

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

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

**ITA No. 333/Ahd/2024  
Assessment Year 2013-14**

Rekhaben Upendrakumar Patel, At & Post: Jaspur, Jaspur, Kalol, Gandhinagar-382721 Gujarat PAN: CGWPP4052K (Appellant)	v.	The Income Tax Officer, Ward-1, Mehsana, Gujarat (Respondent)
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**Assessee by: None**

**Revenue by: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 01-07-2024

Date of pronouncement : 01-07-2024

**आदेश/ORDER**

This appeal in ITA No. 333/Ahd/2024 for assessment year 2013-14 filed by the assessee before the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has arisen from the appellate order dated 12-01-2024 In DIN & Order No. ITBA/NFAC/S/250/2023-24/1059680611(1) passed by ld.

CIT(A),NFAC, New Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 30-09-2021 passed by the learned Assessing Officer u/s. 147 read with Section 143(3) of the Income-tax Act, 1961(DIN & Order No. ITBA/AST/S/147/ 2021-22/1036080300(1).

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

*“1. The Appellant's case was wrongly re-opened w/s 147 of the Act to examine the information available regarding sale of immovable property and without any proper justification which is totally bad in the eyes of law.*

*2. The Ld AO has failed to consider that the appellant has sold an agriculture land which is not capital assets as per Section 2(14) of the IT Act 1961*

*3 Ld. AO has alleged that the appellant failed in providing conclusive evidence in respect of claim that land sold was not a capital asset within the meaning of section 2(14)*

*4. Your Honor appellant craves to leave to add, amend, alter or withdraw any or more grounds of appeal or before the bearing of appeal.”*

3. The brief facts of the case are that the assessee filed return of income for the impugned assessment year on 27.12.2014 , declaring total income at Rs. Nil. The case of the assessee was reopened by Revenue u/s. 147 of the Act on the basis of the available information that the assessee has sold immoveable property. Notice u/s. 148 dated 14-03-2020 was

issued to the assessee by the Assessing Officer. The assessee filed return of income on 09-02-2021 in response to the notice issued by the Assessing Officer u/s. 148 of the Act , declaring total income of Rs. 94,070/-. Based on the information available, the Assessing Officer observed that the assessee along with other co-owners has sold immoveable property/land bearing survey nos. 372 situated at village Jashpur, Kalol for the consideration of Rs. 2,03,37,000/- during the financial year 2012-13. The AO observed that the assessee has not disclosed any capital gains in the return of income filed , and the income arising out of sale of the immovable property was not offered for taxation. In view of the above, the case of the assessee was reopened by Revenue u/s 147 with the prior approval of Id. PCIT, Gandhinagar, and notice u/s 148 was issued by the AO on 14.03.2020. Further, the AO issued statutory notices u/s 142(1) of the Act. The assessee filed its reply before the Assessing Officer. The AO observed that the assessee has sold immovable property registered at Sub-Registrar , Kalol for a total consideration of Rs. 2,03,37,000/- during the impugned assessment year , in which the assessee was having 1/10 share, and thus the assessee received Rs. 20,33,700/- as its 1/10 share . The Assessing Officer further observed after going through the submissions of the assessee that the assessee has infact sold two immoveable properties during the year under

consideration along with other co-owners, and received total consideration of Rs. 49,47,000/- and the assessee has declared long term capital gain of (-) Rs. 23,97,827/-. The Assessing Officer issued notice to the assessee to verify the said capital gain and the justification for the indexed cost of acquisition. The assessee submitted its reply along with copy of sale deed of land sold and purchased during the year. The Assessing Officer observed that the assessee has not furnished any clarification regarding the cost of index claimed , and the assessee has remained silent as to how the indexed cost is arrived at. The Assessing Officer observed that the assessee has sold two survey nos. 301 and 372 , Village Jashpur, Kalol, and the cost of land has been taken at Rs. 20,00,000/- and Rs. 15,00,000/- as on 01-04-2000 respectively , but no supporting documents has been enclosed. The AO observed that the assessee has also not enclosed any document/ evidence to substantiate that the land sold is not a capital asset within the meaning of Section 2(14). The AO observed that the assessee has enclosed certificate issued by the AMC which only confirmed that the village Jashpur does not come under the limits of Municipal Corporation, but the distance of village from the municipal limit of Ahmedabad was not mentioned. The AO stated in its assessment order that infact the assessee has admitted that the land sold is capital asset within the meaning of Section 2(14) , as the assessee had

claimed deduction u/s 54B. The Assessing Officer observed that the assessee has claimed artificially inflated indexed cost of acquisition and thereafter claimed deduction u/s 54B for making investment for purchase of agricultural land. The AO also observed that the assessee has also not submitted any documents to substantiate that the land was actually used for agricultural purposes in recent years. The ld. AO rejected the indexed cost of acquisition claimed by the assessee, and also held that the land sold was capital asset within the meaning of Section 2(14), and computed capital gains from the sale of property as under:-

<i>Total sale consideration received</i>	<i>Rs. 49,47,000/-</i>
<i>Less Admissible deduction u/s. 54B</i>	<i>Rs. 33,15,250/-</i>
<i>Net Long Term Capital Gain</i>	<i>Rs. 16,31,750/-</i>

Thus, addition of Rs. 16,31,751/- was made by the Assessing Officer to the income of the assessee, vide assessment order dated 30.09.2021 passed by AO u/s 143(3) read with Section 147 of the 1961 Act.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A). The ld. CIT(A) issued following notices to the assessee during appellate proceedings, as under:-

<i>Sl. No.</i>	<i>Date of hearing</i>	<i>Remarks</i>
1	09-05-2022	No compliance
2	10-01-2023	No compliance
3	28-03-2023	No compliance
4	26-05-2023	No compliance

There was no compliance by the assessee of the aforesaid notices of hearing issued by the ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee ex-parte in-limine without deciding the issues on merit holding that the assessee is not interested in perusing the appeal , and the assessment order of the Assessing Officer was upheld. The ld. CIT(A) did not decide any issue arising in the appeal on merit despite the fact that the assessee has stated in the statement of facts as well as grounds of appeal that the land sold vide survey nos. 301 and 372 were not capital asset within the meaning of section 2(14) as it is an agricultural land. The assessee has also stated that the purchase deed of the said land was duly submitted before the AO during assessment proceedings, and AO erred in denying indexed cost of acquisition. The assessee has also challenged before Ld. CIT(A) on legal ground invocation of Section 147 for re-opening of the assessment of the assessee. The ld. CIT(A) did not adjudicate any grounds of appeal raised by the assessee on merits , and instead dismissed the appeal of the assessee for non prosecution, and the assessment order passed by ld. AO was upheld by ld. CIT(A).

5. Still aggrieved, the assessee has filed second appeal with the Tribunal. None appeared on behalf of the assessee when this appeal was called for hearing before the "SMC" Bench. No adjournment application has been filed by the assessee. The ld. Departmental Representative relied upon the order ld. CIT(A) and the Assessing Officer, and requested to uphold the additions made by the AO as sustained by ld. CIT(A), but fairly submitted that the ld. CIT(A) has not adjudicated the issues arising in the appeal on merits as is required u/s. 250(6), and the matter can go back to the file of ld. CIT(A) for denovo adjudication of the appeal of the assessee.

6. I have considered the contention of ld. Sr. D.R. and perused the material on record. I have observed that the assessee has filed return of income declaring Nil income on 27.12.2014. Later the assessment of the assessee was reopened by Revenue by invoking provisions of Section 147 on the ground that the assessee has sold immovable property, but the capital gain has not been declared by the assessee. Notice u/s. 148 was issued by the Assessing Officer to the assessee. The assessee filed return of income in response to the notice issued by the AO u/s. 148, declaring income of Rs. 94,070/-. Statutory notices u/s 142(1) were also issued by the Assessing Officer to the assessee. The assessee in

response to the notices submitted that the assessee has sold two land bearing survey nos. 301 and 372 situated at Jashpur, Kalol. The assessee has claimed that the said land sold is a capital asset within the meaning to Section 2(14) as the same is an agricultural land. The assessee has claimed long term capital loss of Rs. 23,97,827/- on sale of aforesaid property in the return of income filed with the Revenue in response to notice issued by the AO u/s 148. The assessee has claimed to have duly furnished copies of registered purchase deeds of the land sold ,during the course of assessment proceedings. The AO denied the assessee with the deduction on account of indexed cost of acquisition of the aforesaid land , despite the claim of the assessee that the purchase deed of land sold were duly furnished by assessee during the assessment proceedings , on the ground that clarification as to indexed cost of acquisition was not furnished. The AO also rejected the contentions of the assessee that land sold is agricultural land mainly on two grounds viz. firstly that certificate issued by AMC only confirmed that the village Jashpur,Kalol does not come under the limit of Municipal Corporation but the distance of the village Jashpur from the municipal limits of Ahmedabad was not mentioned in the said certificate , and secondly that the assessee did not submit proof of agricultural activities carried on during recent years. The Assessing Officer computed the

long term capital gain of Rs. 16,31,750/- after allowing deduction u/s. 54B of Rs. 33,15,250/- , and brought the same to tax. Aggrieved , the assessee has filed appeal with CIT(A) who dismissed the appeal of the assessee ex-parte in-limine mainly on the ground of non prosecution of the appeal by the assessee as the assessee did not comply with the notices issued by ld. CIT(A), without deciding the issue's arising in the appeal before ld. CIT(A) on merits as is required u/s 250(6). The assessee has challenged invocation of Section 147 on legal ground which was not adjudicated by ld. CIT(A). The assessee has also claimed in statement of fact and grounds of appeal before ld. CIT(A) that the assessee has duly furnished copy of purchase deed of land which was sold during the impugned assessment year and the AO had erred in denying the indexed cost of acquisition, but ld. CIT(A) did not make any inquiry nor called for assessment records to verify the contentions of the assessee and to unravel truth, and the appeal of the assessee was dismissed by ld. CIT(A) on the ground of non prosecution by the assessee without adjudicating the issues arising in the appeal on merits as is required u/s 250(6). The assessee has also specifically claimed that the land sold is agricultural land and is not a capital asset u/s. 2(14) of the Act, and certificate issued by AMC was submitted by the assessee before the AO , but neither the AO nor the ld. CIT(A) made any inquiry or verification with AMC and/or Sub-Registrar , Kalol , as to the

aforesaid claim of the assessee. The ld. CIT(A) could have made inquiries by calling information u/s 133(6) from the office of Sub-Registrar, Kalol as to the purchase of the land bearing survey number 301 and 372, Village Jashpur, Kalol or could have made inquiries from the office of AMC(Ahmedabad Municipal Corporation) and/or other relevant government authorities, as to distance of Village Jashpur from the municipal limits of Ahmedabad. Infact , the AO also did not made any inquiries before prejudicing assessee by making additions to the income and saddling the assessee with liability to pay tax. As per section 250(6), the CIT(A) has to state the points for determination, decision thereof and reasoning thereof. But in the instant case, the CIT(A) has dismissed the appeal of the appeal of the assessee ex-parte in-limine without deciding the issues on merit. The appellate order passed by the CIT(A) is non-speaking and non-reasoned cryptic order in which ld. CIT(A) has simply upheld the order of the Assessing Officer on the ground that the assessee has not complied with the notices issued by ld. CIT(A), and further that the assessee is not interested in prosecuting the appeal. I have observed that the there is a clear violation of provisions of section 250(6) of the Act on the part of the ld. CIT(A) as the CIT(A) is obligated to pass appellate order by stating points for determination, his decision and reasoning thereof which has not been done by ld. CIT(A). I have observed that ld. CIT(A)

passed the appellate order without adjudicating the issues arising in the appeal before ld. CIT(A) on merits as is required u/s 250(6). The power of ld. CIT(A) are co-terminus with the power of Assessing Officer which even includes power of enhancement(Section 251(1)(a)). The ld. CIT(A) is required to adjudicate the issues on merit in accordance with law , as is provided u/s. 250(6). The ld. CIT(A) has to state point for determination, his reasons for decision and the decision thereof as provided u/s 250(6). The CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to ld CIT(A), as is provided u/s 250(4), and to adjudicate issues arising in the appeal before him on merits in accordance with law. The CIT(A) could have issued summons u/s. 131 to the assessee and/or could have called for information from third parties i.e. Sub-Registrar, Kalol and/or AMC and/or other relevant government authorities etc., u/s. 133(6). The ld. CIT(A) could have called for assessment records to verify the contentions of the assessee raised in ground of appeal/statement of facts filed before ld. CIT(A). There are other powers vested with ld. CIT(A) as is provided under the 1961 Act. The ld. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non compliance with the notices issued by ld. CIT(A) by holding that the assessee is not interested in prosecuting its appeal , and simply upheld the

additions as were made by the AO. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as ld CIT(A) is required to pass reasoned and speaking order on merits in accordance with law, but the appellate order passed by ld. CIT(A) is a non speaking and non reasoned appellate order which is not in compliance with provisions of Section 250(6), and is liable to be set aside. The appellate order passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices, ex-parte in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate

authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . It is equally true that the assessee also did not complied with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. The assessee is also equally responsible for its woes. Under these facts and circumstances and fairness of both the parties, in the interest of justice, the appellate order of CIT(A) is set aside and the matter can go back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. The ld. CIT(A) shall pass the appellate order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. The assessee on his part is also directed to comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such appellate order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section 250(6) of the Act. Thus, the matter is restored back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law. I clarify that I have not commented on the merits of the issues in the appeal.

Thus, the appeal of the assessee is allowed for statistical purposes. I order accordingly.

7. In the result, the appeal of the assessee in ITA No. 333/Ahd/2024 for assessment year 2013-14 is allowed for statistical purposes.

Orders pronounced in the open court on 01-07-2024 at the Conclusion of the hearing in the presence of ld. Sr DR, and reduced to writing and signed on 10<sup>th</sup> July, 2024

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

**Ahmedabad : Dated 10/07/2024**

**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