

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.1522/AHD/2017

Assessment Year: (2012-13)

(Physical Court Hearing)

The ITO, Ward-3(2)(3), Surat.	Vs.	Rameshbhai Vallabhbai Gajera, 153, Vaikunthdham Society, Laxmikant Ashram Road, Katargam, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABAPG3846B		
(Appellant)/(Revenue)		(Respondent)/(Assessee)
Assessee by	Shri Rasesh Shah, CA	
Respondent by	Shri Ashok B. Koli, CIT(DR)	
Date of Hearing	05/01/2023	
Date of Pronouncement	24/01/2023	

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “the Id. CIT(A)”], in Appeal No. CAS-3/160/2015-16, dated 06.03.2017, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 31.03.2015.

2. Grounds of appeal raised by the Revenue are as follows:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.17,88,327/- made on account of Long Term Capital Gain and the addition of Rs.28,05,280/- made on account of Short term Capital Gain calculated on the basis of details filed on behalf of the assessee and other material available on record during the assessment proceedings which indicated that two pieces of land were purchased by the assessee, one in F.Y.2007-08 and another in F.Y.2010-11.

2. *The Ld.CIT(A) erred in deleting the addition of Rs.17,88,327/- made on account of Long Term Capital Gain and the addition of Rs.28,05,280/- made on account of Short Term Capital Gain by making his own inferences and without giving an opportunity to Assessing officer of being heard even though he, himself accepted that the assessee misled the Assessing officer during the assessment proceeding by making faulty representation.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.52,80,000/- made on account of unexplained cash deposit, as the assessee failed to prove the nature and source of the deposit with documentary evidence during the course of assessment proceedings, despite the fact that assessee was given sufficient opportunities to prove nature and source of these deposits and without explaining the reasons as to why he could not prove nature and source of these deposits before the Assessing officer during assessment proceedings.*

4. *The Ld.CIT(A) erred in accepting the explanation of the assessee without giving Assessing officer an opportunity to examine the explanation given by the assessee and therefore, he violated the provisions of Rule 46A of the I.T. Rules.*

5. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the benefit of Section 54B in the absence of documentary evidence on the ground that assessee produced purchase agreement of new agricultural land before Assessing Officer without appreciating the fact that no such evidence was produced before the Assessing Officer and he admitted this evidence without giving opportunity to the Assessing Officer to examine the same and to give his comments thereon.*

6. *On the fact and circumstances of the case an in law, it is prayed that the decision of the Ld. CIT(A) may be set aside to that extent and that of the assessing officer may be restored to that extent."*

3. Ground nos. 1 and 2 raised by the Revenue are related to the issue of deleting the addition of Rs.17,88,327/- made on account of Long Term Capital Gain and the addition of Rs.28,05,280/- made on account of Short Term Capital Gain.

4. Succinct facts *qua* ground nos. 1 and 2 are that return of income for assessment year 2012-13 was filed by the assessee on 31.03.2013, declaring total income to the tune of Rs.26,65,690/-. The assessee's case was selected for scrutiny through CASS and notice under section 143(2) of the Act was issued on 23.09.2013 which was duly served upon the assessee on 27.09.2013. Thereafter, notices under section 142(1) of the I.T. Act was issued on 26.12.2013 and 04.12.2014 for calling various details. The assessing officer observed that in the

computation of the total income the assessee has shown to have sold land at sales consideration of Rs.65,97,700/-. The assessee has shown to have purchased part of land in F.Y.2007-08 at Rs.5,26,400/- and other part in F.Y.2010-11 at Runki at purchase price of Rs.8,41,859/-. The assessee has furnished copy of purchase deed of the property purchased in F.Y.2007-08 but did not produce the purchase document of the other part which was purchased in F.Y.2010-11. The assessee has stated in his letter dated 25.02.2015, that the other part has been purchased in the year 2008-09 but did not produce any documentary evidence in this regard. In absence of any details the property shown in the computation of income as purchased in the year 2010-11 has been taxed under the head Short term capital gain instead of long term capital gain shown by the assessee as the same has been sold within the period of less than three years. In view of the above, capital gain of the property of Village-Runki is worked out as under:

Working of Long term capital gain (Part-I)

Sales consideration Rs.25,38,280/-

Rs.6597700/- X Rs.526400/-

(RS.526400+RS.841859)

Less: Index cost of acquisition Rs.7,49,953/-

Long term Capital Gain Rs.17,88,327/-

Working of Short term capital gain (Part-II)

Sales consideration Rs.25,38,280/-

RS.6597700/- X Rs.841859/-

(RS.526400 + RS.841859)

Less: Cost of land purchase Rs. NIL

Short term capital Gain Rs.25,38,280/-

In absence of the details of cost of acquisition of the land purchased in the year 2010-11, the Short term capital gain of land situated at Runki has been worked out at Rs.25,38,280/- on proportionate basis and the long term capital gain has been determined of the land situated at Runki at Rs.17,88,327/-. During the verification of the return of income, it is noticed that the assessee has claimed the expenses / deduction i.e. cost of improvement of Rs.25,64,479/- and expenditure on transfer of Rs.8,52,320/-. The details of the above said expenses had been

called from by the assessee vide this office letter dated 23.02.2015. But the assessee did not produce any details in this regard and the same has not been considered for working out the long term and short term capital gain. Even the matter has been referred to the Sub Registrar, Zone-3, Rajkot on 02.03.2015 to intimate the fair market value of the property registered with him. But till date the report has not received from the Sub Registrar, Zone-3, Rajkot of determination of stamp duty value of the said property. As an when the report will be received from the sub registrar, Zone-3, Rajkot, the same will be considered afterwards. Therefore, assessing officer made addition on account of long term capital gain at Rs.17,88,327/- and on account of short term capital gain at Rs.25,38,280/-.

5. On appeal, Id CIT(A) deleted the addition, therefore, the Revenue is in appeal before us.

6. Learned DR for the Revenue, argues that on verification of computation of income the Ld assessing officer found that the land sold at Runki for Rs.65,97,700/- the land was purchased in two parts one in the year 2007-08 and another part in the year 2010-11 for Rs.5,26,400/- and Rs.8,41,859/- and as the assessee was not able to produce the details of the property during the assessment proceedings hence the long term capital gain was calculated at Rs.17,88,327/- and Short term capital gain was calculated at Rs.25,38,280/-. Looking to the facts mentioned above, the addition made by the assessing officer may be sustained.

7. On the other hand, Learned Counsel for the assessee defended the order passed by the Id CIT(A).

8. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. On careful consideration of

the submission of the assessee and the details filed along with computation of income filed by the assessee, it was observed by Id CIT(A) that assessing officer has been misled by the assessee during the assessment stage. The assessee's letter gave an impression that the assessee had sold two pieces of land and hence, the assessing officer went on to calculate the Capital Gains on both parts differently. From the details, it is clear that there was only one land at Runki (Rajkot) and it was sold for the sale consideration of Rs.65,97,700/- This land is claimed to have been purchased for a sum of Rs.5,26,400/- financial year 2007-08, for which, the assessee had claimed indexed "cost of acquisition" and the assessing officer has not disallowed the same. The assessee has also claimed to have incurred "cost of improvement" at Rs.6,27,320/- which he has claimed to have incurred 'cost of improvement' at Rs.6,27,320/- which he has claimed without indexation cost in the computation of Capital Gain. Thus, due to the faulty representation of the assessee, the assessing officer was led to believe that this is the 'cost of acquisition' of another of the land and, because of this misconception, the assessing officer went on to calculate the Short Term Capital Gain for that piece of land. Comparison of the assessee's reply, with computation filed with ITR reveals that, there is no such 'cost of acquisition' of Rs.8,41,359/- claimed. So, there is no question of disallowing or allowing it. The assessee has claimed only one cost of acquisition i.e. Rs.5,26,400/-, whereas the other one is 'cost of improvement' of Rs.6,27,320/-. Regarding this claim, there is no finding by the assessing officer. Therefore, Id CIT(A) noted that there is no any reason to disallow it. Because of this factual mistake, the additions made by the assessing officer in these two grounds become incorrect and cannot be sustained, therefore, Id CIT(A) deleted the addition. We do not find any factual error in the conclusion reached by Id CIT(A), therefore, we confirm and approve the findings of Id CIT(A) and dismiss the ground raised by the Revenue.

9. In the result, ground No. 1 and 2 raised by the Revenue is dismissed.

10. Coming to ground No.3 raised by the Revenue, which relates to deletion of the addition of Rs.52,80,000/- made on account of unexplained cash deposit.

11. The Id DR for the Revenue argued that assessee had failed to prove the nature and source of the deposit with documentary evidence during the course of assessment proceedings. The assessee has miserably failed despite the fact that assessee was given sufficient opportunities to prove nature and source of these deposits. Therefore, addition made by the assessing officer should be sustained.

12. On the other hand, Id Counsel for the assessee, argued that these cash deposits are out of sale proceeds received from the sale of land made by the assessee during the year, therefore Id CIT(A) has rightly deleted the addition.

13. We have heard both the parties. On verification of the sale deed of the land at block no. 217, Katodhara, Surat, the Id CIT(A) noted that it is evident that, assessee has received a cash of Rs.82,00,000/- and cheque of Rs.68,00,000/- respectively as sale consideration. Prima facie, this cash received appears to be the '**source**' of cash deposits made by the assessee in the bank account. The Assessing Officer has not done this cross-checking even though the bank account as well as the sale deeds were before him. In the absence of any finding that above cash received is employed elsewhere, the cash received on sale of land is presumed to be '**source**' of cash deposits in bank. The Id CIT(A) also observed that on verification of bank account reveals that there are cash withdrawals on various dates of sizable amounts, for example Rs.3 lakhs on 27.06.2011, Rs.1 lakh on 03.07.2011, Rs.8 lacs on 30.07.2011, Rs.5 lacs on 29.08.2011 and so on. The assessing officer has not considered these withdrawals. In normal course credit needs to be given to these withdrawals for subsequent cash deposits. However, in instant case, no such exercise is called for as the total cash deposits are explained from cash received on sale of land. Hence, the addition made by the Assessing Officer cannot be sustained, therefore, Id CIT(A) deleted the addition. We find that there is no infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id.

CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

14. In the result, ground No.3 raised by the Revenue, is dismissed.

15. Ground nos. 4 and 5 raised by the Revenue relates to violation of provisions of Rule 46A of the Income Tax Rules.

16. Learned DR for the Revenue argued that Ld.CIT(A) erred in accepting the explanation of the assessee without giving Assessing officer an opportunity to examine the explanation given by the assessee. Besides, the Ld. CIT(A) has erred in allowing the benefit of section 54B in the absence of documentary evidence on the ground that assessee produced purchase agreement of new agricultural land before Assessing Officer.

17. On the other hand, Id Counsel for the assessee submitted that no any new evidence was submitted before the Id CIT(A).

18. We have heard both the parties and gone through the paper book of the assessee and observed that no any new evidence were produced by the assessee during the appellate proceedings, hence there is no violation of Rule 46A of the Rules. We note that there is no allegation in the ground of appeal filed by the revenue that assessee filed any additional evidence. It is well settled that the power of the CIT(A) is co-terminus with that of the power of the assessing officer and he can accept or reject the explanation furnished by the assessee in the course of the appellate proceedings. There is difference between new evidence and new arguments based on same facts and material before AO. Based on the documents already filed before the assessing officer, the assessee may make new arguments during the appellate proceedings, and new arguments does not mean new evidence. Therefore, we note that there is no violation of provisions of Rule 46A of the Income Tax Rules. Therefore, we dismiss ground nos. 4 and 5 raised by the Revenue.

19. In the result, ground nos. 4 and 5 raised by the Revenue are dismissed.

20. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 24/01/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 24/01/2023

SAMANTA/Dkp Out Sourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat