

**आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.109/SRT/2020** (AY 2015-16)

(Hearing in Virtual Court)

Pravinbhai Keshavbhai Patel A/2,Golden Park Society, Opp. PrimeArcade, Anand Mahal Road, Adajan, Surat- 395003 <b>PAN : ASFPP 4549 L</b>	Vs	Income Tax Officer,Ward-1(3)(8), Aaykar Bhavan, Anavil Business Center, Adajan Hazira Road, Adajan, Surat-395009
<b>अपीलार्थी/ Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

निर्धारितकीओरसे /Assessee by	Shri Bharat Jhaveri, Advocate
राजस्वकीओरसे /Revenue by	ShriSBG Mahapatra, Sr- DR
सुनवाई की तारीख/Date of hearing	14.06.2022
उद्घोषणा की तारीख/Date of pronouncement	21.07.2022

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of ld. Commissioner of Income tax (Appeals)-2 Surat [for short to as 'Ld. CIT(A)'] dated 10.02.2020 for assessment year (AY) 2015-16, which in turn arises out assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated

29.11.2017. The assessee has raised the following grounds of appeal:-

*“1. On the facts and circumstances of the case as well as law on subject the learned Commissioner of Income-tax (Appeals)-2 Surat erred in allowing appeal in part only without considering the facts of the case.”*

2. At the outset, appearing the Ld. Authorized Representative (AR) for the assessee submits that in the sole ground of appeal the assessee has challenged two additions of Rs. 5.00 lakhs under section 69 and Rs. 1.62 lakh under section 69C sustained by ld CIT(A). The ld AR for the assessee submits that at this stage he is not pressing part fist of the addition of Rs. 5.00 lakhs under section 69 and the same may be dismissed as not pressed.

3. So far as other (second) part of the addition under section 69C is concerned, the ld AR for the assessee submits that the assessee and his co-owners have incurred Rs.25,34,090/- on account of conversions charges for converting agriculture land to non-agriculture land and the assessee has incurred Rs.1.00 lakhs and remaining was incurred by three other co-owners on behalf of assessee and other sharers. Rs.

16,92,669/- was incurred by Natwarbhai Patel, Rs. 4,75,000/- by Champakbhai Patel and Rs. 2,76,669/- by Parwatiben Patel, which has been accepted by Tribunal in one of the co-owners case case in ITA No. 110/Srt/2020 dated 02,06.2022. Part of the similar expenses incurred by the other co-owner for conversation in assessee's case for converting the agriculture land to non-agriculture. The facts and circumstances of this case are identical. The ld AR for the assessee filed the copy of the order of the Tribunal in ITA No. 110/Srt/2020 on record. The assessee has not incurred any expense as assessee is not regular income. The expense was incurred by other co-owners which have been accepted by the Tribunal in assessee's co-owners case. More over in two co-owners case namely Vipul Champakbhai Patel (PAN: CNYPP 0204N) and Kantabenpatel (PAN:BYFPP 7337 D) no such additions were made.

4. On the other hand, Ld. Senior Departmental Representative (Sr. DR) for the Revenue after going through the grounds of appeal and decision of assessee's co-owners involved in ITA No.110/SRT/2020 (supra). The Ld. Sr. DR for the Revenue submits that he is supported the order of lower authorities.

5. We have heard the rival submission of both the parties and perused the materials available on record. Considering the submissions of the ld AR for the assessee that at this stage he is not pressing the addition of Rs. 5.00 lakh under section 69 of the Act, the addition under section 69 of Rs. 5.00 lakh sustained by ld CIT(A) is upheld.

6. So far as other addition of Rs. 1.62 lakh is concerned, we find that his part of ground of appeal raised by the assessee is covered by the decision in assessee's co-owners case in ITA No. 110/Srt/2020, wherein on similar set of facts similar addition was deleted by this combination. The relevant submissions of the party and contents of the decision is extracted below;

" 4. We have heard the submissions of learned authorised representative (AR) of the assessee and the learned departmental representative (DR) for the revenue and have gone through the orders of the lower authorities. The ld AR of the assessee submits that the assessee has no regular income and the assessee is also not a regular income tax assessee. During the relevant financial year, the assessee along with her other co-owners sold agricultural land after converting the same into non-agricultural land. On sale of such land, the assessee earned long term capital gain. Since the assessee earned Long Term Capital Gain (LTCG), thus the assessee filed return of income in the impugned assessment year. As the assessee has

no source of income, the expenses on behalf of her has been spent by the family members and other co-owners in the following manner;

