

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 368/Rjt/2018  
Assessment Year: 2009-10**

Shri Swaroopsinh Vrudhaji Sodha 63- Sodha Vas, Chandan Nagar, Haripar, Tal. Nakhatrana-Kutch  PAN No:BQDPS2529A (Appellant)	Vs	The Income Tax Officer, Ward-2, Bhuj  (Respondent)
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**Assessee Represented: Shri Mehul Ranpura, A.R.  
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 30-03-2023  
Date of pronouncement : 31-03-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Appellate order dated 01.08.2018 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot as against the ex-parte assessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2009-10.

2. The brief fact of the case is that the assessee is an individual and agricultural of profession. The assessee being an agriculturist acted as agent of Shri Pratap Bhagvanji Thacker of Bhuj who was purchasing agricultural lands in Kutch for Adani Group of Companies for port of Mundra. In view of Land Ceiling Act in Gujarat, various agricultural lands were purchased in the names of different farmers and then such lands were transferred to Adani Group of Companies and assessee was one of the such agent. The assessee purchased agricultural land bearing R.S. No. 481 & 543 situated at village Beraja, Mundra Taluka on 21.05.2008 for a consideration of Rs. 52,08,375/- vide sale deed registered as Document No. 3993 of 2008.

2.2. The assessee contended that the funds for purchase of the agricultural lands were provided by Shri Pratapbhai Bhavanji of Bhuj and that ACIT, CC-2 examined at length the transactions of Shri Thacker of Bhuj and held that the transactions to be genuine. The assessee in support has filed the copy of confirmation of Shri Pratapbhai Bhagvanji Thacker and his bank statement.

2.3. The assessee case was reopened u/s. 137 to add the purchase of agricultural land of Rs. 52,08,375/- as unexplained investment u/s. 69A of the Act. However during the assessment proceedings, the assessee could not file any reply and therefore assessment was completed ex parte and demanded a tax of Rs. 32,34,870/-.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A)-3, Rajkot. The assessee explained the above land transactions. The contentions and evidences filed by the assessee were rejected, as they are in the nature of additional evidences which were not filed before the Assessing Officer and conditions of Rule 46A is not satisfied, thereby rejected the assessee's appeal.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2.0 The Commissioner of Income-tax (Appeals)-I, Rajkot [hereinafter referred to as the "CIT(A)"] erred on facts as also in law in not deciding ground of appeal related to the validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, initiation of action u/s. 147 of the Act is invalid and assessment made on such invalid initiation deserves to be quashed and may kindly be quashed.*

*3.0 The Id. CIT(A) erred on facts as also in law in retaining addition of Rs. 52,08,305/- being alleged unexplained investment in agriculture land situated R.S.No.481 and R.S.No.543 at Village Beraja Tal. Mundra. The addition retained is totally unjustified and uncalled for and deserves to be deleted and may kindly be deleted.*

*4.0 The learned CIT(A) erred on facts as also in law in rejecting evidences additional (evidences (in spite of making specific request for admission of the same) furnished during the appellant stage which goes to the root of the matter. The Id. CIT(A) ought to have admitted the same and give justice to the appellant.*

4.1. The Ld. Counsel Mr. Mehul Ranpura appearing for the assessee submitted the additional evidences could not be produced before the Assessing Officer, since the assessee himself is an agriculturist and not aware of the Income Tax proceedings. However during the appellate proceedings with the professional guidance, the assessee collected the various informations and filed

the same before Ld. CIT(A). But the Ld. CIT(A) rejected the same, as additional evidences and conditions of Rule 46A are not satisfied thereby dismissed the assessee's appeal. The ld. Counsel further submitted non-production of the above documents before the Assessing Officer is beyond the control of the assessee, with the same was produced before the Appellate Authority, the appeal filed ought not to have rejected the same. Therefore in the interest of principal of natural justice, the assessee be given one more opportunity to produce the above documents before the Assessing Officer and pleaded to set aside the matter back to the file of A.O.

5. Per contra, the Ld. D.R. appearing for the Revenue Mr. B.D. Gupta has no serious objection in setting aside the matter back to the file of the Assessing Officer.

6. We have given our thoughtful consideration and perused the materials available on record including the finding of the Ld. CIT(A). Rule 29 of the Income Tax Appellate Tribunal Rules provides for admission of additional evidences before the Tribunal for the first time. It is seen from record, the assessee could not produce the same for reasons beyond its control and therefore in order to meet the ends of justice, we think it fit to entertain the additional documents filed by the assessee before Ld. CIT(A) and set aside the same to the file of the Assessing Officer who is to adjudicate the various additional documents filed by the assessee. Needless to say, the assessee should cooperate with the Assessing Officer by

producing all the additional evidences before the ld. A.O. and get adjudicated its grievances.

7. With this observation, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 31-03-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 31/03/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट