

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. 109/Rjt/2021
Assessment Year 2013-14**

Kishorchandra Mohanalal Khambhayata Dunex, Gondal Road, At Vavdi, B/H. Hotel Krishna Park, Rajkot PAN:AHAPK7958E (Appellant)	Vs	The Income Tax Officer, Ward-1(1)(1), Rajkot (Respondent)
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**Assessee Represented: Shri Samir Bhuptani, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 24-04-2023
Date of pronouncement : 17-05-2023

आदेश/ORDER

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

This appeal is filed by the Assessee as against the Appellate order dated 30.07.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The brief facts of the case is that the assessee is an individual and engaged in the business of manufacturing of hardware items. The assessee filed his Return of Income for the Assessment Year 2013-14 on 13.09.2013 declaring total income of Rs. 9,17,320/-. The assessee was issued a show cause notice that the assessee had entered into sale transactions of various plots of lands amounting to Rs. 3,62,35,000/- and assessee's 10% share thereon Rs.36,23,500/- which was not disclosed and why not the Short Term Capital Gain be charged on the above transactions. The assessee could not give proper explanation in spite of various opportunities. Therefore the Assessing Officer charged the Short Term Capital Gain of Rs. 36,23,500/- as the income of the assessee.

3. Aggrieved against the same, the assessee filed an appeal before Id. NFAC. The assessee alleged that the addition of Rs. 36,23,500/- made on account of short term capital gain is not correct. Since fraudulent transaction on sale of immovable property was carried out by the Power of Attorney Holder and the genuineness of the transaction and various litigations including that of the Public Auction Notice by Axis Bank which is the subject matter of the above lands sold. Therefore the addition made is liable to be deleted. However the Id. NFAC dismissed the assessee's appeal as the assessee failed to prove any documentary evidences before the Assessing Officer. Thus the appeal was dismissed.

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

1. Ld. CIT(A) erred in law as well as on facts in passing the appellate order in undue and unwarranted haste and without affording reasonable opportunity of being heard to the appellant in the unprecedented pandemic situation and newly launched faceless appeal era particularly when the Income-tax department has launched new web-portal which has not been functioning since its launching and even Finance Minister has acknowledged several time about the non-functioning of the web-portal.

2. Ld. CIT(A) erred in law as well as on facts in depriving the appellant from making out his case and furnish necessary explanations and documents on record for the consideration at the time of adjudication of the appeal.

3. Ld. AO erred in law as well as on facts in making and Id. CIT(A) erred in law as well as on facts in confirming the addition of Rs. 36,25,500/- on account of Short Term Capital Gain on alleged sale of immovable property.

4. Ld. AO and Id. CIT(A) erred in law as well as on facts and in conducting any inquiry with buyer and power of attorney holder about the genuineness of the transaction of alleged sale of immovable property.

5. Ld. AO erred in law as well as on facts in not allowing the deduction of cost of acquisition while computing the capital gain, which is mandatory and legitimately allowable to the assessee.

6. All the grounds of appeal raised hereinabove are without prejudice to one another.

4.1. At the outset of the hearing, the Ld. Counsel appearing for the assessee submitted before us various documents as additional evidence filed for the first time before us and thereby requested the matter may be set aside back to the file of the Assessing Officer for fresh adjudication.

5. Per contra, the Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue brought to our attention to the Jurisdictional High Court unreported Judgment dated 09-10-2018 in the case of PCIT Vs. Ashokji Chanduji Thakor in Tax Appeal no. 1160 of 2018 wherein

the Hon'ble High Court held that the Tribunal had exercised its discretion without stating reasons, when the assessee was not co-operative with the department and failed to explain the investments inspite of various opportunities given by the Ld. A.O. and Ld. CIT(A). Therefore set aside the ITAT order and confirmed the exparte assessment order passed by the Ld. A.O. Thus the present appeal filed by the assessee before the Tribunal is liable to be dismissed following the Jurisdictional High Court judgment.

5.1. The assessee in its reply submitted that though the ld. CIT(A) has observed the assessment order to be an exparte assessment order, the hearing notices were issued on 03.02.2021, 29.04.2021 and 06.07.2021 which were the peak period of horrible Covid-19 second wave. Further on 07.06.2021, the Income Tax Department launched the new web portal, which was not working properly. Thus the assessee could not represent its case online in the faceless regime. Therefore the case law referred by the Ld. D.R. will not be applicable to the facts of the preset case. Since additional documents/evidences are filed before the Tribunal for the first time under Rule 29, the same may be taken on record. The assessee be given one more opportunity to explain its case with the additional evidences, now available with the assessee.

6. We have given our thoughtful consideration and perused the material available on record including the Paper Book and additional documents filed before us. Rule 29 of the Income Tax Appellate Tribunal Rules provides for admission of additional evidence 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 Natural justice, we think it fit to entertain the additional documents filed by the assessee to determine to correct assessable total income of the assessee. Thus we set aside the orders of the lower authorities with a direction to the Ld. A.O. to adjudicate the contents of the "additional documents" filed by the assessee. Needless to say that the assessee should co-operate with the department by producing all the additional evidences before the Ld. A.O. and get adjudicated its case.

7. In the result, the appeal filed by the Assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 17-05-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 17/05/2023

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