

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “**SMC**” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA Nos.182 & 183/SRT/2019 (AY 2009-10)

(Hearing in Virtual Court)

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| Shri Jayesh Thakorbbhai Patel House No.96/1, Dabhel Kumbhar Faliya, Dabhel, Nani Daman-396210 PAN : AVWPP 3568 M | Vs | Income Tax Officer Daman Ward, Daman Jivanji Hotel Building, Devka Road, Kathiria, Nani Daman-396210 |
| Shri Rajnikanta Thakorbbhai Patel, House No.96/1, Dabhel Kumbhar Faliya, Dabhel, Nani Daman-396210 PAN : AMJPP 2914 M | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी / Respondent |

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| निर्धारिती की ओर से /Assessee by | Shri P.M. Jagasheth, C.A |
| राजस्व की ओर से /Revenue by | Shri Vinod Kumar, Sr-DR |
| सुनवाई की तारीख/Date of hearing | 21.03.2023 |
| उद्घोषणा की तारीख/Date of pronouncement | 21.03.2023 |

Order under section 254(1) of Income Tax Act

Per PAWAN SINGH JUDICIAL MEMBER;

1. These two appeals by different assessee are directed against the separate orders of Id. Commissioner of Income Tax (Appeals)-Valsad [for short to as “Ld.CIT(A)”] all dated 08.01.2019 for same assessment year i.e. (AY) 2009-10, which in turn arise out separate assessment orders passed by Income Tax Officer, Daman Ward, Daman / Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax

Act, 1961 ('the Act') vide order dated 16.12.2016 & 22.12.2016 respectively. In all the appeals, the assesseees have raised certain common grounds of appeals except variation of addition or figure of addition. Therefore, both the appeals are clubbed, heard together and are decided by consolidate order to avoid the conflicting decision. For appreciation of fact, the appeal in ITA No. 182/SRT/2019 is treated as '**lead**' case, wherein the assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in re-opening the assessment u/s 147 of the Income Tax Act, 1961 and issuing notice u/s 48 of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating reassessment proceedings u/s 148 of the Income Tax Act, 1961.

3. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer to refer to DVO for valuation of land.

4. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer to consider the value of land and also directed to re-compute the LTCG on the basis of FMV of land as per DVO's report.

5. *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer and directed to the AO in recalculating addition of Rs.8,25,575/- on account of long term capital gain.*

6. *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.*

7. *On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has not provided the ample opportunities to hear the case, hence the case may please be allowed and set side to the CIT(A), Surat.*

8. *It is therefore prayed that the above addition may please be deleted as learned members of the Tribunal may deem it proper.*

2. At the outset of hearing, Ld. Authorized Representative (Ld.AR) for the assessee submits that order passed by Ld. CIT(A) is *ex parte* without giving fair and reasonable opportunities of hearing to the assessee and assessee never made any default in attending hearing before Ld. CIT(A). The Ld. AR for the assessee further submits that before Ld. CIT(A), the assessee filed application for adjournment, the Ld. CIT(A) instead of allowing adjournment, decided the appeal of assessee without giving opportunity of fair and proper. The Ld. AR for the assessee submits that assessee has a good case on merit and is likely succeed if one more

opportunity is allowed. The ld AR for the assessee prayed to restore the case to the file of assessing officer. The ld AR for the assessee submits that the assessing officer made reference of valuation of land, the report of valuer was not received till the finalisation of assessment order and the assessing officer also declined the exemption under section 54/54F. the other addition under section 69A was also made by assessing officer by taking view that the assessee not furnished his explanation. Thus, in such circumstances it will be appropriate to restore the matter to the file of assessing officer. The ld AR for the assessee undertakes on behalf of the assessee to be more vigilant in future in making compliance and attending the hearing before the lower authorities.

3. On the other hand, the ld Senior Departmental representative (Sr DR) for the Revenue submits that the assessee was given ample opportunities by ld CIT(A) before passing of impugned order. The Ld. CIT(A) finally dismissed the appeal of assessee after considering the material available on merit.

4. I have considered the submission of both the parties. I find that case of assessee was reopened under section 147 on the basis of information of ITD data that assessee sold certain piece of land in Daman and has not shown Capital gain in his return of income. The assessing officer made addition of long term capital gain of Rs. 9,75,882/-. The said addition was confirmed by Ld. CIT(A) by taking view that assessee was provided reasonable opportunities but assessee failed to avail such opportunities. The Ld. CIT(A) concluded that assessee is not interested to pursue his appeal and has not filed any materials available on record against the addition made by Assessing Officer. The Ld. CIT(A) dismissed the appeal of assessee in *ex parte* proceedings. Therefore, keeping in view the principle of natural justice, I am inclined to give one more opportunity to the assessee to contest his case on merit. Thus, the appeal is restored back to the file of Ld. CIT(A) to decide the issue afresh.

5. Needless to direct before passing the order, the Ld. CIT(A) to provide reasonable opportunity to assessee. The assessee is also directed to be more vigilant in future and provide

complete details and source of cash deposits in bank account as early as possible and not to seek the adjournment without any valid reasons. Accordingly, the grounds of appeal by assessee are allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purposes.

ITA No.183/SRT/2019 (AY 09-10)

7. As noted above the assessee in the present appeal has raised similar grounds of appeal as raised in ITA No, 182/Srt/2019, which I have restored to the file of ld. CIT(A), therefore, taking consistent view this appeal is also allowed with similar observation. In the result, this appeal is allowed for statistical purpose.

8. In combined result, both the appeals of different assesseees are allowed for statistical purposes. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open court on 21/03/2023.

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

सूत / Surat, Dated: 21/03/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

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

By order

// True Copy //

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