

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO.349/MUM/2023 (A.Y: 2012-13)

Gopalbhai Bachubhai Senjalia 102, Tulsi Dhara, Gokul Nagar Khadak Pada, Kalyan (W) Thane- 421301 PAN: ACTPS3399H	v.	ITO, Ward 3(2) 2 nd Floor, Rani Mansion Murbad Road, Kalyan (W) Thane- 421301
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Subhodh Ratnaparkhi
Department Represented by	:	Shri S.N. Kabra
Date of Hearing	:	06.04.2023
Date of Pronouncement	:	18.04.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 16.12.2022 for the A.Y.2012-13.

2. Assessee has raised following grounds in its appeal: -

"1. *The Hon. CIT(A) erred in passing ex-parte order dismissing the appeal for non response on the part of the appellant, when the appellant was un-aware of the notices of the appeal hearing and hence could not furnish any response on the given dates and hence order dismissing the appeal for non response is not justified and may kindly be over turned and set aside.*

2. *The Hon. CIT(A) erred in passing ex-parte order dismissing the appeal, without dealing with the various grounds of appeals raised by the appellant agitating the reopening of assessment u/s 147 as well as non application of sec 50C of the IT Act 1961 to the facts of the matter and other grounds of appeal, which were explained in detail vide the statement of facts annexed to Form no.35 and therefore dismissal of appeal in such casual manner without adequately addressing the merit is not as per law.*

3. *The Hon. CIT(A) erred in not appreciating that the re-opening of assessment u/s 147, by issue of notice us 148 on 30.03.2017, was without any valid belief on the part of the Id. AO that any income chargeable to tax has escaped assessment and therefore the re-opening of assessment was bad in law and the asst. order flowing therefrom was required to be quashed.*

4. *The Hon. CIT(A) erred in confirming the addition of Rs.10,98,810/- made by the Id AO by holding that long term capital gain of the said amount arose in the hands of the appellant, on sale of agricultural land bearing survey no. 161 Pt. 1 at Pedhala Village, Tal. Jetpur, Dist. Rajkot, Gujarat, not appreciating that the land sold was agricultural land and therefore not a capital asset as per exception contained in section 2(14)(ii) of the IT Act 1961 and accordingly the surplus arising on sale of such land was not liable to tax.*

5. *The Hon. CIT(A) erred in confirming the addition of Rs.10,98,810/- as long term capital gains on sale of agricultural land bearing survey no. 161 Pt. 1 at Pedhala Village, Tal. Jetpur, Dist. Rajkot, Gujarat, by adopting the deemed sale consideration of Rs.16,98,810/-, being the market value as per stamp valuation authorities in place of actual sale consideration of Rs.6,00,000/-, by relying upon the provisions of section 50C of the IT Act 1961, which addition is not appropriate by law and by facts.*

6. *The Hon. CIT(A) erred in confirming the addition of Rs.10,98,810/- without referring the valuation of the asset transferred to a valuation officer as provided u/s 50C(2) of the IT Act*

1961 but imposing the value as per stamp valuation authorities to be the deemed sale consideration. The appellant prays that the asset transferred may kindly be referred for valuation as provided u/s 50C(2) of the IT Act 1961.

7. The Hon. CIT(A) erred in confirming addition of Rs.10,98,810/- as long term capital gains on sale of agricultural land bearing survey no. 161 Pt. 1 at Pedhala Village, Tal. Jetpur, Dist. Rajkot, Gujarat, without granting deduction for indexed cost of acquisition of the said land and erroneously computing the long term capital gains.

8. The appellant craves leave to add, alter, amend and/or vary any of the grounds at any time before the decision of the appeal."

3. Brief facts of the case are, assessee is an individual filed return of income for the A.Y. 2012-13 on 22.12.2012 declaring total income of ₹.2,95,190/-. Subsequently, Assessing Officer received information from Income-tax Officer (I & CI), Rajkot that assessee has sold an immovable property vide agreement dated 05.07.2011 to the tune of ₹.6,00,000/- However, the value determined by the stamp valuation authority for the above sale agreement is adopted at ₹.16,98,810/-. The assessee has sold immovable property under value of ₹.10,98,810/-. Accordingly, by issue of notice u/s. 148 of the Act the case of the assessee was reopened. In response, none appeared before Assessing Officer and when the Assessing Officer asked certain information which assessee failed to submit the same before the Assessing Officer and Assessing Officer completed the assessment by making addition on account of long term capital gain amounting to ₹.10,98,810/-.

4. Aggrieved, assessee preferred an appeal before the Ld.CIT(A) even before the Ld.CIT(A) assessee has not complied with the notices accordingly, Ld.CIT(A) has sustained the addition made by the Assessing Officer.

5. Aggrieved, assessee is in appeal before us raising the above grounds of appeal.

6. At the time of hearing, Ld. AR of the assessee brought to our notice that assessee could not receive the notices from the First Appellate Authority. However, he submitted that the Assessing Officer has made the addition based on the registered document value which is in Gujarathi language, however, he submitted that assessee has translated the above said agreement and could not find the value adopted by the Assessing Officer. He prayed that this issue may be remitted back to the file of the Assessing Officer and opportunity to be given to the assessee to submit the relevant information before the Assessing Officer.

7. On the other hand, Ld. DR agreed that assessee has not made any effort to submit the relevant information before lower authorities and he has no objection to remit this issue back to the file of the Assessing Officer.

8. Considered the rival submissions and material placed on record. On a perusal of the orders of the lower authorities, and considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice I am of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Assessing Officer for denovo adjudication in accordance with law. The assessee may file the additional evidences/documents before the assessing officer to substantiate its claim, if any. Needless to say that the assessee shall cooperate with the assessment proceedings before the Assessing Officer and the Assessing Officer shall provide adequate opportunity of being heard to the assessee.

9. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 18th April, 2023

Sd/-

(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 18/04/2023
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum