IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

Before: Smt. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 122/Ahd/2024
Assessment Year 2014-15

Gunvantbhai Narandas Patel, C/o S.A. Sukhadia Advocate, L-3 Meghalaya Avenue, Near Sardar Patel Colony, Naranpura, Ahmedabad-380014 **PAN: ARLPP4168N** **(Appellant)**	V s	Income Tax Officer, Ward-2, Gandhinagar **(Respondent)**

Assessee Represented: Shri Dipen Shukhadia, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR

Date of hearing : 24-06-2024
Date of pronouncement : 10-07-2024

आदेश/ORDER

PER : SIDDHARHTA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the Assessee against the order of National Faceless Appeal Centre (NFAC), Delhi, in proceeding u/s 250 vide order dated 05/12/2023 passed for the Assessment Year 2014-15.

2. The assessee has raised the following Grounds of Appeal:

> *1. The Leamed CIT (A) has erred in upholding the addition u/s 69A that of Rs. 53,00,000 as unexplained money though it is received against the possession of the property.*
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> *2. The Learned CIT (A) has erred in not appreciating the facts that the alleged amount received against the handed over the possession of the land for relinquishment of the right as per Kabja Karar in F.Y. 2012-13.*
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> *3. The Learned CIT (A) has erred in not appreciating the facts and law that for relinquishment of right there is no need of any ownership of the land but possession is required which is holding by the appellant, which is handed over by him to land owner.*
>
> *4. The Learned CIT (A) has not appreciated the facts that the land owners (Payer) allowed deduction against the capital gain by them as expenses for the taking the possession.*
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> *The aforesaid grounds are without prejudice to each other and the appellant craves leave to add/delete/alter and/or amend any of grounds as aforesaid as and when necessary.*

3. The brief facts of the case are that the assessee filed return of income on 31.03.2018 declaring total income of Rs.2,24,860/- for assessment year 2014-15. Subsequently, department was in possession of information that the assessee along with four other persons had entered into a "possession agreement" ("Kabja Karar") on 21.03.2013 for grant of possession of two bigha land at Khoraj Gam, Distt. Gandhinagar for a consideration of Rs. 5 crores. Assessee's share in this amount was Rs.80 lakhs (being 1/5th share). However, the assessing officer observed that the assessee had not disclosed/declared any income on account of this transaction in the return of income. Accordingly, the case of the assessee was reopened by issuance of notice u/s. 148 of the Act

dated 26.03.2019. As per the information available with the assessing officer, the assessee had received a sum of Rs. 53 lakhs under the said "possession agreement". The assessing officer asked the assessee to give a reply in response to the query that on verification of the return filed by the assessee for the impugned assessment year, why the assessee had not offered this income of Rs.53 lakhs which was received by the assessee during the impugned year under consideration. In response, the assessee admitted that it had received a sum of Rs.53 lakhs from Shri Mahendrabhai K. Patel as per "possession agreement" dated 29.03.2013. However, after deduction of cost of acquisition (43,73,026/-) and deduction u/s. 54F of the Act (3,34,431/-), the net capital gains was (5,92,543/-) on which the total tax payable was Rs.2,25,452/-. However, the assessing officer held that the assessee failed to prove the ownership of the said land on the date of "possession agreement" and failed to establish how he entered into the said "agreement" when the assessee was not having ownership of the property. Further, the assessing officer observed that though the assessee had received huge amount upon signing of "possession agreement", however, the assessee failed to offer the income in his return of income. Accordingly, the assessing officer held that the income of Rs.53 lakhs for signing the "possession agreement" is assessee's unexplained income from undisclosed sources and added the same to the total income u/s 69A of the Act. Further, the assessing officer also denied claim of deduction deduction u/s. 54F of the Act on the ground that since the assessee had failed to prove the ownership of the property, no question of capital gain arises. Therefore, the assessing officer

denied the claim of deduction u/s. 54F of the Act and also the cost of indexation worked out by the assessee amounting to Rs.43,73,026/-, while finalizing the assessment.

4. In appeal, the Ld. CIT(A) upheld the appeal of the assessee with the following observations:

> *5.3.1 The appellant had filed his return of income on 31.3.2015 declaring total income of Rs. 2,24,860/-. The appellant had not disclosed/declared any income on account of said transaction. As per the information available with this office the appellant had received Rs. 53.00.000/- out of Rs. 80,00,000/- during the year under consideration. Appellant has not denied that he had received the amount of Rs 53,00,000/-and there is no dispute that the appellant had received the amount on relinquishment of his right over the land.*
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> *5.3.2 In order to tax the said amount under the head 'capital gains the appellant need to establish the ownership of the property i.e. 2 bigha land. However, neither during assessment proceedings nor present proceedings the appellant has failed to prove the ownership on the land on the date of kabja karar. The assessee has also failed to furnish the copy of the sale deed after the kabja karar. Therefore, the receipt of Rs. 53,00,000/- is not taxed under the head capital gains'. Hence, the appellant is not entitled to claim any exemption / deduction under section 54F of the Act*
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> *5.3.3 Further, though the assessee has received huge amount of Rs. 53,00,000/- on signing kabija karar, failed to offer the income for taxation purpose. Therefore, I am of the considered view that the Assessing officer has rightly brought the receipt of Rs. 53,00,000/- under sec 684 of the IT Act.*
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> *5.3.4 As per section 6A of the Act assessee has to explain to the satisfaction of the AD the cash receipts if the assessee fails to explain or the explanation is not satisfactory, the section provides that the money is deemed to be income of the assessee for the year in which it was deposited in this case the assessee failed to explain his claim that it relates to capital gain. Therefore, the amount is liable to be added under deeming provision of 69A. Section 69A reads as under*
>
> *Unexplained money, etc.*

694. Where in any financial year the assessee is found to be the owner of any money bullion jewellery or other valuable article and such money, bullon, jewelery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, Jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

In the present case the assessee is found to be the owner of the money in the financial year and no explanation is offered by him, the money is deemed to be the income of the assessee for such financial year as per section 69A of the Act. Reliance in this regard is laced on the following decisions.

25 taxmann.com 440 Manojkumar Jain (ITAT Delhi)

34 taxmann.com 5 MH Raney (ITAT Mumbai)

49 taxmann.com 101 Sarwankumar Sharma (Guj)

56 taxmann.com 284 Bhagwandas D Vachani (Guj)

In 25 taxmann.com 440 Manoj kumar Jain (ITAT Delhi) Hon'ble ITAT Delhi held as under

"9. We have heard both parties and gone through the material available on record. We have also gone through the bank account of M/s. Dynamic Solutions with Jain Co-operative Bank Ltd. From the copy of bank account we find that the assessee has deposited cash in the bank account. The cash deposited has been transferred it to various accounts in the same branch. The assessee has not explained source of cash deposited The assessee has not withdrawn cash from the bank on the bake of which it could be argued that the same cash was deposited in The bank account and therefrom peak credit of deposits in the bank account should have been worked out. Therefore the contention of the assessee that the Assessing Officer should have determined the peak credit is not supported by any evidence However, we also find that on February 10, 2008 an

> *amount of Rs 1,75,000 has been transferred by cheque No. 868596 and another amount of Rs 1,750 vide cheque No 263278 We also find that on 29th March 2006 amount of Rs 18,00,000/- has been transferred from account No. C-738. The Assessing Officer had also noted that an amount of Rs. 1,00,000 was also withdrawn from cash The source of the balance amount has not been explained. Therefore the addition made by the Assessing Officer except the above amount of Rs 18,76,750 (Rs 1,75,000 plus Rs. 1,750 plus Rs. 18,00,000) has to be upheld. Accordingly, we do not find any infirmity in the order of the leamed Commissioner of Income-tax (Appeals) confirming the addition to this extent"*

Hon'ble ITAT Mumbai in MH Raney 34 taxmann.com 5 (ITAT Mumbai) dealing with cash deposits held as under.

> *"The assessee's explanation is vague and unsubstantiated, rather, being limited to the working of the quantum of the unexplained funds involved, contending recycling, so as to impact the addition to income exigible on account of the unexplained nature and source of the investment. The peak credit theory is based on recycling of funds, implying systematic activity, while neither the nature of the deposits nor their utilization stands explained, so that the plea is not maintainable at the threshold Scrutiny (of the bank account statement) reveals it to be inconsistent with not only the explanation of the amounts being possibly used for charitable purposes, but also with the fact of the same being, apart from withdrawn in cash, also by cheques for ostensibly personal purposes, on a regular basis and in no insignificant sums. Further, the pattern of withdrawal reveals the account to be employed for transfer of funds in the main, Le deposit of cash at one place and its withdrawal at other, the funds being withdrawal almost in toto, and soon after their deposit. The assessee has been wholly unable to discharge the onus of a satisfactory explanation qua cash deposits, including the quantum of funds involved and accordingly, its appeal fails."*

5.3.5 In view of the above discussion and the case laws relied, it is held that the AO correctly held that the assessee failed to discharge the onus vested on him. Therefore, the addition of Rs. 53,00,000/- made by the AO is confirmed u/s 69A of the Act as the source of which remain unexplained and unsubstantiated. Ground nos. 4 of the appeal is dismissed.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) confirming the additions made in the hands of the assessee.

6. Before us, the Counsel for the assessee submitted that firstly, the assessee was having "possession rights" over the said property and this fact has not been disputed by the Department. The Counsel for the assessee submitted that in the return of one of the co-owners of property, to whom such "possession" was given, this amount was allowed as deduction as "cost of acquisition" at the time of sale of such property by the said co-owner of the property. Accordingly, the Counsel for the assessee submitted that "possession rights" in the said piece of land were clearly with the assessee which constituted a "capital asset" and transfer of such "right of possession" constituted transfer of capital asset and such gain was liable to be taxed as "capital gains" tax. Secondly, the Counsel for the assessee drew our attention to page 75 of the Paper Book i.e. order of Ld. CIT(A) in the case of Shri Mahendrabhai K Patel in which the said Shri Mahendrabhai K. Patel had given an Affidavit that the assessee was having "possession rights" over the said land and the same was used for tilling purposes till the time of entering of the "possession agreement" in favour of Shri Mahendrabhai K Patel. Accordingly, the counsel for the assessee submitted that the assessee was having "possession rights" over such piece of land which constituted a "capital asset" and the transfer of such capital asset was liable to be taxed as capital gains. Further, the counsel for the assessee submitted that the assessee had entered into an agreement in the year 2014, vide a

family arrangement by way of which the assessee along with other four persons were given "right of possession/right of tilling" over such land. Therefore, since the instant land constituted a capital asset the transfer thereof was liable to be taxed as capital gains u/s. 45 of the Act and the assessee was also entitled to cost of acquisition of such asset and also was eligible for grant of deduction u/s. 54 of the Act.

7. In response, the Ld. D.R. placed reliance on the observations made by Ld. CIT(A) in the appellate order and submitted that the assessee has failed to offer such capital gains tax in the return of income, the assessee has given no satisfactory explanation as to why the assessee did not offer capital gains tax on such capital asset and also the assessee has failed to establish any legal right over the said asset, and therefore, the additions/ disallowances were confirmed by the Ld. CIT(A) was liable to be upheld.

8. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case, certain facts are noteworthy. Firstly, in our view, the definition of "capital asset" u/s. 2(14) of the Act (property of any kind held by an assessee) is very wide so as to include all types of tangible/intangible assets including the right of possession over the said property. Therefore, such "right of possession" would constitute a capital asset within the meaning of its definition u/s. 2(14) of the Act. Secondly, having noted the above, we observe that the Counsel for the assessee submitted before us during the course of hearing that the assessee had entered into a family settlement agreement in the year 2004 on

a Rs.100/- stamp paper by way of which the assessee and four other family members had been granted the "right of possession/right of tilling" over such property. However, we observe that this fact was submitted before us for the first time and during the course of assessment proceedings/appellate proceedings such family agreement/arrangements by which the possession of such property was given to the assessee, was never brought to the notice of the assessing officer/Ld. CIT(A) for their consideration. Further, even before us, the assessee has not submitted the relevant family arrangements/agreement by which such "possession rights" over the property in question had been handed over to the assessee and four other family members. Therefore, the assessee, in our view has not given this important document which establishes that he was in possession of such "possession rights" in respect of the above property since 2004. Though assessee has made reference to extracts of the assessment/appellate orders of the co-owners of such property to establish that he was having "right to possession" over such property, but that in our view, would not qualify as substantive evidence to prove that the assessee was having "possession rights" over such property. This is especially in the light of the fact that the possession agreement dated 2004 was not brought to the notice of the assessing officer/Ld. CIT(A) for their consideration.

9. Further, while computing the "cost of acquisition" of such "possession rights" in the return of income filed by the assessee in response to notice issued by Ld. A.O. u/s. 148 of the Act, the assessee has taken cost of acquisition of such "right of possession"

by taking the value of land as per value computed by registered Valuer Report as on 01.04.1981 of Rs. 43,73,026/-. However, it is not clear that why the assessee has taken the cost of acquisition of "right of possession" on the basis of registered value of such land/property as per report of registered valuer as on 01.04.1981 and thereafter indexing the same to compute the cost of acquisition at Rs.43,73,026/- as on the date of transfer of such capital asset, when as per the assessee's own submission, the assessee was not having ownership rights in the said property. Therefore, it is not clear as to why the assessee has computed the cost of acquisition with reference to the "ownership rights" in the said piece of land and that too by taking reference of the value of land as per registered Valuer Report as on 01.04.1981, when in fact, the assessee was not the owner of the said property and further the assessee, as per the ld. Counsel's submission before us, got "possession right" over such property by way of a family arrangement entered in the year 2004. Therefore, it is not clear as to on what basis against the transfer consideration of Rs. 53 lakhs, the assessee has computed cost of acquisition of such property at Rs.43,73,026/-. Therefore, while in our view, the "right of possession" in respect of such property would qualify as a capital asset, however, the assessee has failed to furnish certain important documents with respect to the date of acquisition of such capital asset (family arrangement in the year 2004) and further, it is also not clear as to how the assessee has taken the cost of acquisition of such "right to possession" at Rs.43,73,026/- when admittedly the said right was acquired purely by way of a family arrangement without incurring any cost and such cost of acquisition has been

computed by the assessee with reference to the registered value of such property as on 01.04.1981 and thereafter indexing the cost of value of such property when the assessee was admitted to having no ownership right in the property. Accordingly, looking into the instant facts, the matter is being restored to the file of assessing officer to examine the above facts, with reference to the capital gains computed by the assessee.

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

Order pronounced in the open court on 10 -07-2024

Sd/- **Sd/-**
(ANNAPURNA GUPTA) **(SIDDHARHTA NAUTIYAL)**
ACCOUNTANT MEMBER **JUDICIAL 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