

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.115/SRT/2019

(निर्धारणवर्ष / Assessment Years: (2014-15)

(Virtual Court Hearing)

Bhikhamchand S. Shah, Kadampalli Apt., Samroli, N.H. No.8, Post-Chilhli, Navsari-396521, Gujarat.	Vs.	The ITO, Ward-2, Navsari.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AEZPS9850B		
(Assessee)		(Respondent)

Assessee by : Shri Surji D. Chheda, CA

Revenue by : Shri Deependra Kumar, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 27/10/2021

घोषणाकीतारीख/Date of Pronouncement: 23/12/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the ld. CIT(A)”] in Appeal No. CIT(A)/VLS/752/16-17/2265, dated 23.01.2019, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 29.12.2016.

2. At the outset, Learned Counsel for the assessee begins by pointing out that during the appellate proceedings, the assessee has submitted his submissions, that is, submission no.1 and 2, which have not been considered by the ld. CIT(A) while adjudicating assessee’s appeal. Learned Counsel submits that ld. CIT(A) did not call the Remand Report in respect of the disputed issue, in assessee’s case, which is, the difference in violation of property. The ld. CIT(A) has co-terminus power, therefore he ought to have examined the assessee’s issue, written submission and the evidences filed before him during the appellate proceedings.

3. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue relied on the order of the ld CIT(A).

4. We have heard both the parties perused the material available on record. We note that during the appellate proceedings, the assessee has submitted the following written submissions along with relevant evidence, which are reproduced below:

Submission-1

GROUND NO.1 & 2: Addition of Rs.14,74,189/- u/s 50C by treating the N.A. Land as Industrial as against Commercial.

FACTS:

- > During the F.Y. 2013-14, the appellant has sold his N.A. Land at Samroli at price of Rs.69,00,000/-. The appellant has shown LTCG of Rs.23,20,606/- in his return of income and paid tax on the same.*
- > As per the sale deed submitted before the learned A.O., additional stamp duty was charged at the time of registration of sale deed.*
- > On finding the difference in the sale consideration shown in registered sale deed and circle rate on the date of registration, the learned A.O. has made addition of Rs. 14,74,189/- u/s 50C.*
- > Notice dated 7.12.16 was issued to the assesses for show cause for difference on valuation u/s 50C. The natter being legal, the notice was handed over to the accountant to file the reply and attend before A.O. However it seems that the accountant has not replied the above show cause notice. The above fact has come to my notice only after receipt of the order.*
- > We hereby provide the details regarding the whole issue as under:
I. LAND PURCHASE & N. A. PROCESS HISTORY:*

The appellant has jointly purchased land (Ann. 2) at Samroli with his wife Mrs. Taraben B. Shan in the F. Y. 1007-08. The details of land purchased are as follows:

<i>c.s. No.</i>	<i>Date of Purchase</i>	<i>Purchase Cost</i>	<i>Area in Sq. Mtrs.</i>	<i>N.A. Order Date</i>
<i>566</i>	<i>16.07.2007</i>	<i>9,00,001</i>	<i>1012</i>	<i>15.05.2006</i>
<i>567</i>	<i>12.07.2007</i>	<i>4,51,000</i>	<i>523.14</i>	<i>22.05.1957</i>

The appellant has purchased both the above land for the purpose of constructing show room for his business.

As per N. A. order dated 12.07.2007 in case of Land at C. S. No. 566, there was some facts which are as follows:

As per order, the N.A. permission was granted for the purpose of Show Room Only.

As per Sr. No.8 of Conditions No.19B of that N.A. order, it is mentioned that:

"The development permission has been granted or/for the purpose of construction of Show Room for Building Materials on the ground floor in 110 Sq. mtrs. on the land under question"

i- The copy of the N. A. order is attached herewith. (Ann. 3)

ii- On the page no. 6 in the sale deed, it was also mentioned that the land sold is for the purpose of Show Room purpose only (Annx:4)

II. SALE HISTORY:

The appellant has consolidated the above lands in December, 2012. The appellant has sold the above land on 30.05.2013 at sale price of Rs.69,00,000/-.

On the page no. 6 in that sale deed, it was also mentioned that the land sold is for the purpose of Show Room purpose only.(Annx:4)

In that sale deed, nowhere it: was mentioned that the sale price of the land sold is below the market price. But only bee-use of technics issue for treating the land as Industrial N. A. instead of Commercial N. A. by the Sub Registrar, the additional stamp duty was paid by the purchaser.

PROPOSITIONS:

> The land in question was N. A. land with permission for show room construction as per its N. A. order. In this case, the additional stamp duty was paid only because of the technical issue for treating the land as Industrial N. A. Instead of Commercial N. A. by the Sub Registrar and applying the circle rate @ Rs.5455/- per Sq. Mts. instead of Rs. 4525/- per Sq. Mts.

> The land is not situated in any Industrial Area, but the location of land is surrounded by many commercial entities like Hospital, Hotel and Shopping Market etc. The location of the land in question is having no industrial unit within the radius of 2 kms.

> Hence the Land is considered as N. A. Industrial instead of N. A. Commercial by erroneously for the purpose of stamp valuation.

> Hence the circle rate should be applied for stamp duty valuation is the Rate: applicable for N. A. Land for Commercial Purpose instead of the Rate applicable for N. A. Land for Industrial Purpose,

*> If you considered the rate as per N. A, Land for Commercial Purpose (Ann: 5], the market rate is 69,46,510/- [1535.14 Sq. Mtrs * 4525/-. In such case the difference is just Rs.45,510/-.*

> The above difference is within 5% range & cannot be added u/s 50C as held in N/s. John Fowler (India) Pvt. Ltd. Vs Deputy Commissioner of Income Tax (ITA T

Mumbai) – I.T.A. No, 7545/Mum/2014. The copy of the judgment is attached herewith.

Submission – 2

Our above mentioned client has filed an appeal against the order u/s 143(3) of the act as on 25.01.2017. In reference to above, we hereby state as follows:

The case of the appellant was selected for scrutiny through CASS. The Appellant has filed his return of income for the A. Y. 2014-15 showing taxable income of 25,27,770/-. The appellant has shown LTCG of Rs.23,20,606/- on sale of N. A. land at Samroli, in his return of income. The appellant has sold the said land at price of Rs. 69,00,000/-.

During the assessment proceedings, the learned A.O, has issued notice u/s 133[6] of the act to the Sub-Registrar, Chikhli for verification of the sale transaction. In response to that notice, the Sub-Registrar, Chikhli has furnished his reply showing the market value of the said land for the purpose of Stamp Duty Computation is Rs. 83,74,189/-.

On the basis of above, the learned A.O. has issued notice on 07.12.16 to the appellant for show cause for difference on valuation u/s 50C. The matter being legal, the notice was handed over to the accountant to file the reply and attend before A.O. However it seems that the accountant has not replied the above show cause notice. The above fact has come to notice to the appellant only after receipt of the order.

In view of the above facts, we submit herewith following as additional evidences as those cannot be produced before A.O. for the reason stated in the earlier para:

- *N.A. order dated 12.07.2007 in case of Land at C.S. No.566.*

Any Attempt of not affording an opportunity to the assessee would be violating principles of natural justice and any addition made in such a manner in assessment is bad in law – ITO vs. K.C. Luka (1982) 2 ITD 27 (Coach-Trib), Inter Corp. Industries Ltd. vs. CIT (2005) 142 Taxman 408 (Del). ”

5. We note that solitary grievance of the assessee is that above noted written submissions were not considered during the appellate proceedings. Therefore, it is a violation of principle of natural justice. We note that assessee should be given an opportunity to be heard and ld. CIT(A) should consider the submissions of the assessee and express his view as per the mandate of the provisions of section 250(6) of the Act, which the ld. CIT(A) has failed to do so. We note that it is settled law of principle that affected party should be given an opportunity to hear. Besides ld. CIT(A) has co-terminus power as that of the Assessing Officer

therefore he should examine the documents and submissions submitted by the assessee before him. We note that the Hon'ble Supreme Court in M.S.Gill vs. The Chief Election Commission 1978 AIR SC 851 held "*The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of nemo judex in parte sua (no person shall be a judge in his own case) and audi alteram partem (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice.*"

6. Therefore, considering the above facts, we deem it fit and proper to set aside the order of ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits after considering the assessee's submissions and documents. For statistical purposes, the appeal of the assessee is treated to be allowed.

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

Order is pronounced on 23/12/2021 by placing result on notice board.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

सुरत /Surat / दिनांक/ Date: 23/12/2021

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat