

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 No.361/SRT/2022 (AY 2013-14)

(Hearing in Physical Court)

Mukesh Agarwal E-601 Amritkunj Apartment, Bhatar Road, Surat-395001 PAN No: AARPA 1109 M	Vs	Income Tax Officer, Ward-1(3)(3), Surat
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Jaikishan Goel, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	01.03.2023
उद्घोषणा की तारीख/Date of pronouncement	18.05.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld.CIT(A)”] dated 25.08.2022 for assessment year 2013-14, which in turn arises from the addition made by the Income Tax Officer, Ward-1(3)(3), Surat / Assessing Officer in assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 20.12.2018. The assessee has raised the following grounds of appeal:-

“(1) The learned CIT Appeals grossly erred on facts of case in confirming addition of Rs.1780500/- on account of LTCG based on unsigned computerized Satakhath (agreement for sale) found during

*course of survey in premiss of third party lawyer who is unknown tase, without giving an opportunity of cross examining either lawyer or party mentioned in satakhat to prove genuineness of such satakhat, when no details of cash payment is available in satakhat (**Agreement for Sale**) and wrongly disposing off our objection raised by us stating that payment dates has been mentioned in satakhat as 19-02-2013, without actually been mentioned in satakhat and later on stating that it was typographical error and payment was actually not been made and payment had to be made, thereby AO himself admitting that no payment has been made and it was written that payment was to be made but has not been actually made, no details was available about actual cash transaction either from person from whose premises such satakhat was found or person named in satakhat thereby addition based on assumption and presumption;*

(2) The appellant craves leave to add, alter, delete or modify any grounds of appeal.”

2. Perusal of record shows that impugned order was passed by NFAC/Ld CIT(A) on 25.08.2022, however, present appeal was filed on 05.12.2022, thus, there is delay of thirty-eight days in filing appeal before Tribunal. The assessee has filed an application for condonation of such delay. The Ld. Authorized Representative (Ld.AR) for the assessee submits that delay in filing appeal was neither intentional nor deliberate on the part of assessee but due to *bona fide* reason that assessee was trying to contract Advocate, on whom survey action was carried out, wherein unsigned satakhat in the name of assessee and purchases of immovable property was found. The assessee despite

making efforts could not trace the said Advocate, namely, Vasudev Goplani. Before filing appeal, the assessee intends to ascertain the real fact and to raised grounds of appeal. The Ld. AR for the assessee submits that assessee has a good case on merit and would suffer prejudice, if the delay in filing of assessee's appeal is not condoned and the appeal is not heard on merit. The Ld. AR for the assessee further submits that the addition in case of assessee was made solely on the basis of alleged satakhat (agreement to sale) found during the survey action conducted at the business premises of one Vasudev Goplani, Advocate. The Ld. AR for the assessee submits that assessee will not get any benefit in filing the appeal belatedly rather there is always chance that may be loose such application.

3. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue submits that the cause of delay explained by Ld. AR for the assessee is artificial and based on concocted story. The assessee was very well aware about all such fact right from the very beginning. On confronting the facts that what benefit, the assessee will get in filing appeal belatedly. The Ld. Sr-DR for the Revenue submits

that the Bench may take appropriate decision on the basis of such facts pleaded by Ld. AR for the assessee.

4. I have considered the submission of both the parties and gone through the order of lower authorities carefully. Considering the facts that addition in the assessment, based on the alleged satakat found at the business premises of Vasudev Goplani Advocate, to whom the assessee was trying to contract and to inquired the real facts. Considering the facts that delay is only of 38 days and the assessee is not likely to get any benefit in filing appeal belatedly. Considering the fact that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice must be preferred. Hence, the facts of delay of 38 days in filing of appeal is condoned. Now adverting the merit of the case.

5. Rival submission of both the parties on merits and perused the order of lower authorities carefully. The Ld. AR for the assessee submits that case of assessee was reopened on the basis of survey action carried out at the business premises of Vasudev Goplani, Advocate. As per the assertion of assessing officer a satakat was found in the survey action

bearing the name and details of assessee about the transactions of sale of immovable property. On the said satakhat the consideration of property was allegedly recorded at Rs.59 lakhs, however, the sale consideration shown by assessee in the sale deed was only Rs.21,69,000/-. The assessee was having $\frac{1}{2}$ share in the said property. Accordingly, the Assessing Officer after recording the reasons for reopening that income of assessee escaped assessment, the case of assessee was reopened. Notice under section 148 was issued to the assessee on 30.03.2018. The assessee filed his letter dated 14.10.2018 intimated the Assessing Officer that he has filed return of income on 07.09.2018 in response to notice under section 148 of the Act. The ld AR for the assessee submits that during assessment, the assessing officer neither provided the copy of alleged satakhat found during the survey action carried out in business premises of Vasudev Goplani, Advocate nor called him for cross-examination. The purchaser of the property was also not called for ascertaining truth. The document was found at the premises of third-party and document does not bear the

signature or acknowledgement of assessee and such document cannot be relied until and unless the said agreement/satakat is corroborated by an independent evidence. The Assessing Officer made addition of Rs.17,80,500/- on account of long term capital gains. The NFAC/Ld. CIT(A) confirmed the action of Assessing Officer without giving any independent finding. The ld AR for the assessee prayed for deleting the entire addition.

6. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities and submits that during the survey carried out at the business premises of Vasudev Goplani, Advocate a satakat was found. The details mentioned on such satakat exactly matched with the particulars of the payment made to assessee as mentioned on the conveyance deed of immovable property sold by assessee. If Shri Vasudev Goplani, Advocate was unknown to assessee, what was the reason of such satakat which was found at the business premises of Vasudev Goplani at the time of survey proceedings. The Ld. Sr-DR submits that lower authorities made the addition on appreciation of evidence which is directly related to assessee.

7. I have considered the submissions of both the parties. I find that Assessing Officer reopened the case of assessee on the basis of copy of satakat found at the business premises of Vasudev Goplani, Advocate during survey proceedings. The Assessing Officer made addition of long term capital gain, solely on the as per the details available on satakat, though, on the assessee flatly denied his he connection with the alleged satakat. The NFAC/Ld. CIT(A) confirmed the addition without giving any independent finding and simply held that Assessing Officer has rightly came to the conclusion for making addition of Rs.17,80,500/-. I find that Assessing Officer solely relied upon the documents found at the business premises of third-party. The Assessing Officer neither called upon Vasudev Goplani, Advocate during re-assessment proceedings nor made any independent investigation on fact from the purchasers namely Niral Apoorva Bhatu. Before me Ld. AR for the assessee vehemently submitted that Vasudev Goplani, Advocate is unknown to assessee and the assessee has not received any other amount except the sale consideration shown on the registered sale deed. I find merit in the

submission made by Ld. AR for the assessee that Assessing Officer made addition on the basis of third-party information neither the Assessing Officer made investigation on fact from purchasers nor copy of such satakat was provided to assessee nor the person from whose possession the document was recovered was examined during the re-assessment proceedings. Further, there was no corroborative and supporting evidence to support the alleged incriminating material found at the business premises of Vasudev Goplani, Advocate. In absence of corroborative and supporting evidence, I do not find any justification for making addition of Rs.17,80,500/- on account of long term capital gains. Therefore, I direct the Assessing Officer to delete the addition. I order accordingly. This ground of assessee's appeal is allowed.

8. In the result, the appeal of the assessee is allowed.
Order pronounced on 18/05/2023 in open court.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूत/Surat, Dated: 18/05/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

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

// True Copy //

By order

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat