

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 268/Rjt/2017  
Assessment Year 2008-09**

Shri Ramesh Ramjibhai Dodiya "Krishna", Panchvati Society, Akshar Marg, Rajkot PAN: AJWPD6609H (Appellant)	Vs	The ITO, Ward-2(1)(1), Rajkot (Respondent)
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**Assessee by: Shri Kalpesh Doshi, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 08-05-2023  
Date of pronouncement : 16-05-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2008-09, arises from order of the Id. CIT(A), Rajkot dated 20-06-2017, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

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

*2.0 The learned Commissioner of Income Tax (Appeals)-2, Rajkot [hereinafter referred to as the "CIT(A)"] erred on facts as also in law in rejecting the ground of appeal relating to reopening of assessment u/s. 148 of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].*

*3.0 The learned CIT(A) erred on facts as also in law in rejecting the ground of appeal relating to order passed u/s. 144 of the Act.*

*4.0 The learned CIT(A) erred on facts as also in law in confirming addition of Rs. 89,50,560/- made on account of capital gain on sale of property made in the capacity of power of attorney holder. The addition may kindly be deleted.*

*5.0 The learned CIT(A) erred on facts as also in law in not allowing cost of acquisition of the property from sale consideration and thereby taxing the whole sale consideration as STCG. The cost of acquisition of property may kindly be allowed from sale consideration.*

*6.0 Your Honor's appellant craves leave to add, amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”*

3. The brief of the case at that the assessing officer received information that the assessee had made transaction in immovable property of ₹ 89,50,560/- during the impugned year under consideration. Accordingly, reassessment proceedings were initiated u/s 147 of the Act by the assessee. The assessing officer observed that during the course of assessment, the assessee has not filed any details/explanation in respect of sale of immovable properties as mentioned in the show cause notice. Further, the assessing officer observed that the assessee has not provided “purchase deeds” of the properties in question to consider the cost of acquisitions of the properties sold by the assessee. Accordingly, the assessing officer made addition of ₹ 89,50,560/- as long term capital gains in the hands of the assessee, in an ex-parte order passed under section 144 of the Act.

4. The assessee filed appeal before Ld. CIT(Appeals), who dismissed the appeal of the assessee. The Ld. CIT(Appeals) observed that during the course of assessment proceedings, the assessee did not make any factual contention that the properties sold did not belong to the assessee and that he was a power of attorney holder only. It was only during the course of appellate proceedings that the assessee has raised this factual issue for the first time before him. Therefore, Ld. CIT(Appeals) refused to admit any additional evidence with respect to the aforesaid contention raised by the assessee during the course of appellate proceedings, under Rule 46A of the Income Tax Rules. Further, the Ld. CIT(Appeals) also dismissed the appeal of the assessee for the reason that the assessee has not filed any confirmation or evidence to the effect that the sale consideration was transferred to Shri Manubhai, the copy of power attorney has not been provided by the assessee, the assessee has not disclosed the relation of the assessee with Shri Manubhai and therefore, there seems no plausible reason for there being a power of attorney in favour of the assessee. Further, the assessee has also not filed date of acquisition of aforesaid two properties, and since the cost of acquisition of the aforesaid properties is not known, the benefit of cost of acquisition cannot be granted to the assessee. Accordingly, Ld. CIT(Appeals) confirmed the order of the assessing officer with the following observations:

**“6.3 Ground of appeal 5**

*Having considered facts and circumstances of the case I find that the only contentious issue is whether the assessee is liable for Capital Gains Tax on sale of properties purported to have been sold as power of Attorney. It is noteworthy, during the assessment proceedings the assessee did not make any averment that the properties sold did not*

*belong to him. It is only during the appellate proceedings that the assessee has raised this issue. Such averment thus amounts to additional evidence which cannot be admitted without satisfying the conditions laid down in Rule 46A. No petition has been made under Rule 46A.*

*Besides, when the assessee makes such averment it is for him to prove the same with necessary evidence. Since as a common practice properties particularly in the given period were frequently transacted through unregistered documents between the intermediary buyers and sellers and registered deed would be made through power of Attorney only on final sale, the onus was clearly on assessee to prove that this transactions was not of this sort. It would be relevant to note that no confirmation from Shri Manubhai has been provided to AO or during appellate proceedings that the transaction was on his behalf. No confirmation or evidence has been adduced to the effect that the sale consideration was transferred to Shri Manubhai.*

*The copy of power of Attorney has also not been provided by the assessee. It is also noteworthy that the only reason of giving power of Attorney to assessee is the illiteracy of Shri Manubhai. Relation of assessee to the Shri Manubhai is also not disclosed. Therefore as such there seems no plausible reason for there being a power of Attorney in favour of assessee. The only inference that can be drawn from pre-ponderance of probability is that the sale is of properties sold by assessee but not registered in his name in earlier transaction with Manubhai.*

*Therefore, to conclude in absence of any confirmation from Shri Manubhai that properties belonged to him and that he had received the impugned sale considerations, the contentions of assessee are not tenable. The action of AO in assessing capital gains in hands of assessee calls for no interference.*

*Since the assessee has not claimed any cost of acquisition and has not disclosed how and when he acquired the impugned properties, no benefit of cost of acquisition can be granted. Besides, since date of acquisition too is not disclosed it cannot be concluded that it is a long term capital gain. Therefore the AO is directed that the income be*

*assessee as Short Term Capital Gain and not as Long Term Capital Gain.”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). At the outset, the assessee challenged the initiation of reassessment proceedings under section 147 of the Act. However, in light of the facts placed on record, we are of the considered view that the assessing officer has not erred in facts and law in initiating proceedings under section 147 of the Act, in the instant set of facts. In this case, as per AIR information, the assessee had sold two immovable properties during the year under consideration, for a total consideration of ₹ 89,50,567/-. Further, the assessee had also not filed return of income for the impugned year under consideration. It is well-settled principle of law that in order to initiate 147 proceedings, only a *prima facie* belief has to be formed by the assessing officer that the income has escaped assessment. In order to initiate proceedings under section 147 of the Act, it need not be conclusively proved that the income had in fact escaped assessment and only a *prima facie* belief is sufficient to initiate proceedings under section 147 of the Act. Accordingly, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in confirming the initiation of proceedings under section 147 of the Act.

6. The second contention raised by the counsel for the assessee before us is that the proceedings have been initiated on an incorrect set of facts and hence liable to be set aside. According to the counsel for the assessee, the assessing officer has erred in facts in coming to the conclusion that the sale consideration belonged to the assessee. From a perusal of the sale deeds, it

is evident that the properties under consideration belonged to Shri Manubhai and the assessee was only a power of attorney holder. Therefore, neither did the properties belonged to the assessee and neither was the sale consideration in respect of the aforesaid properties received by the assessee. Therefore, in the instant facts, the capital gains cannot be taxed in the hands of the assessee. The counsel for the assessee placed on record several judicial precedents in support of the contention that no additions can be made in the hands the assessee in the capacity of a power of attorney holder.

7. In response, the Ld. DR submitted that despite several opportunities provided to the assessee, he did not file any evidences and nor did he file any response to the notices issued by the assessing officer. The assessee has been totally non-compliant during the course of assessment proceedings and therefore, in absence of any details being provided by the assessee during the course of assessment proceedings, the aforesaid additions have been made in the hands of the assessee on the basis of material available on record. Accordingly, the Ld. DR submitted that the order passed by Ld. CIT(Appeals) be kindly upheld, looking into the facts of the instant case.

8. We have heard the rival contentions and perused the material on record. We observe that the assessee was totally non-compliant during the course of assessment proceedings and did not cause appearance, despite several notices having been issued in the name of the assessee. During proceedings before Ld. CIT(Appeals), he dismissed the appeal of the assessee on the ground that the assessee has not been able to demonstrate that he was only a power of attorney holder, the assessee has not been able

to demonstrate that the sale consideration has not been received by the assessee in his bank account, the assessee has not been able to throw any light on the relation with Shri Manubhai and as to why he would appoint the assessee as his power of attorney holder, the assessee has not filed copy of the power attorney issued in his name by the original owner and finally, the assessee has also not furnished copies of purchase deeds, so as to enable the Department to compute the cost of acquisition and arrive at the correct figure of long-term capital gains. However, we also observe that Ld. CIT(Appeals) did not permit the assessee to file additional evidence under Rule 46A of the Income Tax Rules for reasons reproduced in the preceding part of our order. We are of the considered view that in the interest of justice, the Ld. CIT(Appeals) should have allowed the assessee to place on record additional evidence/documents in support of the contention that the aforesaid sale consideration in respect of sale of properties did not belong to the assessee in the first instance since he was only a power of attorney holder. Therefore, in the interest of justice, the matter is being restored to the file of Ld. CIT(Appeals) for fresh adjudication, after giving the opportunity of hearing to the assessee to present his facts on merits and allowing the assessee to place relevant documents/information on record in support of its contention that firstly, he was only a power of attorney holder in the instant set of facts, secondly, to produce the necessary documents in support of the contention that the sale consideration was not received by the assessee and was received by Shri Manubhai, who was the original owner and thirdly, to furnish copies of the “purchase deeds” in order to ascertain the cost of acquisition in respect of the aforesaid properties. Further, Ld. CIT(Appeals) may call for and the assessee may place on record any other

relevant documents as deemed fit in support of his case. Accordingly, the case is being set aside to the file of Ld. CIT(Appeals) with the aforesaid directions.

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

Order pronounced in the open court on 16-05-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 16/05/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**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,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot