

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.2246/Ahd/2018

Assessment Year : 2015-16

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| Pramod Ramavatar Poddar 201, Pinnacle Business Park Corporate Road Prahladnagar Ahmedabad-380 051 PAN: ABRPP 6193 R | Vs | The Dy.CIT Central Circle-1(1) Ahmedabad-380 009 |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |
| Assessee by : | | Shri M.K.Patel, Adv. |
| Revenue by : | | Shri R.R. Makwana, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 03/02/2022

घोषणा की तारीख /Date of Pronouncement: 18/02/2022

आदेश/ORDER

PER PRAMOD M. JAGTAP, VICE-PRESIDENT

This appeal is preferred by the Assessee against the order of Ld. Commissioner of Income-tax (Appeals)-11, Ahmedabad [CIT(A)] dated 14th September-2018 for Assessment Year (AY) 2015-16 passed *ex-parte*, whereby he dismissed the appeal of the assessee.

2. The assessee in the present case is an individual who is engaged in the business of Development of Real Estate. The return of income for the year under consideration was filed by him on 21/11/2015 declaring total income of Rs.4,12,890/-. In the said return, the entire Long Term Capital Gain (LTCG) of Rs.1,28,49,116/- arising from the sale of shares of

M/s.Surabhi Chemical and Investment Ltd. was claimed to be exempt by the assessee u/s.10(38) of the Income Tax Act, 1961. During the course of assessment proceedings, this claim of the assessee for exemption of LTCG was examined by the Assessing Officer and on such examination, he disallowed the claim of the assessee for the said exemption for the detailed reasons given in the order passed u/s.143(3) of the Act vide order dated 20/11/2017.

3. Against the order passed by the Assessing Officer u/s.143(3) of the Act, an appeal was preferred by the assessee before the Ld.CIT(A) challenging the disallowance made by the Assessing Officer on account of LTCG and since there was no compliance on the part of the assessee to the notices issued by him, the Ld.CIT(A) dismissed the appeal of the assessee vide his appellate order dated 14/09/2018 passed *ex-parte* thereby confirming the addition made by the Assessing Officer on account of disallowance of assessee's claim for exemption on account of LTCG. Aggrieved by the order of the Ld.CIT(A), the assessee preferred the appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the ld.counsel for the assessee, the appeal filed by the assessee was initially fixed for hearing by the ld.CIT(A) on 12/02/2018 and in response to the adjournment application filed by the assessee in writing, the hearing was adjourned to 28/02/2018. He has submitted that the Ld.CIT(A) however issued a notice on 22/02/2018 fixing the appeal for hearing on 09/03/2018 and due to the communication gap as well as other unavoidable reasons, the assessee could

not attend the hearing fixed by the Ld.CIT(A) on 09/03/2018 as well as on 12/06/2018 and on 12/09/2018. The Ld.counsel for the assessee has contended that the ld.CIT(A), however, proceeded to dismiss the appeal of the assessee vide his impugned order passed *ex-parte* without giving any further opportunity of hearing to the assessee. Keeping in view this submission made by the Ld.counsel for the assessee, we are of the view that proper and sufficient opportunity of being heard cannot be said to have been given by the Ld.CIT(A) to the assessee before dismissing the appeal of the assessee *ex-parte* and even the Ld.DR has not been able to dispute this position. We, therefore, set aside the impugned order passed by the Ld.CIT(A) *ex-parte* and remit the matter back to him for disposing the appeal of the assessee afresh on merit by passing a well discussed and well reasoned order after giving proper and sufficient opportunity of being heard to the assessee. As undertaken by the ld.counsel for the assessee, the assessee shall make due compliance before the ld.CIT(A) and shall extend all the possible co-operation in order to enable the ld.CIT(A) to dispose of the appeal afresh expeditiously.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Court on 18th February, 2022 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 18/02/2022
टी.सी.नायर, व.नि.स.।T.C. NAIR, SJ. PS

आदेश की प्रतिलिपि अग्रेषित/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 CIT(A)-11, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad