

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.532/SRT/2023

Assessment Year: (2011-12)

(Physical Hearing)

Firoj Jamshedji Patel, Ground Floor At and Post Mora Parsiwad, Moragam, Surat – 394510	Vs.	The ITO, Ward – 2(3)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BHJPP9558B		
(Appellant)		(Respondent)

Appellant by	Ms Chaitali Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	09/10/2023
Date of Pronouncement	10/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 06.06.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 28.11.2018.

2. At the outset itself, the Ld. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex parte* order,

stood vitiated on account of violation of principle of natural justice. The assessee could not receive the notice of hearing during the appellate proceedings, therefore, ld. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the Ld. first appellate authority may be granted to the assessee.

3. Learned Counsel also contended that assessee had sold plot of land (1/6th share of assessee) situated at land Survey No.175 at Mora Taluka Choryasi, Surat for Rs. 5,54,00,000/- on 28.07.2010 alongwith five other Co-owners. The assessee had not filed his return of income and had not declared capital gain because the land so sold was agricultural land hence capital gain was exempted from tax. The ld Counsel further pointed out one of the co-owner's case, namely: **"MAHARUKH RUMI BHESANIA", PAN: AYFPB4575L, AY.2011-12**, vide NFAC Appeal No. ITBA/NFAC/S/250/2023-24/1056112525(1), order dated 15.09.2023, the addition has been deleted by the ld CIT(A). Therefore, matter may be remitted back to the file of the ld. CIT(A) to consider the case of co-owner and adjudicate the issue in accordance with the outcome of the co-owner. As in the case of co-owner, the addition was deleted, therefore Ld. Counsel contended that in the hands of the assessee also, the addition should be deleted.

4. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue fairly agreed that matter may be remitted back to the file of the ld. CIT(A) to consider the co-owner case wherein based

on similar facts and circumstances the ld. CIT(A) has passed the order.

5. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that in the case of one of the Co-owners, namely **“MAHARUKH RUMI BHESANIA”, PAN: AYFPB4575L, for AY.2011-12**, vide order dated 15.09.2023, faceless appeal, wherein the addition was deleted by the ld. CIT(A) on the identical facts. Therefore, we note that why the assessee should be treated differently on the same facts and circumstances. One of the Co-owners, noted above, got full relief, therefore we note that assessee`s case is covered by said one of the Co-owners.

6. We note that in the assessee`s case under consideration, the assessment was carried out u/s 143(3) r.w.s.147 of the Act and the impugned order passed by the ld. CIT(A), is an *ex- parte* order and non-speaking order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee.

7. Since, in assessee`s case, ld. CIT(A) has passed the *ex parte* order, without hearing the assessee, therefore we direct the ld. CIT(A) to hear the assessee on merit and consider the above co-owner case (supra), while adjudicating the issue on merit, and pass the order in accordance with law.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced on 10/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 10/10/2023

SAMANTA

Copy of the Order forwarded to

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat