

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.229/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2013-14)

(Virtual Court Hearing)

Navinchandra Girdharbhai Patel 23, Mitrali Row House, B/S Sahaj Super Store, Surat-395009	Vs.	Assistant Commissioner of Income Tax, Circle-1(3), Surat Room No.301, Income Tax Office, Anavil Business Centre, Adajan- Hazira Road, Surat-395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADQPP 1133 L		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Mehul Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kumar– Sr.DR

सुनवाईकीतारीख/ **Date of Hearing** : 12/06/2023

घोषणाकीतारीख/**Date of Pronouncement**: 13/06/2023

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to the assessment year 2013-14, is directed against the order passed by the National Faceless Appeal Centre [‘NFAC/Ld.CIT(A)’ for short] dated 22.02.2023, which in turn arises out of an assessment order passed by the Assessing Officer (AO for short) u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 21.12.2018.

2. Grounds of appeal raised by assessee are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order. Assessee submits that assessee asked for adjournment, but CIT(A) passed ex-parte order. In fact, assessee filed submission and paper book after the date of hearing but before the order of CIT(A) which was not considered.

2. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in re-opening assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.

3. Even otherwise, the learned CIT(A) has not passed the speaking order ignoring the facts stated in the “SOF” filed before him.

4. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in making addition of Rs.17,54,205/- on account of difference in sale consideration and value adopted by applying the provisions of section 50C of the I.T. Act, 1961 without referring the matter to the departmental valuation officer.

5. It is prayed that the assessment may please be quashed and/or addition made by the assessing officer may please be deleted or the matter may please be set aside to the file of CIT(A) for fresh adjudication.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. At the outset we note that during the course of hearing, the Ld. Counsel for the assessee did not argue in respect to Ground No.2 raised by the assessee which relates to challenging the re-assessment proceedings u/s 147 r.w.s. 148 of the Act. Therefore, we dismiss the Ground No.2 raised by assessee as not argued / pressed.

4. The Ld. Counsel for the assessee submits that the NFAC/Ld. CIT(A) has passed an *ex parte* order. The Ld. Counsel submitted that during the appellate proceedings, the assessee asked for adjournment and filed application, submission, however the NFAC/Ld. CIT(A) ignored the adjournment application and submission of the assessee and passed the *ex parte* order without adjudicating on merit the various issues raised by the assessee. The Ld. Counsel pointed out that assessee filed submission and paper book during the appellate proceedings, however, NFAC/Ld. CIT(A) did not consider it and passed the *ex parte* order. The Ld. Counsel also submitted that Assessing Officer should refer the matter to Departmental Valuation Officer ('DVO' in short) at his own as per the procedure mentioned in Section 50C of the Act i.e., the Assessing Officer may refer the matter before DVO *suo motu*, which the Assessing Officer has failed to do so. For this, Ld. Counsel for the assessee relied on the judgment of Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT, Siliguri [2014] 47 taxmann.com 158(Cal)/[2014] 225 Taxman 211 and Hon'ble

Delhi High Court in the case of Faqir Chand vs. National E-Assessment Centre, Delhi [2021] 130 taxmann.com 323 (Del)/[2021] 283 Taxman 51 (Del) and contended that if the assessee does not ask the Assessing Officer to refer the matter before DVO even then the Assessing Officer should refer the matter before DVO, which the Assessing Officer has failed to do so. Therefore, Ld. Counsel contended that one more opportunity should be given to assessee to plead his case before Assessing Officer, and prays the Bench that the entire *lis* may be remitted back to the file of Assessing Officer for *de novo* adjudication in accordance with law.

5. On the other hand, Ld. Sr. DR for the Revenue has fairly agreed that considering the facts and circumstances of the case the matter may be remitted back to the file of Assessing Officer for afresh adjudication.

6. We have heard both the parties and perused the materials available on record. We note that NFAC/Ld. CIT(A) passed *ex parte* order without considering the statement of facts and material available in the assessment order. The NFAC/Ld. CIT(A) also did not consider the adjournment application filed by the assessee as well as the paper book filed during the appellate proceedings. Therefore, it is a violation of principle of natural justice. We also note that during the assessment stage, the Assessing Officer did not refer the matter for valuation to the DVO, *suo motu*, therefore considering the facts and circumstances of the present case, we are of the view that the matter may be restored back to the file of Assessing Officer for afresh adjudication. Therefore, we set aside the order of NFAC/ Ld. CIT(A) and remit the issue back to the file of Assessing Officer with the direction to refer the valuation matter to DVO and pass a speaking order after providing reasonable opportunity of hearing to assessee. We also direct the assessee to submit relevant documents and evidences as and when called for by the

Assessing Officer during re-assessment proceedings. For statistical purposes, the appeal of assessee is treated to be allowed.

7. In the result, appeal of the assessee is allowed for statistical purposes in above terms.

Order pronounced on 13/06/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूत /Surat/दिनांक/ Date: 13/06/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat