आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' C'' BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं.**/ITA No.687/AHD/2023**

निर्धारण वर्ष/**Asstt. Year: 2011-2012**

Nitaben Rasikbhai Patel, Moti Khadki At Sisva, Ta Borsad, Anand-388540. **PAN: AWSPP5864D**	Vs.	Income Tax Officer, Ward-1(3)(2), Now Ward 1(3)(1), Petlad.
(Applicant)		(Respondent)

Assessee by	:	Shri B.T Thakkar, A.R
Revenue by	:	Shri Ashok Kumar Suthar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing : 05/02/2024**
घोषणा की तारीख /**Date of Pronouncement: 09/02/2024**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Vadodara, arising in the matter of assessment order passed under s. 144 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The only grievance raised by the assessee is that the Ld. CIT(A), erred in confirming the order of the AO by sustaining the addition of Rs. 61,51,200/- under the head "long term capital gain" on the sale of agricultural land.

3. In the present case the proceedings were initiated u/s 147 of the Act, for the income escaping assessment on account of non-disclosure of income on the sale of immovable property for Rs. 10,00,000/- only. Furthermore, as per the AO, the stamp value of the immovable property was Rs. 61,51,200/- whereas the same was sold by the assessee at Rs. 10,00,000/- only. As per the provisions of section 50C of the Act, the stamp value of land declared for the purpose of the stamp duty should be taken as sale consideration for the purpose of calculating the capital gain under section 50C of the Act. To this effect, a clarification was sought by the AO from the assessee by issuing multiple notices but there was no compliance. Therefore, the AO framed the assessment u/s 147 of the Act vide order dated 21/03/2016, by making the addition of the stamp value of the property in dispute at Rs. 61,51,200/- only.

4. On appeal before the Ld. CIT(A), there was also no compliance by the assessee and therefore the Ld. CIT(A) was pleased to uphold the finding of the AO.

5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 19 but failed to give any satisfactory explanation for non-compliance of the assessee before the authorities below. However, the Ld. AR made a very pertinent point demonstrating that the land was owned by 3 persons whereas the revenue has made the addition in the hands of the present assessee only. As per the Ld. AR, the fact that the land in dispute is owned by 3 parties was very much appearing in the sale deed which was available before the AO during the assessment

proceedings. Accordingly, the Ld. AR submitted that there has been negligent approach on the part of the revenue while framing the assessment in scientific manner under section 144 r.w.s. 147 of the Act.

7. Besides the above the Ld. AR also submitted that the land in dispute, being agriculture land, cannot be made subject to tax under the head capital gain. As per the Ld. AR the land in dispute is not a capital asset chargeable to tax under the head capital gain.

8. On the other hand, the Ld. DR submitted that the assesee has been negligent in making compliance of the notices issued by the authorities below. Therefore, the order of the authorities below should be upheld. The Ld. DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the Ld. AR before us has not furnished any plausible reason for non-compliance during the assessment and appellate proceedings.

9.1 Be that as it may be, it is the trite law that the income, even in the situation of non-cooperation from the assessee, has to be determined in a scientific manner and within the provisions of law. As such, after referring the sale deed, we find force in the argument of Ld. AR that there are three owner of the land and therefore it appeals to us apparently that the income under the head capital gain with respect to the property in dispute cannot be made in the hands of the assessee for the entire amount of sale consideration. Likewise, we also note a defect in the order of the authorities below that no benefit of cost of acquisition of such land has been given while computing income under the head capital gain which was mandatory to allow as deduction. Furthermore, we also note that the contention of the Ld. AR that the land in dispute is an agriculture land has not

been decided on merit, certainly because of non-cooperation from the side of the assessee. However, we are conscious of the fact that a meritorious case cannot be dismissed on account technical lapses as held by the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165. The relevant extract of the judgment is as under:

> ***20.*** *A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:*
>
> > *"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."*

9.2 From the above it is revealed that the income of the assessee should not be over assessed even if there is a mistake of the assessee. As such the legitimate deduction for which the assessee is entitled should be allowed while determining the taxable income. We also note that the Hon'ble Gujarat High Court in the case of Vareli textile industry versus CIT reported in 154 Taxman 33 wherein it was held as under:

> *It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits.*

9.3 In view of the above, in the interest of justice and fair play, we are deemed it fit to restore the issue to file of the AO for fresh adjudication as per the provision of law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

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

Order pronounced in the Court on 09/02/2024 at Ahmedabad.

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 09/02/2024

Manish