

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRIPAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.141/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2014-15)

(Physical Court Hearing)

Shri Dalubhai Raghobhai Chauhan 201, Swastik Heights, B/h Terapanth Bhavan, City Light Road, Surat- 395007	Vs.	Income Tax Officer, International Taxation, Anavil Business Centre, Adajan, Surat-395002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ATZPC 0952 H		
(Assessee)		(Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rakesh Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kumar– Sr.DR

सुनवाई की तारीख/ **Date of Hearing** : **07/12/2022**

घोषणा की तारीख/**Date of Pronouncement** : **24/01/2023**

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to the assessment year 2014-15, is directed against the order passed by the Id.Commissioner of Income Tax(Appeals)-13, Ahmedabad dated 21.09.2018, which in turn arises out of an assessment order passed by the Assessing Officer (AO for short) u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 02.12.2016.

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

"1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of income Tax (Appeals) has erred in passing ex-parte order without providing reasonable opportunity of hearing to assessee.

2. On the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.30,89,550/- as unexplained cash deposits.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.48,23,694/- u/s 56(2)(vii)(b) of the Act.

4. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (As) may please be deleted.”

3. The appeal filed by the assessee for Assessment Year 2014-15, is barred by limitation by 96 days. The assessee has moved a petition requesting the Bench to condone the delay. The reasons of delay mentioned in the petition for condonation of delay, are reproduced below:

“1. In my case, ld. CIT(A)-13, Ahmedabad passed appellate order on 21.09.2018 which was received by me on 03.10.2018. As such appeal was required to be filed before Honourable Income Tax Appellate Tribunal on or before 02.12.2018.

2. I have no intention in not filing appeal before Income Tax Appellate Tribunal within statutory time limit of 60 days from date of receipt of order & the default has occurred due to reasons beyond my control as explained hereafter.

3. I am the citizen of United Kingdom & when the above appellate order was passed by ld. CIT(A) on 21.09.2018, I was not in India. When I came to India on 28.11.2018 i.e. after the appellate order was passed, I came to know about the above appellate order passed in my case & hence, I gave copy to my counsel Shri Kantilal Patel. He told me that he would do the needful. However, I had to leave India again on 18.12.2018 & then I again came to India on 05.02.2019. I immediately went to the office of my counsel & inquired about the above appellate order & further course of action taken by him. However, he did not give any proper response & informed that appeal before tribunal is still not filed. As even after passing of several months Shri Kantilal Patel did not file appeal, I gave copy to other tax practitioner namely CA Hitesh Dhamecha who guided me that appeal is to be immediately filed before Honourable Tribunal and he asked me to contract CA Sapnesh Sheth who is engaged in appellate practice. I gave copy of appellate order to him & the appeal has been immediately prepared. He advised me that although time limit for filing appeal has expired, the appeal should be filed immediately against the above appellate order & request for condonation of delay should be filed considering above facts. Thus, delay in filing of appeal is due to above bona fide reasons only.

4. I apologize for default on my part & request your kind & respectful Honours to condone the delay in filing of appeal as the same is caused purely due to above bona fide reasons & I do not have any intention in disregarding the provisions of the statute. As I am the citizen of UK and not well versed with Indian income tax law, the delay in filing appeal may kindly be condoned, I shall always remain grateful for the act of kindness.

Whatever stated above is true to the best of our knowledge and belief. I know that to make false affidavit is an offence.”

4. Based on contents of the petition, Ld. counsel pleads that assessee has explained the bona fide and sufficient reasons for delay in filing appeal before the Tribunal. The ld Counsel explained that assessee is a citizen of United Kingdom and on relevant time he was not in India, besides, the assessee has hired the Counsel for argue his case and to file the appeal, which took substantial time, therefore appeal could not be filed on time. Therefore, ld Counsel prays the Bench that such delay in filing the appeal should be condoned.

5. On the other hand, Ld. Sr.DR for the Revenue opposed the prayer of Ld. Counsel for condonation of delay and stated that such delay should not be condoned and appeal of the assessee should be dismissed.

6. We have heard both the parties on this preliminary issue. We note that assessee is a citizen of United Kingdom and when the appellate order was passed by ld. CIT(A) on 21.09.2018, assessee was not in India. When assessee came to India on 28.11.2018 i.e. after the appellate order was passed, he came to know about the above appellate order. The assessee got the copy of order from his Counsel Shri Kantilal Patel, however, then again assessee had to leave India on 18.12.2018 and then after came to India on 05.02.2019. To prove these facts, the ld Counsel submitted before the Bench the copy of passport of the assessee. Therefore, we note that delay in filing of the appeal is due to above bona fide reasons only. We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Therefore, the delay deserves to be condoned.

7. We are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others, reported in 167 ITR 471, (1988) SC 897) (7) observed as follows:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.....”

8. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We note that the reasons given in the affidavit for condonation of delay, was convincing, and the reason would constitute reasonable and sufficient cause for the delay in filing this appeal. Considering the above facts and circumstances of the case, as narrated above, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned and to decide the appeal of assessee on merits in accordance with law. Accordingly, we condone the delay and admit the appeal of the assessee to adjudicate on merit.

9. Learned Counsel for the assessee, at the outset informs the Bench that assessee does not wish to press ground No.1, therefore, we dismiss the ground No.1 as not pressed.

10. Now, we shall deal remaining ground of appeal of the assessee on merit.

11. Succinct facts *qua* the issue are that assessee before us is an individual and filed his return on 16.01.2016, declaring total income of Rs.2,04,384/-. The assessee`s case was selected for scrutiny through CASS and accordingly notice u/s 143(2) of the Act was issued on 24.08.2016 and duly served upon the assessee. Thereafter, the notice u/s 142(1) of the Act was issued along with detailed questionnaire on 14.09.2016. The residential status of the assessee is NRI. On verification of bank statement of ICICI Bank submitted by the assessee vide submission dated 13.09.2016, it was observed by the assessing officer that there were cash deposit of Rs.22,11,000/- in A/c No.019301075602, Rs.2,24,550/- in a/c No.005201078295 and Rs.6,54,000/- in A/c No.005201078266 before payment towards purchase of immovable properties. The assessee has not explained the source of such cash deposit. Accordingly, a show cause was issued by assessing officer to the assessee, vide letter dated 11.11.2016.

12. In response to the show cause notice, the assessee vide letter dated 15.11.2016 has furnished the cash flow statement without producing the supporting evidence. As per the bank statement, the assessee has deposited cash of Rs.22,11,000/- on 20.07.2012. On verification of the cashflow statement it was found by AO that assessee has taken the opening balance at Rs.4,80,110/- as on 01.04.2012 and thereafter these has withdrawn Rs.20,00,000/- on 03.04.2012. During the course of hearing, the assessee has submitted that the cash was withdrawal for household expenses. As there is sufficient balance as on 01.04.2012 i.e. Rs.4,80,110/-, why the withdrawal has made? Further, after the long time i.e. 3 months, the assessee has deposited the cash of Rs.22,11,000/-. The AO noted that argument of the assessee is not convincing as the assessee has not furnished any supporting evidence. The assessee fails to furnish the source of cash deposits. The onus of proving the source of cash deposited in the bank account is rests on the assessee. However, the assessee has failed to prove the genuineness as well as the creditworthiness of cash deposited in the bank account with supporting evidences. In view of the above, the total cash deposited amounting to Rs.30,89,550/- was added to the total income of the assessee.

13. On verification of the purchase deed gathered vide letter u/s 133(6) of the Act from the Sub-registrar, Palsana, Surat, it was observed by the AO that the market value ascertained by the Stamp Valuation Authority for the said immovable property is Rs.70,34,694/- and the purchase consideration price is Rs.22,11,000/- only. Further, the assessee has paid the stamp duty at Rs.3,44,700/- on the value adopted by the stamp duty authority. It is therefore clear that there is difference of Rs.48,23,694/- (Rs.70,34,694- Rs.22,11,000) between consideration amount paid and valuation of the properties as per stamp duty paid for the said property. As per the sub-clause (b)(ii) of clause(vii) of Section 56(2) of the Act, the difference amount shall be chargeable to income tax under the head "income from other sources". However, the show cause notice was issued by AO on 11.11.2016 for addition of Rs.48,23,694/- on account of difference of purchase consideration and the value adopted by the stamp duty authority.

14. In response to the show cause notice, the assessee, vide letter dated 15.11.2016 has submitted that he had accepted market value ascertained by the stamp valuation authority as Rs.70,34,694/-. In view of the above, the difference of purchase consideration and the value adopted by the stamp duty authority amounting to Rs.48,23,694/- was added to the total income of the assessee.

15. On appeal, Id CIT(A) has confirmed the action of the assessing officer. During the appellate proceedings, the assessee participated and sought adjournment on two occasions. However, on third occasion, the assessee could not appear before Id CIT(A), therefore Id CIT(A) has adjudicated the issue on merit after considering statements of facts filed by the assessee along with Form No.35 and assessment records. The findings of Id CIT(A) on merit are as follows:

“4. In this case, the assessee has raised the following statements of the fact, which are reproduced herein as under:

“1. Assessee has filed his return of income for the assessment year 2014-15 on 16.01.2016 showing total income of Rs.2,04,384/-. The case was selected for scrutiny and after several hearing with the case was decided by making addition on Rs.79,13,244/- on account of following No Nature of addition Amount in Rs and Total cash deposited in Bank 30,89,550/- 2 difference in purchase price of property and valued by stamp authority valuation 48,23,694/- Total amount of addition 79,13,244/-.

2. Assessing Officer had called for the sources of deposit of Rs.30,89,550/- in bank, which assessee has explained through the cash flow of assessee bank and also details of withdrawals was explained. It is worth to be noted that assessee was NRI for the year under consideration and had visited in India occasionally during the year under consideration. Cash was withdrawals from bank for personal use but the same was not utilized by assessee and deposited in bank. The explanation was not found satisfactory and Assessing Officer had made addition.

3. The learned Assessing Officer had not considered the assessee's argument that cash was safe in his locker with Central Bank of India and ICICI Bank. His sole purpose was to invest his fund in India for purchase of properties, lands etc. Cash was withdraw from bank for his personal use for furniture at house or purchase of electronics equipment or may be for other use it is not the Assessing Officer's matter to how to spend or utilised money. Assessing Officer unnecessary put step in the shoe of assessee and advised him to use of money.

4. The learned Assessing Officer had also made inquiry for purchase of property at Palsana, Surat. The consideration for property mentioned

indeed was of Rs.22,11,000. While as per the stamp valuation the valuation of property was of Rs.70,34,694/- and balance of Rs.48,23,694/- was added u/s 56(2)(vii)(b). The learned Assessing Officer had failed to consider the assessee's argument that section is applicable from 01.0.2014 and not from 01.04.2013. Hence addition should not be attracted in this section.

5. Notwithstanding it was also stated that assessee had actually paid Rs.70,34,694/- for the purchase of property and consideration was paid of Rs.70,34,694/- and same was also recorded in books of account. The advocate of the assessee had failed to mention in books of account the additional consideration was paid by him to seller. The balance addition made of Rs.48,23,694/- to be deleted in toto.

5. In the assessment order the AO has made the addition as under:

'3. On verification of bank statement of ICICI Bank submitted by the assessee vide submission dated 13.09.2016, it was found that there were cash deposit of Rs.22,11,000/- in a/c No.019301075602, Rs.2,24,550/- in a/c No.005201078295 and Rs.6,54,000/- in A/c No.005201078266 before payment towards purchase of immovable properties. The assessee has not explained the source of such cash deposit. Accordingly, the show cause was issued to the assessee vide letter dated 11.11.2016 for proposed addition.

3.1 In response to the show cause notice, the AR of the assessee vide letter dated 15.11.2016 has furnished the cash flow statement without producing the supporting evidence. As per the bank statement, the assessee."

6. I have carefully perused the assessment order and the statement of fact narrated by the assessee along with the Form No.35 filed before this office.

The assessee has deposited (Rs.2211000/- + Rs.224550/- + Rs.654000/-) before payment towards purchased immovable property during the year under consideration. The assessee has not submitted any proof to support his contentions. Based that he withdrew Rs.20,00,000/- on 3/04/2012 for household expenses in spite of the fact that he had opening cash balance of Rs.4,80,110/- as on 01/04/2012. It is also evident from the submission made by the assessee that he is an NRI and seldom visits India. Seldom visits and short stay is in contrast to the plea of the assessee for huge household expenses. Thereafter, the assessee has deposited Rs.22,11,000/- after about 3 months of the withdrawal. The assessee has not furnished any supporting evidence regarding the same. Further, there seems no satisfactory explanation regarding huge withdrawal and the subsequent deposit after such gap.

Regarding the addition of Rs.48,23,694/- it is observed that the same has been done based on the difference of purchase consideration of immovable property and the valuation by the sub-registrar which needs no further adjudicated.

Moreover, the assessee has in his submission before the AO has accepted the value adopted by the stamp duty authority and has already paid the stamp duty

based on the said value adopted by sub-registrar.....
.....
.....

Considering the above judicial precedents and under the facts and circumstances of the case, in my opinion, the addition made by the AO is well funded and cannot be faulted on facts. Therefore, the assessment made by the A.O is fully justified and sustainable. No interference is called for with the impugned assessment order. All grounds of appeal are dismissed.”

16. Aggrieved by the order of Id CIT(A), the assessee is in further appeal before us.

17. Shri Rakesh Shah, Learned Counsel for the assessee, begins by pointing out that assessee has filed his Income Tax Return on 16.01.2016 with residential status “NRI” (copy ITR-2 is attached in paper book). As per para 1 of assessment order, the notices 143(2) dated 24.08.2016 and notice u/s 142(1) were issued by ITO ward 1(3)(1), Surat and whereas order u/s 143(3) was passed by Income Tax Officer (International Taxation, Surat). Therefore Id Counsel argued that notice u/s 143(2) and 142(1) were not issued by an officer having jurisdiction on the assessee. The case was transferred to concerned Assessing Officer and he passed the order, as the original notice was not issued by Assessing Officer who has passed the order therefore, it is tantamount to non-issue of statutory notice u/s 143(2) of the Act, therefore the assessment order is bad in law and void ab initio and hence all further proceedings including the order passed by the learned AO and CIT(A) is bad in law. The assessee has disclosed his “NRI” status as on date of filing of ITR (page No.4 of paper book), so from initial stage assessee`s jurisdictional officer was international taxation however despite having this fact on record, the ITO ward 1(3)(1), Surat (who is not assessee`s jurisdictional assessing officer) issued notices 143(2) & 142(1) of the Act, which is void-ab-initio hence entire proceeding may be treated as bad in law. The Id Counsel further pointed out that even show cause notice dated 11.11.2016, based on which order was passed by Income Tax Officer (Int. Taxation, Surat) on 02.12.2016, was not issued by jurisdictional assessing officer (refer page No 5 of paper book). Therefore, Id Counsel contended that statutory notice under section 143(2) of the Act as well as other notices were issued by non-jurisdictional assessing officer. Whereas final

assessment was framed by the assessing officer of international Taxation ward, therefore entire assessment proceedings are bad in law and for that Id Counsel relied on the judgment of Hon'ble jurisdictional High Court of Gujarat in the case of Pankaj Bhai Shah 425 ITR 70.

18. The Id Counsel further argued that assessee's case was selected for limited scrutiny for the verification/examination of purchase of property, however, assessing officer has covered other issues without converting the limited scrutiny into full scrutiny. Even notice under section 143(2), dated 24/08/2016, was issued for limited scrutiny which states only one point namely, purchase of property while assessing officer has violated the law by making addition on other issues which were not the subject matter of limited scrutiny. The Id Counsel took us through the "CBDT Instruction No.20/2015 dated 29/12/2015 and Instruction No.05/2016 dated 14-07-2016, wherein it is stated that Assessing Officer in the case of "Limited Scrutiny" can only examine those issues for which the case has been selected or the issue mentioned in notice u/s 143(2) for limited scrutiny.(refer page No.6 of paper book).

19. On merits, Id Counsel argues that in respect of addition on account of cash deposit of Rs.30,89,550/-, as per para 3 of assessment order, the following cash were deposited.

Sr.No.	Bank Name	Account No.	Amount
I.	ICICI Bank	019301075602	22,11,000/-
II	ICICI Bank	005201078295	2,24,550/-
III	ICICI Bank	005201078266	6,54,000/-
Total			30,89,550/-

The above, cash deposit was added by the assessing officer for assessment year 2014-15, treating that cash were deposited in the said assessment year, that is, previous year, starting from the period 01-04-2013 to 31.03.2014, relevant to assessment year 2014-15.

20. However, Id Counsel states that cash was deposited in the assessment year 2013-14, relating to previous year starting from April 1, 2012 and ending on March 31, 2013. To substantiate this, the Id Counsel took us through para 3.1 of the assessment order wherein Rs.22,11,000/- cash deposit is stated as follows:

Para 3.1 of assessment order.....“As per the bank statement, the assessee has deposited cash of Rs.22,11,000/- on 20.07.2012.”

The Id Counsel pointed out that as per bank statement, cash was deposited as on 20.06.2012 (page No.39 of paper book) and the previous year period for such cash deposit is 01-04-2012 to 31-03-2013, hence such cash deposit may be assessable for the assessment year 2013-14 and not for assessment year 2014-15 under consideration.

21.. About cash deposit of Rs.2,24,550/-, the Id Counsel submitted a chart before the Bench, which is reproduced below:

<i>Cash deposit and withdrawal of ICICI Bank A/c :005201078295 (copy of bank statement attached – page No.6 & 7 of paper book)</i>			
<i>Date</i>	<i>Particulars</i>	<i>Cash deposited into bank a/c</i>	<i>Cash withdrawal from bank a/c</i>
<i>02-04-2013</i>	<i>Cash</i>	<i>46300.00</i>	
<i>12-08-2013</i>	<i>Cash</i>	<i>39000.00</i>	
<i>04-09-2013</i>	<i>Cash</i>	<i>43250.00</i>	
<i>03-10-2013</i>	<i>Cash</i>		<i>990000.00</i>
<i>27-11-2013</i>	<i>Cash</i>	<i>35000.00</i>	
<i>31-12-2013</i>	<i>Cash</i>	<i>26000.00</i>	
<i>31-12-2013</i>	<i>Cash</i>	<i>350000.00</i>	
<i>17-02-2014</i>	<i>Cash</i>		<i>80000.00</i>
<i>17-02-2014</i>	<i>Cash</i>	<i>25000.00</i>	
<i>13-03-2014</i>	<i>Cash</i>	<i>10000.00</i>	
<i>TOTAL</i>		<i>259550.00</i>	<i>1070000.00</i>

With help of the above chart, Id Counsel contended that cash deposit was made from withdrawals made from same bank accounts or from another bank accounts during the year or earlier year as per the copy of the bank statement, therefore no addition of Rs.2,24,550/- should be made in the hands of the assessee.

22. About cash deposit of Rs.6,54,000/-, the Id Counsel submitted a chart before the Bench, which is reproduced below:

<i>Cash deposit and withdrawal of ICICI Bank A/c :005201078266 (copy of bank statement attached – page No.8 & 9 of paper book)</i>			
<i>Date</i>	<i>Particulars</i>	<i>Cash deposited into bank a/c</i>	<i>Cash withdrawal from bank a/c</i>
02-04-2013	Cash	20000.00	
30-04-2013	Cash	55000.00	
12-08-2013	Cash	19000.00	
04-09-2013	Cash	14000.00	
12-09-2013	Cash		402500.00
12-09-2013	Cash		400000.00
16-09-2013	Cash	142000.00	
20-09-2013	(as per details)	84500.00	
	Cash		38000.00 Cr
	Cash		46500.00 Cr
26-09-2013	Cash	75000.00	
27-11-2013	Cash		16000.00Cr
	Cash		59000.00 Cr
06-12-2013	Cash	6500.00	
31-12-2013	Cash	12000.00	
31-01-2014	Cash	140000.00	
17-02-2014	Cash	38000.00	
	Cash		8000.00 Cr
	Cash		30000.00 Cr
13-03-2014	Cash	48000.00	
	Cash		8000.00 Cr
	Cash		40000.00 Cr
TOTAL		654000.00	1558000.00

With help of the above chart, Id Counsel submitted that cash was deposited from withdrawals made from same bank accounts or from another bank accounts during the year or earlier year as per the copy of bank statement attached.

23. About second addition of Rs.48,23,694/- made by the assessing officer, u/s 56(2)(vii)(b)(iii) of Income Tax Act, the Id Counsel submits that assessee had made payment of Rs. 22,11,000/- on 18/06/2012 and 19/06/2012 (refer page No.6 of sale deed attached and page No.10 of paper book.). Further, the SataKhata (Agreement) was made on dated 19/06/2012. So accordingly transaction was deemed to have been concluded in the assessment year 2013-14. Thus, addition, if any, about Rs.48,23,694/- can be made by assessing officer only in the assessment year 2013-14 and not in the assessment year 2014-15 under consideration. The Id Counsel also contended that the “transfer” in the assessee`s case is by way of sale, which is covered u/s 2(47)(i) of the Act. The transfer under the Act is therefore completed on 19/06/2012 therefore Id Counsel contended that payment as well as agreement for sale was done in the assessment year 2013-14, hence no addition can sustain for said transaction in the assessment year 2014-15, therefore entire addition may be deleted.

24. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

25. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that in assessee`s case the assessment year involved is the assessment year 2014-15, however, the cash of Rs.22,11,000/- was deposited by the assessee in the assessment year 2013-14, therefore, the impugned amount of cash deposit belongs to assessment year 2013-14 and not for the assessment year 2014-15 under consideration. Therefore, such cash deposit of Rs. 22,11,000/- does not belong to assessment year 2014-15, hence

no addition should be made in the assessment year 2014-15, therefore addition Rs.22,11,000/- is hereby deleted.

26. So far cash deposits of Rs.2,24,550/- and Rs.6,54,000/- are concerned, we note that assessee has demonstrated with help of a chart, noted above, which shows cash deposit and withdrawals of ICICI bank account number 005201078266 and ICICI bank account number 005201078295, which clearly prove that cash was deposited from withdrawals made from same bank accounts or from another bank accounts during the year or earlier year as per the copy of bank statement attached. The assessing officer did not dispute cash withdrawals made from same bank accounts or from another bank account and cash deposit in the bank accounts from assessee's cash book/cash balance. Therefore, based on this factual position, we delete the additions of Rs.2,24,550/- and Rs.6,54,000/- respectively.

27. Thus, ground No.2 raised by the assessee involving amount of Rs.30,89,550/- (Rs. 22,11,000 + Rs.2,24,550 + Rs.6,54,000), is allowed.

28. Regarding ground no.3 of the assessee wherein the assessing officer made addition to the tune of Rs.48,23,694/-. We note that this addition has been made by the assessing officer based on the difference of purchase consideration of immovable property and the valuation by the sub-registrar. This transaction pertains to assessment year 2013-14 therefore addition should not be made in the assessment year 2014-15 under consideration. Regarding this addition, the Id Counsel submitted before us that just because assessee, by mistake, had accepted market value ascertained by the stamp valuation authority as Rs.70,34,694/-, (during the assessment stage), does not mean that assessee cannot challenge the same during appellate proceedings. The Id Counsel submitted that said transaction is not taxable in assessment year 2014-15 under consideration, rather it is taxable in assessment year 2013-14, therefore addition should not be made in the assessment year 2014-15 under consideration. We find merit in the submission of Id Counsel to the effect that since the assessee had made payment of Rs.22,11,000/- on 18/06/2012 and 19/06/2012 (refer page No.6 of sale deed attached and page No.10 of paper book.) and the Sata Khata (Agreement) was

made on dated 19/06/2012, so accordingly transaction was deemed to have been concluded in the assessment year 2013-14. Thus, addition, if any, about Rs.48,23,694/- can be made by assessing officer only in the assessment year 2013-14 and not in the assessment year 2014-15 under consideration.

29. We note that just because assessee, by mistake, had accepted market value ascertained by the stamp valuation authority as Rs.70,34,694/-, (during the assessment satge), does not mean that assessee cannot challenge the same during appellate proceedings, on the basis of technical grounds. It is a settled Law that, only the real income has to be taxed. It is the duty of the tax authorities to act properly and judiciously. As per CBDT circular dated 03.11.1955 cited in Choksi vs. CIT (107 ITR 363) and also as held in the decisions of CIT vs. Ahemndabad Miles (128 ITR 486), CIT vs. Mattu (139 ITR 1020), CIT vs. Mahalaxmi Mills (160 ITR 920) (SC), and CIT vs. Anger Pressings (161 ITR 159) (SC), that it is the duty of the Assessing Officer to draw attention of the assessee to the deductions, relief, and refund to which, he / she/ himself / herself to be entitled, under facts of the case, if assessee is omitted to make the claim.

30. The Hon'ble Supreme Court in ITO Vs. CH. Atchaiah (1996) 218 ITR 239 (SC) has held that the income should be assessed on the right person, right year and it should be on the right income. From the aforesaid decision of the Hon'ble Supreme Court only the right person and the right person alone is liable to be taxed and not the wrong person and the right assessment year is also to be considered. We note that addition to the tune of Rs.48,23,694/-, as noted by us above, pertains to assessment year 2013-14 therefore addition should not be made in the assessment year 2014-15 under consideration. We note that the cash of Rs.22,11,000/-, as noted by us above, was deposited by the assessee in the assessment year 2013-14, therefore, the impugned amount of cash deposit belongs to assessment year 2013-14 and not for the assessment year 2014-15 under consideration. Hence, no addition should be made in assessment year 2014-15.

31. Based on this factual position and legal position as narrated above we allow ground no.3 of the assessee wherein the assessing officer made addition to the tune of Rs.48,23,694/-.

32. Before parting, we would like to make it clear that since we have allowed the appeal of the assessee on merit/technical (Right income, in Right assessment year) therefore following other arguments made by the Id Counsel, before the Bench, are not adjudicated:

(i) The notices 143(2) dated 24.08.2016 and notice u/s 142(1) were issued by non-jurisdictional assessing officer (being ITO ward 1(3)(1), Surat) and whereas order u/s 143(3) was passed by another Income Tax Officer (International Taxation, Surat), so assessment order is bad in law.

(ii) Assessee`s case was selected for limited scrutiny for the verification/examination of purchase of property, however, assessing officer has covered other issues without converting the limited scrutiny into full scrutiny, so assessment order is bad in law.

Since we have allowed the appeal of the assessee, on merit/technical issue, therefore, above noted two arguments, of Id Counsel becomes academic and infructuous, therefore we do not deal with these arguments.

33. In the result, assessee`s appeal is allowed.

Order pronounced on 24/01/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 24/01/2023
Dkp Outsourcing Sr.P.S.

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

Copy of the Order forwarded to

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

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat