

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

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

आयकर अपील सं./ITA No. 1144/AHD/2019
निर्धारण वर्ष/Asstt. Year: 2011-2012

Shri Sandip Bharatbhai Vadodariya, Jawaharnagar, Paliyad Road, Botad, Bhavnagar. PAN: ACAPV8736E	Vs.	D.C.I.T., Circle-2, Bhavnagar.
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(Applicant)		(Respondent)
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Assessee by :	Shri Vipul Khandhar, A.R
Revenue by :	Shri R.R. Makwana, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **02/05/2022**
घोषणा की तारीख / **Date of Pronouncement**: **20/05/2022**

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)-6, Ahmedabad, dated 26/04/2019 arising in the matter of assessment order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The assessee has raised the following grounds of appeal:

1. *The learned DCIT, Circle-2, Bhavnagar erred in law and on facts in passing the order u/s.154 in respect of assessment order u/s.144 r.w.s 147 of IT Act 1961 which is requested to be quashed.*
2. *The learned DCIT, Circle-2, Bhavnagar erred in making addition of Rs.908127/- being unexplained investment.*
3. *The learned CIT(Appeal-6) erred in rejecting the appeal of the appellant.*

3. The interconnected issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO passed under section 154 of the Act and thereby sustaining the addition of ₹ 9,08,127/- on account of unexplained investments.

4. The assessee in the present case is an individual and claimed to be an agriculturist. Thus the assessee has not filed any return of income as there was no income accrued to him chargeable to tax. However, the AO found that the assessee has made investment in the property for an amount of ₹ 9,08,127/- only, source of which was not explained. Therefore the AO treated the same as unexplained investments in the assessment framed under section 147 read with section 144 of the Act dated 15th November 2018.

4.1 Subsequently, the assessee filed rectification application before the AO under section 154 of the Act dated 11th December 2018 against the order passed under section 147 read with section 144 of the Act wherein it was contended that there was the agricultural income which was utilized for the purpose of making the investments. The assessee in support of his contention has filed the copy of the purchase deed and the bank statement. However, the AO rejected the rectification application filed by the assessee by observing that there was no mistake apparent from the record in the order framed under section 147 read with section 144 of the Act.

5. On appeal to the learned CIT-A, the order passed by the AO under section 154 of the Act was confirmed.
6. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.
7. The learned AR before us has not challenged the addition made by the AO on account of the investment made in the properties treating as unexplained investments. However, it was prayed by the learned AR that the assessee being an individual was entitled for the basic exemption limit and slab rate of tax but the benefit of which has not been given by the Revenue authorities. Accordingly the learned AR requested to grant the benefit of basic exemption while computing tax liability and charge at the slab rate as applicable to an individual.
8. On the contrary, the learned DR submitted that the addition was made by the Revenue authorities under the deeming provisions under section 69 of the Act and therefore no benefit for the basic exemption and slab rate of tax as applicable to an individual can be given to the assessee.
9. We have heard the rival contentions of both the parties and perused the materials available on record. We note that a new section 115BBE was inserted by the Finance Act 2012, the purpose for which this section was inserted was explained by clause 45 of the Finance Bill 2012 which reads as under:

Clause 45 of the Finance Bill 2012 proposes to insert a new section 115BBE in the Income-tax Act relating to tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D. under the heading "Taxation of cash credits, unexplained money investments etc."

"Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed incomes if the amount of such deemed

income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."

9.1 From the above, there remains no ambiguity that under the old provisions of law the assessee being an individual was entitled for the basic exemption limit even on the deemed income in the manner as discussed above. Admittedly the year before us pertains to the assessment year 2011-12 which is before the amendment as discussed above. Thus we are of the view that the assessee is entitled for the basic exemption limit and the slab rate of tax as applicable to individual assessee.

9.2 Before parting, it is also worthy to note that the income tax authorities have been empowered under the provisions of section 154 of the Act to rectify the mistake on its own motion. The basic exemption limit is provided under the statute to an individual and therefore the assessee should not be deprived of such benefit even the assessee omitted to claim for the same.

9.3 The CBDT circular No. 114 XL 35 of 1955 dated 11-04-1955 has also discouraged the officers of the income tax Department not to take the advantage of the ignorance of an assessee as to his rights which are available under the statutes.

9.4 In view of the above and after considering the facts in totality we hold that there is a mistake in the order of the AO which needs to be rectified under the provisions of section 154 of the Act. Accordingly we set aside the order of the learned CIT-A, and direct the AO to allow the basic exemption limit to the assessee

and apply slab rate of tax while calculating the tax liability of the assessee. Hence the ground of appeal of the assessee is partly allowed.

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

Order pronounced in the Court on 20/05/2022 at Ahmedabad.

**Sd/-
(SIDDHARATHA NAUTIYAL)
JUDICIAL MEMBER**

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

Ahmedabad; Dated **(True Copy)**
20/05/2022
Manish

आदेश की प्रतिलिपि ग्रेषित/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)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR,
ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad