

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
' C' BENCH, AHMEDABAD

BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1280/AHD/2018
निर्धारण वर्ष/Asstt. Year:2011-2012

Shri Jayeshkumar Manubhai Shah, Block No.255, Anand Nagar, Sector-27, Gandhinagar-382028. PAN: AUSPS3041H	Vs.	The Commissioner of Income Tax, Gandhinagar.
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(Applicant)		(Respondent)
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Assessee by :	Shri Chetan Agarwal, A.R
Revenue by :	Shri Alok Kumar, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **23/05/2022**
घोषणा की तारीख / **Date of Pronouncement**: **12/08/2022**

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, Gandhinagar, dated 28/03/2018 arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The only issue raised by the assessee is that the learned CIT erred in holding the assessment framed under section 147 read with section 143(3) of the Act as erroneous insofar prejudicial to the interest of revenue.

3. The facts in brief are that the assessee in the present case is an individual and claimed to be engaged in the business of property developers. The assessee along with the co-owner has sold a property amounting to Rs. 3,00,00,000/- bearing survey No. 3037/2. The part of the property of survey number 3037/2 was transferred/ registered dated 25-01-2010 whereas the other part of property survey number 037/2 was registered dated 08-04-2010. The assessee on the transfer of such property has disclosed the income under the head capital gain after claiming the exemption under section 54B of the Act in the assessment year 2010-11 which was also accepted by the Revenue in the assessment framed under section 147 read with section 143(3) of the Act in the case of the co-owner being Shri Jagatsinh Ranjitsinh Raol. The copy of the assessment order framed under section 147 of the Act in the case of the co-owner is placed on page 25 of the paper book filed by the assessee.

4. However, the learned CIT on examination of the case records of the assessee found that the assessment framed under section 143(3) r.w.s. 147 of the Act is erroneous insofar prejudicial to the interest of revenue on the reasoning that the part of the property was registered on dated 8 April 2010. Therefore the income thereon should have been offered to tax in the year under consideration i.e. AY 2011-12. Likewise, the AO has not verified the claim of the deduction made by the assessee under the provisions of section 54B of the Act. Finally, the learned CIT held the assessment framed under section 147 r.w.s. 143(3) of the Act was erroneous insofar prejudicial to the interest of revenue.

5. Being aggrieved by the order of the learned CIT, the assessee is in appeal before us.

6. The learned AR before us contended that the assessee has actually transferred the property in the financial year 2009-10 and the capital gain thereon was offered to tax in that year corresponding to assessment year 2010-11. Therefore, if there was any mistake qua the capital gain exemption claimed by the assessee, then the assessment year 2010-11 should have been revised under the provisions of section 263 of the Act.

7. On the other the learned DR vehemently supported the order of the authorities below

8. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that the assessee has disclosed the income under the head capital gain on the transfer of the land in dispute in the assessment year 2010-11 which can be verified from the details available on pages 6 of the paper book.

8.1 It is also a fact on record that the revenue in the case of the co-owner has also accepted the transaction for the transfer of the property in dispute in the assessment year 2010-2011 which can be verified from the assessment order placed on pages 25 to 38 of the paper book.

8.2 In view of the above if there was any mistake in the assessment relating to the assessment year 2010-11, the same can be made subject to the revision under section 263 of the Act in that year only. However, the learned CIT has no authority to revise the assessment year 2011-12 as there is no error in the assessment framed under section 147 of the Act for the AY 2011-12. At the time of hearing, the learned DR has also not brought anything on record contrary to the arguments advanced by the learned AR for the assessee. Thus, we are not convinced with the finding of the learned CIT and accordingly we quash the order passed under section 263 of

the Act. Hence the ground of appeal of the assessee is allowed.

9. In the result, the appeal filed by the assessee is **allowed**.

Order pronounced in the Court on 12/08/2022 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 12/08/2022
Manish