

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA Nos.1512/Ahd/2013 & 09/Ahd/2014,
Assessment Years: 2009-10, 2010-11,**

Late Natwarbhai Haribhai Patel, vs. Asstt. Commissioner of Income Tax,
(Rep. by L.R. Tarik N. Patel), Gandhinagar Circle, Gandhinagar.
Plot No. D/139, Kasturinagar,
IFFCO Township,
Distt. Gandhinagar – 382 423.
[PAN – ACFPP 5528 B]

**ITA No.3490/Ahd/2014
Assessment Year: 2011-12**

Late Natvarlal Haribhai Patel, vs. Income Tax Officer,
(Rep. by L.R. Tarik N. Patel), Ward – 3, Gandhinagar.
Plot No. D/139, Kasturinagar,
IFFCO Township,
Distt. Gandhinagar – 382 423.
[PAN – ACFPP 5528 B]

**ITA Nos.3332/Ahd/2016 & 2222/Ahd/2015
Assessment Years: 2009-10 & 2010-11**

Late Natvarlal Haribhai Patel, vs. Dy. Commissioner of Income Tax,
(Rep. by L.R. Tarik N. Patel), Gandhinagar Circle, Gandhinagar.
Plot No. D/139, Kasturinagar,
IFFCO Township,
Distt. Gandhinagar – 382 423.
[PAN – ACFPP 5528 B]

**ITA No.405/Ahd/2018
Assessment Year: 2011-12**

Late Natwarbhai Haribhai Patel, vs. Income Tax Officer,
(Rep. by L.R. Tarik N. Patel) Ward – 3, Gandhinagar.
Plot No. D/139, Kasturinagar,
IFFCO Township,
Distt. Gandhinagar – 382 423.
[PAN – ACFPP 5528 B]
(Appellant) (Respondents)

Appellant by : Shri S.N. Divatia, A.R.
Respondent by : Shri S.S. Shukla, Sr. D.R.

Date of hearing : 10.03.2022
Date of pronouncement : 08.04.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These six appeals pertain to the same assessee, involve some common issues, are filed against different orders passed by the CIT(A), Gandhinagar, Ahmedabad for different assessment years, and were heard together. As a matter of convenience, therefore, all these six appeals are being disposed of by way of this consolidated order.

2. We are taking up the appeal filed by the assessee for the Assessment Year 2009-10 i.e. ITA No.1512/Ahd/2013 as the lead matter and the grounds raised in this appeal are reproduced as under :-

“1.1 The order passed u/s.250 on 01.04.2013 for A.Y. 2009-10 by CIT(A), Gandhinagar upholding the addition of Rs.45.50 lakhs made by AO as unexplained investment is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.

1.3 Both the lower authorities have grievously erred in upholding the impugned addition of Rs.45.50 lakhs without providing the copy of statements, documents etc. relied upon though the same were demanded

2.1 The Ld. CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.45.50 lakhs as unexplained investment in land at Kalol relying on alleged notarised banakhat accompanied to TEP and statement of Notary etc.

2.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought to have upheld the addition of Rs.45.50 lakhs in land as unexplained investment.

3.1 The observations made and conclusion reached by both the lower authorities so as to hold that the appellant had made unexplained investment in land are not admitted by the appellant in so far as the same were contrary to the facts of the case and evidence on record or prejudicial to the Appellant..

It is, therefore, prayed that the addition of Rs.45.50 lakhs upheld by the CIT(A) may kindly be deleted.”