❖ Natwarbhai Patel	Rs. 16,92,669/-	(PAN ACCPP 1100C),
❖ Champakbhai K Patel	Rs. 4,75,000/-	(PAN:CNYP 0205 P),
❖ Parwatiben N Patel	Rs.2,76,669/-	(PAN:ADGPP 1884L),
❖ Praveenbhai K Patel	Rs.1,00,000/-	(PAN:ADGPP 4549L).
Total :	Rs. 25,34,090/-	

4. Similar expenses were made by or on behalf of other co-owners namely Vipul Champakbhai Patel (PAN:CNYP 0204N) and Kantabenpatel (PAN:BYFPP 7337 D), but revenue has not made addition for similar expenses in their case despite the facts that assessment was completed under section 143(3) in their cases, copy of their assessment order is being filed. The Id. AR submits that he has placed on record of other co-owners of the land wherein the Department has accepted similar Long Term Capital Gain, without making addition of expenses in their hand as they have also not made expenses from their account, in the assessment order passed under section 143(3) of the Act. The Id. AR further submits that the assessee cannot be treated indifferently than the other co-owners as no similar additions were made in their assessment, though the assessment order was passed under Section 143(3) of the Act. The Id. AR for the assessee submits that being co-owner the assessee is also entitled for similar treatment.
5. In support of his submission the AR relied upon the decision of Madras High Court in CIT Vs. Kumar Rani Meenakshi Achi (2007) 292 ITR 624 (Mad), decision of Ahmedabad Bench in Chetanbhai Prahaldhbhai Gami Vs. ITO (ITA No. 2082/Ahd/2013).
6. On the other hand, the Sr. DR for the Revenue supported the orders of the authorities below. The Id. Sr. DR for the revenue further submits that the explanation furnished by the assessee is not supported by documentary evidence or any confirmation by the other co-owners. The

copy of the assessment orders passed by Id AR for the assessee were passed by different assessing officer and they might have explained the source of expenses to the satisfaction of respective assessing officer.

7. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We find that a very short controversy is involved in the present appeal. There is no dispute that that the assessee was co-owner of agricultural land having 6.67% share in the said agricultural land. The assessee before transferring the land, paid conversion charges along with other co-owners. The case of assessee throughout the proceedings was that she is not having sufficient income. The expenses incurred by the other co-owners on her behalf and that no such similar addition was made in case of other co-owners, on whose behalf similar expenses were incurred by other co-owners. We find that the assessee has placed on record the copy of two assessment orders passed under Section 143(3) of the Act, in the name of Kantaben Patel and Vipul Champakbhai Patel, though by different Assessing Officers of different wards. However, the facts remained the same that no such addition was made in case of other co-owners though similar expenses were spent on their behalf by their relative and co-owners. It is settled law that the assessee cannot be treated as indifferently in respect of expenses or treatment of capital gain.
8. The Hon'ble Madras High Court in CIT vs. Kumararani Meenakshi Achi (supra) held that during the same assessment year same quantity of wealth in possession of co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned it would militate against the principle of equality of laws enshrined in Article 14 of the Constitution. By following the same principle, the Co-ordinate Bench of this Tribunal in Chetanbhai Prahladbhai Gami vs. ITO in ITA No.2082/AHD/2013 dated 19.07.2019, granted relief

to the assessee holding that while making the assessment of the same property, the similar treatment should be granted.

9. In view of the above aforesaid factual and legal discussion and respectfully following the decision of Hon'ble Madras High Court in Kumararani Meenakshi Achi (supra) and decision of Co-ordinate Bench in Prabhodhchandra Ambelal Desai (supra), the revenue cannot treat the assessee in different way, therefore, the addition on account of unexplained source under section 69C is deleted. In the result the grounds of appeal raised by the assessee are allowed.
10. In the result, this appeal of the assessee is allowed."
11. Considering the aforesaid decision on similar set of facts, by this on identical facts in ITA No.110/SRT/2020 (supra), we direct the Assessing Officer to delete the addition under section 69C of Rs. 1.62 lakh made on account of unexplained expense. Hence, this (remaining) part of ground of appeal raised by assessee is allowed.
12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 21/07/2022  
and the result was also placed on the Notice Board.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat,  
Dated: 21/07/2022  
*Dkp. Out Sourcing Sr.P.S*

**Sd/-**  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

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By order

Sr.P.S./Assistant Registrar, ITAT, Surat