

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri Ramit Kochar, Accountant Member**

**ITA No. 898/Ahd/2024  
Assessment Year 2021-22**

Anand Dilipbhai Patel, D-443, Krishnanagar, Adinathnagar, Odhav, Ahmedabad-382415, Gujarat PAN: ADMPP1926F (Appellant)	v.	The Income Tax Officer, Ward-4(2)(1), Pratyakash Bhawan, Ambawadi Ahmedabad- 380015, Gujarat (Respondent)
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**Assessee by: Shri Rameshchandra B. Patel &  
Ms. Divya K. Rathod, A.Rs.**

**Revenue by: Shri M. Anand Kumar, Sr. D.R.**

Date of hearing : 20-06-2024

Date of pronouncement : 25-06-2024

**आदेश/ORDER**

This appeal in ITA No. 898/Ahd/2024 for assessment year 2021-22 has arisen from appellate order passed by the office of Commissioner of Income-tax, Appeals , 1d. Addl/JCIT(A)-1, Nashik vide DIN & Order No. ITBA/APL/S/250 /

2023-24/1062034100(1) dated 05-03-2024, which in turn has arisen from intimation u/s. 143(1) dated 8<sup>th</sup> July, 2022 passed by CPC u/s. 143(1).

2. The grounds of appeal raised by the assessee in memo of appeal filed with ITAT, Ahmedabad Bench, Ahmadabad, reads as under:-

<i>Sl. No.</i>	<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal (see note below)</i>
<i>1</i>	<i>The order passed u/s 250 of 05.03.2024 by ADDL/JCIT(Appeal) - (1), Nashik, confirming addition of capital gain of Rs. 2,62,383/- is wholly illegal, unlawful and against the justice.</i>	<i>Rs. 2,62,383/-</i>
<i>2</i>	<i>The Ld. ADDL/JCIT (A)-1, Nashik has - grievously erred in law and or on facts in not considering fully and properly the submissions made with evidence.</i>	<i>Rs. 2,62,383/-</i>
<i>3</i>	<i>On the facts and circumstances of the case the Ld. ADDL/JCIT (A)-1, Nashik erred in not considering LTCG of Rs. 2,53,211/- already offered for taxation in ITR while concluding addition of Rs, 2,62, 383/-.</i>	<i>Rs. 2,62,383/-</i>
<i>4</i>	<i>The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before</i>	<i>N.A.</i>

	<i>final appeal</i>	
<i>Total tax effect</i>		<i>Rs. 2,62,383/-</i>

3. The brief facts of the case are that the assessee filed his return of income on 5<sup>th</sup> January, 2022 u/s. 139(1) of the Act, for the assessment year 2021-22, wherein total income declared by the assessee was Rs. 30,91,230/- . The income assessed by the Department vide intimation dated 08.07.2022(CPC No. CPC/2122/A3/243735235 and demand reference no. 2022202137079318755T) u/s. 143(1) was Rs. 34,80,670/- , thereby addition of Rs. 3,89,431/- was made by the Revenue while processing return of income u/s. 143(1) of the Act. In the remark column it is stated in the said intimation u/s 143(1) issued by CPC dated 8<sup>th</sup> July, 2022 that adjustment u/s. 143(1) has been made of Rs. 3,89,431/- as under:-

*“Adjustments u/s 143(1)(a)  
Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return - 143(1)(a)(iv)*

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount in Income Tax Return</i>	<i>Amount mentioned in Form Annexure 3CD</i>	<i>Proposed adjustment to total income</i>
<i>1</i>	<i>There is inconsistency in amount mentioned at Sl. No. 5(d). "Any other item of income" in Part A-1 OI of return and amount mentioned at Clause No. 16(d) of Tax audit report</i>	<i>0</i>	<i>3,89,431/-</i>	<i>3,89,431/-</i>

Thus, it is stated while making adjustment that there is inconsistencies in amount mentioned at serial no. 5(d) in any other item of income in part A-Other Income of return and amount mentioned in clause 16(d) of the tax audit report.

4. Aggrieved, the assessee filed first appeal with the office of ld. CIT(A), Addl/JCIT(A) and raised the grievance vide grounds of appeal filed before the ld. Addl/JCIT(A) wherein it is stated that the addition made by CPC of Rs. 3,89,431/- is wholly illegal and unlawful and against principles of natural justice, and stated that income was added twice. The assessee claimed that the said income has been offered for taxation in the return of income filed with Revenue, and CPC has made double addition. The assessee has claimed that in tax audit report there were 5 items mentioned in the column other income which was credited to Profit and Loss Account, and which had already been offered for taxation as under:-

- (i) Interest of FDR from Bank of Rs. 68,949/-
- (ii) Interest on saving bank account of Rs. 3,827/-
- (iii) Dividend income of Rs. 5,585/-
- (iv) interest from deposit with post office under head income from other of Rs. 48,690/- and
- (v) long term capital gain under the head capital gain of Rs. 2,62,383/-.

It was stated that these amounts have been credited in the profit and loss account but since income is not earned from the business activities , and hence they are shown as taxable income under the different heads. Thus, it was claimed that CPC has committed an error by making addition of the said amount u/s. 143(1) as it tantamount to double taxation of the same income. The ld. Addl/JCIT(A) considered the contentions of the assessee and deleted the addition on account of bank interest income FDR of Rs. 68,949/- bank interest income (saving) of Rs. 3,827/-, dividend income of Rs.5,585/- and interest on post office deposit of Rs. 48,690/- , and accordingly part relief was granted to the assessee as the income under the above stated four heads stood matched and explained. Thus, these income achieved finality and there is no dispute between department and the assessee. But, however, ld. Addl/JCIT(A) observed that Long term capital gain of Rs. 2,62,383/- as reported in tax audit report and LTCG offered for taxation of Rs. 2,53,211/- in the return of income filed did not matched and there is inconsistency between the Tax-Audit Report and ITR. Since the amount was not matched, the Addl/JCIT was of the view that the entire amount of Rs. 2,62,383/- is chargeable to tax although he has himself observed that the assessee has declared long term capital gain of Rs. 2,53,211/- in the return of income filed with the Department. Later, the assessee filed an application u/s. 154

for rectification of mistake on 27th March, 2023 with the office of Addl./JCIT(A) explaining that Rs. 2,53,211/- has already been offered for taxation under the head long term capital gain and the audit report is showing LTCG of Rs. 2,62,383/- and at best the addition of Rs. 9,172/- can be made by the Addl./JCIT. My attention was drawn to the notice dated 12.02.2024 (DIN & notice No. ITBA/APL/F/APL\_1/2023-24/1060805314(1) placed in paper book at page 49-52) issued by ld. Addl./JCIT(A) u/s. 250 in which it is stated that he proposed to make addition of difference of the amount between Rs. 2,62,383/- of long term capital gain as reported in clause no. 16(d) of tax audit report and an amount of Rs. 2,53,211/- being declared as long term capital gain in ITR, but while passing the appellate order, the ld. Addl./JCIT(A) confirmed the addition of Rs. 2,62,383/-.

5. Aggrieved , the assessee has filed appeal before the Tribunal and ld. counsel for the assessee made argument before the Bench that ld. Addl./JCIT erred in sustaining the addition of Rs. 2,63,383/- on account of long term capital gain on the ground that the same is not matched with the long term capital gain of Rs. 2,53,211/- as declared in the return of income. The ld. counsel for the assessee submitted that at best the addition of Rs. 9172/- can be made by the ld Addl./JCIT(A). The ld. Addl./JCIT(A) erred in confirming the

addition of Rs. 2,63,383/- while in fact the assessee has itself declared long term capital gain of Rs. 2,53,211/- in the return of income filed and at best , the ld. Addl./JCIT could have made the addition of Rs.9172/-, otherwise it would lead to double taxation of the same income. The ld. Sr. DR conceded that ld. Addl/JCIT(A) ought to have confirmed the additions to the tune of Rs. 9,172/- being the differential amount between reported by tax auditor as LTCG and declared by the assessee in its return of income as LTCG. Thus, in nutshell both the parties are at consensus/ad-idem that an income by way of LTCG to the tune of Rs. 9172/- could be added. Thus, after hearing both the parties and perusing the materials available on record, I observe that the Ld. Addl./JCIT(A) erred in making addition of Rs. 2,62,383/- towards long term capital gain as reported in clause16(d) of the tax audit report , while the fact of the matter is that the assessee has duly declared long term capital gain of Rs. 2,53,211/- in the return of income filed by the assessee with department and paid due taxes on the same, and at the best only differential amount of Rs. 9,172/- could have been sustained by ld Addl/JCIT(A) .Both the parties are at consensus/ad-idem that the amount of Rs. 9,172/- can be added and brought to tax, otherwise the same amount of income by way of LTCG to the tune of Rs. 2,53,211/- would be doubly taxed which is not permissible. Thus, after hearing both the parties, I sustain the addition under the head LTCG

to the tune of Rs. 9172/- and grant relief to the assessee to the tune of Rs. 2,53,211/- by deleting the additions under the head LTCG to the tune of Rs. 2,53,211/- out of total addition of Rs. 2,62,383/- as sustained by Id. CIT(A), as the LTCG to the tune of Rs. 2,53,211/- is reported by the assessee in the ROI filed with the department. Thus, the appeal of the assessee is partly allowed .I order accordingly.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 25-06-2024

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 25/06/2024**

**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,  
अहमदाबाद