

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 309/Rjt/2019  
Assessment Year 2010-11**

Shri Vijay Jamnadas Vinchhi, Navagam Ghed, Anand Society, 13 Near Dental College, Jamnagar  PAN: AFTPV8145F (Appellant)	Vs	The ITO, Ward-2(5), Jamnagar  (Respondent)
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**Assessee Represented: Shri Mehul Ranpura, A.R.  
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 03-07-2023  
Date of pronouncement : 19-07-2023

**आदेश/ORDER**

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

This appeal is filed by the Assessee as against the appellate order dated 29.08.20219 passed by the Commissioner of Income Tax (Appeals), Jamnagar arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. The Registry has noted that there is a delay of 58 days in filing the above appeal. The assessee filed an Affidavit stating that he is not much educated person and was sick in the month of November 2019 whereby there is a delay in filing the above appeal. The Ld. Sr. D.R. has no objection in condoning the delay of 58 days, recording the same, the delay of 58 days in filing the above appeal is condoned.

3. The brief facts of the case is that the assessee is an individual and engaged in Bandhani Printing Works. As per AIR information, the assessee sold an immovable property for Rs. 39,00,000/- during the Financial Year 2009-10, but no Return of Income filed by the assessee. Therefore the assessment was reopened by issuing a notice u/s. 148 of the Act. In response, the assessee filed his Return of Income declaring net taxable income of Rs. 1,64,506/- as calculated as under:

Sr. No.	Head of Income	Amount	Amount
	Long Term Capital Gain		
1	Sales Consideration	13,00,000	
2	Less : Brokerage Paid to effect the sales	13,000	
3	Less : Indexed cost of fair market value of land as on 01-04-1981 as per valuation report (53,430 * 632/100)	3,37,678	
4	Less : Cost of construction (2,34,565 * 631/305)	4,65,328	
5	Less: Cost of improvement (90,450 * 632/480)	1,19,488	
6	Long Term Capital Gain (1-2-3-4)	3,64,506	
7	Less: Exemption u/s. 54 of the Income Tax Act, 1961	2,25,000	
	Taxable Long Term Capital Gain		1,39,506
	Other Income		25,000
	Gross Total Income		1,64,506

3.1. While making assessment, the Assessing Officer disallowed the brokerage, cost of construction and cost of improvement and also denied the exemption u/s. 54 of the Act and determined the Long Term Capital Gains at Rs. 8,22,816/-. The Assessing Officer also made an addition of Rs. 1,69,010/- being a cash deposits in the bank account of the assessee.

4. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals) who deleted the brokerage cost of construction, allowed claim of exemption u/s. 54 of the Act. The Ld. CIT(A) confirmed the cost of improvement claimed by the assessee of Rs. 1,19,488/- and also confirmed the addition of cash deposits, since the assessee has not filed necessary evidences of the claims.

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

*1. The Income Tax officer has erred on facts and in law in disallowing cost of improvement of Rs. 90,450/- (indexed cost Rs. 1,19,488/-) incurred towards repairing of building and the Commissioner of Income Tax (Appeals) has erred on facts and in laws in confirming the same.*

*2. The Income Tax officer has erred on facts and in law in making addition of Rs. 1,69,010/- by treating cash deposit as income from Bandhani Job work business. The Commissioner of Income Tax (Appeals) has erred on facts and in laws in confirming the addition of Rs. 1,69,010/-.*

5.1. Ld. Counsel Shri Mehul Ranpura appearing for the assessee submitted that the assessee is co-owner of the property with 1/3<sup>rd</sup> share inherited from his parents. In 1996, the property was developed into residential building by getting approval from Competent Authority namely Jamnagar Mahanagar Palika. The entire west coast of Gujarat and Kutch witnessed heavy earth

quake on 26/01/2001 which has damaged many number of properties. The assessee's property was also partly damaged and the repairing works were carried out during the year 2006-07 at a cost of Rs. 90,750/- wherein the assessee sold the property on 10/03/2010. However the assessee could not preserve bills for construction materials purchased and labour charges paid. Without repairing works, the residential building was not fit for safe habitation. Therefore the disallowance ought not to have been made the Assessing Officer.

5.2. Regarding cash deposit in the bank account of the assessee, it is submitted that though the assessee sold the property on 10-03-2010 by way of execution of Sale Deed, the assessee has not received the full consideration from the buyer. It is general practice in real estate that buyer make payment gradually in two to three months and then after making full payment sales deed executed. In this case, cash deposits on 19-12-2009 of Rs. 20,000/- , on 05-01-2010 of Rs. 20,000/- and on 01-02-2010 of Rs. 60,000/- all totaling Rs. 1,00,000/- was received from the buyer of the property and the assessee deposited in his bank account. There was a cash withdrawal of Rs. 11,500/- on 04/06/2009 and Rs. 10,000/- on 27/10/2009, the same amounts were redeposited subsequently which amounts to Rs. 21,500/-. Regarding the remaining amount of Rs. 47,510/-, the assessee claimed the same is from Job Work income from Bandhani Printing and past saving. Therefore the Ld. CIT(A) is not correct in confirming the above additions and pleaded to delete the same.

6. Per contra, the Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue strongly supported the order passed by the Ld. CIT(A) who has given partial relief to the assessee based on evidences. The remaining confirmation of disallowance made by the Ld. CIT(A) does not require any interference.

7. We have given our thoughtful consideration and perused the materials available on record. The Ld. CIT(A) while denying the benefit of cost of improvement of Rs. 90,750/- which was made by the assessee on the sole ground that no evidence has been filed by the appellant and also denied the indexation on the cost of improvement namely Rs. 1,19,488/-. The Ld. Counsel submitted before us after the severe earth quake in 2001, the residential building required repairs and renovation which were done by the assessee during the year 2006-07 at cost of Rs. 90,750/- but the reassessment order was made in 2017 and appellate order in 2019. The assessee could not provide the details for the renovation expenses carried out 12 years back, therefore the assessee should not be denied the claim cost of improvement. In our considered view, the disallowance is not correct for non-production bills & labour expenses which incurred more than 10 years back. However the claim of repairing expenses is reasonable amount, the same is hereby deleted and directed the A.O. to give the cost of improvement and indexation thereon.

8. Regarding the addition of Rs. 1,69,010/- on account of unexplained cash deposit, the assessee has already explained that Rs. one lakh is the sale consideration received from the Purchaser

of the property and Rs. 21,500/- is re-deposited in the bank account and remaining of Rs. 47,510/- was from the Bandhini Job Work done and past savings by the assessee. The Ld. CIT(A) denied the same that no evidence was produced by the assessee and thereby confirmed the disallowance. In our considered view, the assessee has explained the cash deposits mainly from the sale consideration received between December 2009 to February 2010 and whereas the property was sold only on 10-03-2010, therefore the same cannot be doubted. Remaining cash deposits, the assessee claimed redeposit of cash of Rs. 21,500/- and also from the Job Work done in Bandhani works and past savings which are found to be a very reasonable amount. Therefore we hereby delete the above additions made by the lower authorities.

9. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 19 -07-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 19/07/2023**

**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