hearing:	05/10/2021
Date of Pronouncement:	25/10/2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 14.05.2018 passed by the Ld. CIT(A)-3, Ahmedabad arising out of the order dated 05.12.2017 passed by the ITO, Ward-3(2)(5), Ahmedabad under Section 144 of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2010-11.

2. We have heard the parties, and perused the relevant materials available on record.
3. It appears that before the Ld. AO the assessee has not complied in spite of being served with number of notices. Ultimately sale consideration of the land to the tune of Rs. 20,55,000/- has been treated as income for the year under consideration in the absence of any details and/or document made available by the assessee before him which was, in turn, affirmed by the Ld. CIT(A). Additionally the Ld. AO was of the opinion that the appellant failed to disclose income of this transaction for plots falling as within two kilometers limit from the outer limit of Sanand Municipality. The validity of the

notice issued under Section 148 dated 29.03.2017 has been upheld by the Ld. CIT(A) on merit.

4. When the matter was taken up by us none appeared on behalf of the assessee, neither any adjournment was sought for. It appears that the Ld. CIT(A) has disposed of the appeal on technical ground. However, the Ld. AO made addition on the entire sale consideration; such order was passed ex-parte since no compliance was made by the assessee. However, the addition could have been made by the Ld. AO only on the capital gain earned by the assessee.

It further appears from the impugned order that the appellant has not agitated the issue on merit before the Ld. CIT(A) against the order of addition made by the Ld. AO. Before us the appellant has pressed the issue on merit too.

Since the merit of the matter has not been decided by the Ld. CIT(A) it would be fair to set aside the issue to the file of the authorities below. As we find that the order of additions made by the Ld. AO is an ex-parte one and the full fact order on the basis of determination of capital earned by the assessee has not been verified at the level of AO, we find it fit and proper to set aside the issue to the file of the Ld. AO to reconsider the same upon giving an opportunity of hearing to the assessee and to pass a reasoned orders in accordance with law in view of the observation made hereinabove.

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

This Order pronounced in Open Court on

25/10/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 25/10/2021
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