3. Firstly we are taking the facts of Assessment Year 2009-10. Return of income was filed on 29.06.2009 declaring total income of Rs.5,01,950/-. The assessee is deriving income from salary and income from other sources during the present assessment year. Survey under Section 133A of the Income Tax Act, 1961 was conducted on 17.09.2010. Summon under section 131(1) of the Act was issued on the assessee for recoding statement of the assessee. As per the observations of the Assessing Officer in assessment order, the statement recorded on oath of Shri Natwarlal Haribhai Patel states that the assessee paid Rs.45,00,000/- with document value plus Rs.0.50 lakhs as stamp duty and registration charges. On verification of copy of Banakhat dated 05.02.2009, the Assessing Officer observed that the assessee and the Notary of the Banakhat duly certified and signed a copy of the said Banakhat to authenticate the said document. The Banakhat entered between Shri Natwarbhai Haribhai Patel and Shri Manilal Tribhovandas Trivedi (original owner) and others reveals that Banakhat for sale of land at Survey No.118 Kalol of 0-52-56 hector (5256 sq. mtr) was done at the rate of Rs.41,00,000/- per bigha and the assessee paid Rs.45,00,000/- in the manner given in the assessment order. The Assessing Officer observed that the assessee purchased 2¼ bigha land at Kalol @ Rs.41,00,000/-per bigha and per Banakhat made and registered on 05.02.2009, the assessee paid unaccounted cash of Rs.45,00,000/- during the F.Y. 2008-09 and stamp duty and registration charges of Rs.50,000/- and treated these amounts as unexplained investment in land under Section 69 in the hands of the assessee. Thus, the assessment order under Section 143(3) was passed on 27.12.2011 thereby assessing the total income of the assessee at Rs.50,71,501/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. A.R. submitted that the assessee is an individual and employed with Indian Farmers Fertiliser Cooperative Limited (IFFCO) as Assistant Manager in Production Section and derives income from salary and other sources. The Ld. A.R. submitted that tax evasion petition was lodged with Income Tax Department along with copy of Banakhat dated 04.02.2009 which was allegedly notarised on 05.02.2009. The Ld. A.R. submitted that the said Banakhat was found during the course of survey in the case of Shri Bhupendra M. Trivedi and handed over to ITO, Ward-3, Gandhinagar by Additional Commissioner of Income Tax, Mehsana. The said Banakhat shows

consideration at Rs.41,00,000/- per bigha and the assessee paid Rs.41,00,000/- over and above the consideration stated in the final sale deed. Even survey under Section 133A was conducted on 17.09.2010 at Juna Chora Pase, Kalol, based on the contents of the tax evasion petition. The statement of the assessee was recorded on 17.09.2010 by issuing summons under Section 131(1), but his statement remained un-concluded and the assessee was allowed to go at late night. The Ld. A.R. further submitted that the assessee vide letter dated 15.11.2010 requested the Authorised Officer to complete the said statement. Ultimately, a fresh summon was issued under Section 131(1A) to appear on 22.09.2010. The assessee was told by the Assessing Officer that the said Assessing Officer was temporarily Incharge of this case. Thereafter, the ITO (Inv.), Mehsana issued summons under Section 131 on 20.12.2010 and recorded his statement on 22.12.2010. The assessee appeared in response to the said summon and his statement was recorded accordingly. The assessee vide letter dated 22.12.2010 asked for various documents such as copy of notarised Banakhat which was attached with tax evasion petition, copy of his statement was recorded on 22.10.2010. The Assessing Officer failed to give copies of these documents till completion of the assessment and also has not given complete statement (page no.6 was missing). The Ld. A.R. submitted that the assessee never signed any notarised agreement and he was shown the page containing his photo and signature which only were confirmed by him. The assessee pointed out in letter dated 22.12.2011 to the Assessing Officer that the so called Banakhat was intended for Shri Bhupendra Trivedi to obtain VISA and it was cancelled by agreement dated 19.09.2009. In spite of the categorical denial of the contents of the notarised Banakhat accompanied to the tax evasion petition, the Assessing Officer completed the regular assessment on 27.12.2011 thereby making addition of Rs.45,50,000/- as unexplained investment. The Ld. A.R. submitted that the assessee has denied/retracted the statement made during the proceedings under Section 131(1A) of the Act. The Ld. A.R. submitted that the assessee was suffering from kidney problem and, therefore, was not in a proper mind to give his statement and, therefore, the assessee retracted the statement. The Ld. A.R. further submitted that no opportunity of cross examination was provided to the assessee to examine the Notary as well as complete statement of the assessee was not given by the Revenue. The Ld. A.R. submitted that there was no evidence with the Revenue as to on what basis the consideration was for Rs.45,00,000/- per bigha. The Ld. A.R. further submitted that no incriminating documents were found during the

survey. Thus, the Ld. A.R. submitted that the assessee could have not been made to suffer by making addition of Rs.45,00,000/- as undisclosed investment.

6. The Ld. D.R. submitted that the additional evidence supplied by the assessee before the CIT(A) in fact supports the Revenue's case. In fact, there is a gap between statement and retraction and the retraction should not be taken into account. The Ld. D.R. further submitted that it is not correct that the statement was not provided to the assessee. The Ld. D.R. further submitted that the notary copy of Banakhat clearly sites the actual price consideration and thus at this juncture the assessee cannot deny the same. The Ld. D.R. further submitted that empirical calculation was rightly done by the Assessing Officer and there was an evidence for making this addition.

7. The Ld. A.R. in rejoinder submitted that letter dated 22.02.2013 categorically states that the statement of the assessee was not at all furnished to the assessee during the assessment proceedings. In fact, the incomplete statement was given on 08.02.2013 which was immediately retracted by the assessee on 22.02.2013. The Ld. A.R. further submitted that the addition will not sustain as there was no undisclosed investment done by the assessee at any point of time. In fact, the Banakhat was an arrangement between the assessee and the party for obtaining VISA at the end of the owner of the land. Afterwards the said transaction never took place and, therefore, the addition cannot be sustained.

8. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee is an employee of Indian Farmers Fertiliser Cooperative Limited. The assessee has entered into a Banakhat with Shri Manilal Tribhovandas Trivedi and others but the same Banakhat was understanding between the parties as per the submissions of the Ld. A.R. during the hearing. The contentions of the Ld. A.R. that the consideration at Rs.41,00,000/- per bigha is exorbitant consideration and the said page or the document was never signed by the assessee at any point of time before the Notary. These facts were placed before the Assessing Officer during the assessment proceedings. The statements given by the parties were never cross-examined by the assessee at any point of time. The assessee in letter dated 22.12.2011 addressed to the Assessing Officer has given a categorical intention of the Banakhat as the same is intended for Shri Bhupendra Trivedi to obtain VISA and cancellation thereafter as per the agreement dated 19.09.2009. The

notarised Banakhat was not actual document which was signed by the assessee as per the contentions of the Ld. A.R. The statement made during the proceedings under Section 131(1A) was also retracted by the assessee as the assessee was not in a proper mind to give his statement as per contentions of the Ld. A.R. After taking all these contentions of the Ld. A.R./assessee, and after perusing the documents, it is seen that the consideration per bigha amounting to Rs.41,00,000/- was never the intention of the assessee and the same was not paid by the assessee as observed by the Assessing Officer. The correct or the original consideration amount was properly placed before the Assessing Officer. These documents were never taken into consideration by the Assessing Officer as well as by the CIT(A). Merely on the basis of statement of the assessee, which was later on retracted, the Assessing Officer has made an addition which is not a correct method of making any addition. Therefore, appeal of the assessee is allowed being ITA No.1512/Ahd/2013.

9. In respect of A.Y. 2010-11, the grounds remain the same. A.Y. 2010-11 is identical to A.Y. 2009-10 and, therefore, ITA No.09/Ahd/2014 is allowed.

10. As regards A.Y. 2011-12, the Ld. A.R. made additional statement that no co-owners were examined in the present case by the Assessing Officer. There is no evidence for adapting exorbitant price in respect of per bigha/per sq. mtr. In fact, section 50C of the Act did not entitle any value consideration in respect of the said transaction which was never finalised. As regards Short Term Capital Gain of Rs.46,000/-, the Ld. A.R. submitted that the same is presumptive basis and, therefore, should have not been added. In respect of A.Y. 2011-12 the contentions of the assessee that no co-owners were examined by the Assessing Officer appears to be correct and thus, the Assessing Officer without taking cognisance of the evidences put up before him has made addition under Section 50C of the Act. Thus, ground no.1 is allowed. Regarding Ground no.2 relating to Short Term Capital Gain, the same is on presumptive basis and, therefore, ground no.2 is allowed. Hence, ITA No.3490/Ahd/2014 is allowed.

11. As regards ITA No.3332/Ahd/2016, the same is related to penalty under Section 271(1)(c) of the Act. Since the quantum appeal is decided in favour of the assessee, penalty becomes infructuous. Hence, ITA No.3332/Ahd/2016 is allowed.

12. ITA No.2222/Ahd/2015 is related to penalty under Section 271(1)(c) of the Act and ITA No.405/Ahd/2018 is also related to penalty under Section 271(1)(c) of the Act which are consequential appeals to the quantum. Hence, both the appeals are allowed.

13. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open Court on this 8th day of April, 2022.

Sd/-
(BHAGIRATH MAL BIYANI)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 8th day of April, 2022

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad