

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.1130/Ahd/2023
Assessment Year : 2010-11

Shri Shrenik Hiralal Shah 5/ A Vrundavan Bungalows Near Mathura Nagari, Tandalja Vadodara -390 020 Gujarat, India PAN: APNPS 0058 Q	Vs	The Asstt.CIT Circle-1(1)91 Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Ms.Amrion Pathan, AR
Revenue by :		Shri B.P. Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख /Date of Pronouncement: 14/02/2024

आदेश/O R D E R

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Assessee against the order dated 31/10/2023 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["CIT(A)" in short] for Assessment Year 2010-11.

2. Grounds of appeal are as under:

"All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

Ex-Parte Order:

1) *The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi ('NFAC') ('the CIT'(A)') erred in fact and in law in passing the order ex-parte.*

2) *The learned CIT(A) erred in fact and in law in passing the order without granting proper opportunity of being heard.*

3) *The learned CIT(A) erred in fact and in law in confirming the action of the learned assistant Commissioner of Income Tax, Circle 1(1)(1), Vadodara ('the Assessing Officer' or 'the AO') in assessing the total income of the Appellant at Rs.37,03,490.*

Without prejudice to the above:

Invalid assessment proceedings u/s 147 of the Act:

4) *The learned CIT(A) erred in facts and in law in confirming the action of the learned AO in initiating assessment proceedings under section 147 of the Act which is invalid and bad in law and therefore, the assessment order deserves to be quashed.*

Recomputing Long-Term Capital Gain:

5) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in recomputing the long-term capital gain at Rs.37,01,433 as against Rs. 15,39,710 computed by the Appellant.*

6) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in assessing the sale consideration at Rs.48,86,816 by invoking the provision of section 50C of the Act as against the actual sale consideration of Rs.39,00,000.*

7) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in wrongly applying the provision of section 50C(1) of the Act without referring the valuation of the capital asset to a Valuation officer as per section 50C(2) of the Act.*

8) *The learned CIT (A) has erred in facts and in law in confirming the action of the learned AO in considering the cost of acquisition of the property at Rs .4,18,260 instead of Rs.4,40,023 claimed by the Appellant.*

9) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in not allowing deduction of cost of improvement.*

10) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in not allowing deduction of expenses incurred in relation to sale of capital asset.*

11) *Without prejudice to above grounds of appeal, the CIT(A) erred in fact and in law in confirming the action of the learned AO in assessing the capital gains amounting to Rs.37,01,433 in the hands of the Appellant despite the fact that the learned AO had accepted the fact that 50% of the capital gains has to be assessed in the hands of Ms. Megha Shah.*

Disallowance of interest on housing loan u/s 24(b):

12) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in not allowing the claim of interest paid on housing loan under section 24(b) of the Act.*

Income from other sources:

13) *The learned CIT(A) has erred in facts and in law in confirming the action of the learned AO in treating saving interest income under the head "Income from house property" instead of "Income from other sources".*

Other Grounds:

14) *The learned CIT(A) erred in fact and in law in confirming the action of learned AO in initiating penalty proceedings u/s. 271(1)(c) of the Act.*

15) *Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal."*

2. The assessee is assessed in the capacity of individual. In response to notice u/s.148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the assessee has filed the return of income for AY 2010-11 declaring total income of Rs.13,91,770/- on 06/12/2017. The Assessing Officer made

addition of Rs.37,01,433/- on account of capital gain. The said capital gain generated after selling of immovable property and the Assessing Officer calculated it on the basis of stamp duty paid and sale-deed after deducting cost of acquisition.

3. Being aggrieved by the assessment order, the assessee filed the appeal before the Ld.CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee.

4. The Ld.AR submitted that the assessee being a Senior Citizen and was not aware of the notices issued to the assessee and could not represent his case properly before the Ld.CIT(A). Therefore, the matter may be remanded back to the file of Ld.CIT(A).

5. The Ld.DR relied upon the assessment order and the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material available on record. It is pertinent to note that, in the present case, the assessee is a Senior Citizen and was not aware about the notices issued and, in fact, whether all the notices were served to the assessee are not mentioned in the order of Ld.CIT(A). Therefore, in the interest of justice, it will be appropriate to remand back the issues contested by the assessee before the Ld.CIT(A) for proper adjudication by the Ld.CIT(A). Needless to say, the assessee be given opportunity of hearing by pleading in the interest of natural justice. The assessee is directed to co-operate and file the necessary details for proper adjudication of the issues on merit.

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

Order pronounced in the Court on 14th February,2024 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Ahmedabad, Dated 14/02/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad