

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.740/AHD/2018
निर्धारण वर्ष/Asstt. Year:2014-2015

Vinodkumar Babulal Dugar, 1, Sanjay Society-II, Sahibaug Road, Ahmedabad-380004. PAN: AANPD6487B	Vs.	I.T.O, Ward-1(2)(4), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Jaimin Gandhi. A.R
Revenue by :	Shri V.K. Singh, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **18/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **20/07/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-10, Ahmedabad, dated 22/01/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 6,26,710/- on account of capital gain.

3. The assessee is an individual and engaged in the business of trading of agricultural products cattle feed, tea and oil etc. The assessee during the year sold three properties on which he claimed long term capital loss of Rs. 1,84,337/- only. The necessary details of the property are available in the assessment order.

3.1 The AO from the records found that properties at serial number 1 and 3 were purchased by the assessee jointly with Smt. Kanchanben Vinodkumar as on 31-03-2000 and 16-07-1992 for Rs. 2,09,250/- and 4,15,000/- respectively in which assessee share comes at Rs. 1,04,250/- and 2,07,500/- only whereas, the assessee claimed purchase cost at Rs. 2.4 lakh and 3 lakh against properties mentioned at serial number 1 and 3. Likewise property at serial number 2 was purchased as on 07-07-1998 for Rs. 68,750/- whereas in computation of income, the assessee claimed the cost at Rs. 2 lakh only.

3.2 The AO further found that there were three bills submitted by the assessee dated 04-01-1993, 26-12-1998 and 14-07-2000 for Rs. 1.38 lakh, 1.2 lakh and Rs. 2,57,480/- on account of cost of improvement but no detail of payment was provided against such bill. Hence, the same was not accepted by the AO. However, the AO allowed some expenses being stamp duty and other related expenses in connection of purchase of property. Thus the AO in view of the above recomputed the long term capital gain and make addition of Rs. 6,26,710/- in the following manner:

<i>Sr No .</i>	<i>Details of the Property</i>	<i>Date of purchase</i>	<i>Purchase of cost</i>	<i>Purchase of cost Indexed cost of Pur. Rs.</i>	<i>Date of sale</i>	<i>Sale value Rs</i>	<i>LTCFG Rs.</i>
1.	Office No.207 &	31.03.2000	1,04,62,515,249	2,89,361	07.03.2014	6,00,000	3,10,639

	208, Sahajanand Complex						
2.	Office No.402/A Sahajanand Complex	07.07.1998	68,7502,000	1,89,271	07.03.2014	4,41,000	2,51,729
3.	Tenement No.2, Sanjay Co-op Housing Soc. Ltd.	16.07.1992	2,07,50038,455	10,35,658	25.02.2014	11,00,000	64,342
	Grand Total						6,26,710

4. Aggrieved assessee preferred an appeal before the learned CIT (A).

5. The assessee before the learned CIT(A) submitted that during the assessment proceeding, he has furnished all the details being purchase deed, sale deed and copy of invoices for improvement cost. But the AO without issuing any show cause notice and providing opportunity of hearing made wrong addition. The assessee in support also submitted revised computation of long term capital loss detailed as under:

Particulars	Date of Purchase/Sale	Purchase Cost	Renovation Cost	Indexed Cost	Sale Price	Capital Gain
Office Building No, 207 & 208	31/03/2000 14/07/2000 07/03/2014	119874	128740	289361 297750 587111	600000	12889
Office Building No.402/A	07/07/1998 26/12/1998 07/03/2014	75750	120300	202647 321828 524475	441000	-83475
Tenement No.2	16/07/1992 04/01/1993 25/02/2014	245955	69000	1035658 290542 1326200	1100000	-226200

6. The learned CIT(A) after considering facts in totality confirmed the order of the AO by observing as under:

2 4. After going through the facts, it is seen that at the time of assessment, the Assessing Officer has asked for further proofs, like bank statement for the above expenses from where it has been incurred, which the assessee failed to submit. After going through the facts, it appears that the renovation/addition in the above properties is an afterthought of the assessee to reduce taxable Long Term Capital Gain.. That is why he is not able to show any of the payment which has been made through the banking system. It is very difficult to accept that not a single payment has been made where cheques have been issued to the concerned parties who have allegedly made the renovation/addition in the above properties. In view of the above, I agree with the findings of the Assessing Officer and the addition made of Rs. 6,26,710/- is confirmed. This ground of appeal is dismissed.

7. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

8. The learned AR before us requested to restore the issue to the file of the AO for fresh adjudication as per the law and assured to file the necessary documents in support of his contention.

9. On the contrary, the learned DR did not raise any objection if the issue is set-aside to the AO for fresh adjudication as per the law.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The AO during the assessment proceedings found that the assessee has claimed higher amount of cost against the sale of the properties. Accordingly the AO allowed the actual cost incurred by the assessee against the sale of properties. In this process, the AO has made the addition of Rs. 6,26,710/- to the total income of the assessee which was subsequently upheld by the learned CIT.

10.1 From the preceding discussion, we note that there was no dispute with respect to the cost of acquisition of the property sold by the assessee calculated by the AO. However the assessee before the learned CIT-A has also claimed the cost incurred by him on the purchase of impugned properties in the form of property tax, stamp duty and other related expenses in connection with the purchase of such

properties. However, the learned CIT-A was pleased to confirm the order of the AO without considering the request made by the assessee.

10.2 Never the less, at the time of hearing the learned AR appearing on behalf of the assessee pleaded before us to restore the issue to the file of the AO for fresh adjudication as per the provisions of law. The learned AR also undertook the responsibility to file the necessary documentary evidence in support of the cost on improvement incurred by the assessee. The learned DR did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law. Considering the above facts of the case and the pleadings made before the bench, we are of the view that the assessee was to be provided one more opportunity before the AO to justify his stand based on the documentary evidence. Thus the ground of appeal of the assessee is allowed for the statistical purposes.

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

Order pronounced in the Court on 20/07/2022 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 20/07/2022
Manish