

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.346/RJT/2023

(Assessment Year: 2014-15)

(Hybrid Hearing)

Ranchhodbhai Jerambhai Meghani, B/H Sorathiya Wadi, B/H Gel Ma Temple, Mavdi Gam, Rajkot-360004.		<b>Vs.</b>	The ITO, Ward-1(1)(3), Rajkot,
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>BEHPM3519J</b>			
(अपीलार्थी/Appellant)			(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Appellant by

: Shri R B Shah, AR

राजस्वकीओरसे/Revenue by

: Shri Ashish Kumar Pande, Sr. DR

सुनवाई की तारीख/ Date of Hearing

: 13/08/2024

घोषणा की तारीख/Date of Pronouncement

: 02/09/2024

**आदेश/ORDER**

**PER DR. ARJUN LAL SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), which in turn arises, out of an assessment order passed by the Assessing Officer u/s.143 of the Income Tax Act, 1961 (in short, 'the Act'), vide order dated December 14, 2016.

2. The Grounds of appeal raised by the assessee are as follows:

1. *The Id. CIT(appeals) NFAC (Delhi), has erred in law and on facts in confirming the addition without considering and appreciating the facts that return was selected for*

*limited scrutiny for verifying Large investment in property AND large deduction claimed u/s 54B,54C, 54D, 54G, 54GA. The A.O. exceeded his jurisdiction of the said scrutiny rendering the assessment as erroneous and needs to be quashed.*

*2. The Ld. CTT(Appeals) NF AC (Delhi), has erred in law and on facts in holding that the issue involved (i.e.) Sec. 45 & 54B highly related and inter linked despite the facts that both sections are independent, and both have their own machinery for application in the income tax law.*

*3. The Ld. CIT(A)-NFAC (Delhi), has erred in law and on facts in confirming the addition of Rs.2,50,07,170/-on account of capital gain by not accepting the FMV adopted by the assessee which was supported by the Govt. Approved Valuer.*

*4. The Ld. CIT(A)-NFAC (Delhi), has erred in holding the action of the assessing officer of not allowing the following deduction which are prima facie allowable against the capital gain income:*

- |            |  |                               |
|------------|--|-------------------------------|
| <i>(a)</i> | <i>Agricultural land purchased at Ramnagar</i> | <i>Rs.35,00,157/- u/s.54B</i> |
| <i>(b)</i> | <i>Residential House Purchased</i>             | <i>Rs.29,12,500/- u/s.54F</i> |

*It is prayed that the order passed by the assessing officer may be annulled and the addition made by the assessing officer and confirmed by the CIT(A) may be deleted.*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual, and has filed his return of income on 26-07-2014, for Assessment year 2014-15, declaring total income of Rs. 2,05,044/- and agricultural income of Rs. 1,43,010/-, which was processed u/s 143(1) of the I.T Act 1961. Subsequently, the return was selected for Limited Scrutiny by "CASS" for two issues to verify:

- (i) Large investment in property (AIR) as compared to total income and*
- (ii) Large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA*

Notice u/s 143(2) of the Income Tax Act, was therefore issued by the assessing officer, on 28.09.2015 and duly served upon the assessee on 29.09.2015. Notice u/s 142(1) of the I.T. Act and questionnaire dated 01.06.2016 was issued and served upon the assessee.

4. In response to these notices, the assessee attended from time to time and furnished the details called for. The assessee is agriculturist and derived income from capital gain, other source and agriculture activities. The computation of income and other relevant account and papers were submitted by the assessee, before the assessing officer. On verification of return of income, it was noticed by the assessing officer, that the assessee has along with others, have sold agriculture land situated at Mavdi, vide document No.2461 & 2462, dated 07.12.2013 for Rs. 6,71,82,000/-. The assessee has declared long term capital gain of Rs. NIL, after claiming of deduction u/s 54B by taking sale consideration. While calculating the long- term capital gain, the assessee has taken cost of acquisition at Rs. 35,61,360/-. The assessee was requested to furnish supporting evidence in respect of his claim of cost of acquisition. In support of his claim of cost of acquisition, the assessee has furnished copy of valuation Report dated 02.01.2014. The assessing officer noted that the value of the agriculture land, as on 01.04.1981 valued by the valuer of the assessee, in his report dated 02.01.2014, seems to be higher side. Therefore, to ascertain the fair market value, (FMV) of the agriculture land, as on 01.04.1981, the assessee`s case was referred to the Valuation Officer of the department. The District Valuation Officer [DVO], vide order dated 29.11.2016, estimated FMV for the property as on 01.04.1981, at Rs.5,82,098/-. Since there was a difference, between the the FMV worked out by DVO and the fair market value, worked out by the valuer of the assessee, therefore, the assessing officer issued a show - cause notice to the assessee, to explain the difference,

5. In response to the notice of the assessing officer, the assessee has submitted its reply, before the assessing officer, which is reproduced below:

*“We have received your letter dated 6.12.2016. On the basis of valuation report favourable on your side, you are willing to increase and worked out the capital gain. The valuation of your government officer is totally contrary to the valuation done by our govt. approved valuer. Our govt valuer has already assigned the plus point of our land. The said plus point are shown by our valuer on page 2 in item 6 and 7 and 8 and plus point are also mentioned on page 3 of the valuation report. Not only all these points are not considered properly but have been rejected summarily. The Explanation given on page no. 5 against the item no.9 is also not considered lawfully.*

*All these points suggest that your departmental valuer has not remained serious while deciding the issue. Subsequent objection by our reply has not been rejected. The decision taken by your valuer is harsh, heavy and arbitrary based on whimsical reasons. Under these circumstances you are hereby requested to direct your valuation cell to consider entire valuation report together with subsequent objection. The reasons cited by your valuer are not at all applicable in our case*

*More so, the comparable instances rely upon by the DVO in serial no. 4 to 8 was not put forward by him before us. The proposed valuation report does not contain the instances from serial no 4 to 8 and that is why we could not be able to take any objection for these comparable instances. Thus the Report of the DVO is cryptic and prejudicial.*

*The comparable instances from ser. 4 to 8, has been used by him in the back of our knowledge and in the light of the established principle of the various courts, the action of the DVO is bad in law and on that count the DVO's Report is defective, null and void. Had our valuation Report and subsequent objection been considered by your valuer, the capital gain would have resulted in capital loss. In this circumstances and on the facts of the case, kindly reject the DVO's Valuation and accept the Valuation Report of our govt. approved valuer for the working of capital gain and for this act of kindness, we shall ever grateful.*

*Apart from the above in the computation of income following purchases such as agri, land and Residential house of the following amount were not claimed which may please be allowed out of the capital gain if decided.*

<i>1. Agricultural Land Purchased at Mavdi Survey No. 386/3</i>	<i>Rs. 3,67,08,920/-</i>
<i>2. Agricultural Land Purchased at Ramnagar</i>	<i>Rs. 35,00,157/-</i>
<i>3 Residential House Purchased</i>	<i>Rs. 29,12,500/-</i>
<i>Total allowable deduction u/s 54B/54F</i>	<i>Rs 4,31,21,577/-</i>

*Thus, total investment made by us for purchase of new agri, land and residence. You have considered deduction of Rs.3,37,40,830/- instead of Rs. 4,31,21,577/-. Copies of Purchase deed of all the above properties are already submitted earlier. If you do not have the copy, kindly inform us.*

*You are therefore requested to do what has been omitted to consider and oblige.*

*In case you have required any more details/documents, kindly inform us, so we can submit forthwith."*

6. However, the assessing officer has rejected the contention of the assessee and held that assessee has worked out the long -term capital gain at Rs. 3,37,40,830/- and after claiming deduction u/s 54B of the Act, has shown net taxable capital gain at Rs NIL. The cost of acquisition was found on higher side and not acceptable, and therefore, the matter was referred to the Valuation Cell of Income Tax department for valuation of assessee`s property in terms of cost of acquisition. The Valuation Cell, vide order u/s 55A of the Act dated 29.11.2016, estimated the fair market value of the property in question at Rs.5,82,098/- as on 01/04/1981 instead of Rs.35,61,360/-taken by the registered valuer of the assessee. Therefore, in light of valuation done by assistant valuation officer, Valuation Cell of 1.1. Department, the working of capital gain by assessing officer is as under:

<i>Sale consideration received by the assessee</i>	<i>Rs.6,71,82,000/-</i>
<i>Less Indexed cost of acquisition:</i>	
<i>(1) Cost of acquisition as on 01.04.1981</i>	
<i>FMV, as on 01.04.1981 valued by DVO at Rs. 5,82,098/-</i>	
<i>Cost of acquisition x cost of index</i>	
<i>Rs 5,82,098 x 939/100=</i>	<i>Rs. 54,65,900/-</i>
<i>Long term capital gain</i>	<i>Rs.6,17,16,100/-</i>

The long-term capital gain arised from the agriculture land sold during the year under consideration, was worked out by the assessing officer at Rs.6,17,16,100/-. The benefit of deduction claimed under section 54B in the return of income of Rs. 3,67,08,930/- was allowed to the assessee. The claim of additional deduction under section 54B and 54F claimed by the assessee, vide assessee`s submission letter dated 12.12.2016, was not allowed to the assessee. Therefore, the remaining long-term capital gain on sale of land of Rs.2,50,07,170/-

(6,17,16,100 - 3,67,08,930) was added to the total income of the assessee under the head capital gain.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before Ld.CIT(A), who has confirmed the addition, made by the assessing officer. The Id CIT(A) noticed that the Registered Valuer has not followed any of the methods specified in the guide lines for Valuation of immovable Properties published by CBDT, New Delhi. During the appellate proceedings, the assessee has fairly uploaded copy of Valuation Report dated 29.11.2016 given by the DVO to the assessee and ITO, as well as copy of the Registered Valuer, [Shri. P. K. Desai] report dated 02.01.2014. Perusal of both the reports, the Id CIT(A) held that what have been stated in the Valuation Report dated 29. 11.2016, given by the DVO are correct and also noticed that there is merit in the addition made in the assessment order u/s 143(3) dated 14.12.2016 by the assessing officer, hence, Id CIT(A) has confirmed the action of the assessing officer.

8. Aggrieved by the order of the Ld.CIT(A), the assessee is in further appeal before us.

9. The Ld. Counsel for the assessee submitted that the assessee's case was selected for limited scrutiny and the notice of the limited scrutiny is placed at page no.6 of the assessee's paper book wherein the selection of limited scrutiny was made for 2 reasons, which are given below:

*Please refer to the above. The assessment proceedings for the above-mentioned assessment year are pending before me. Your case for the year under consideration has been selected for limited scrutiny by CASS for following reasons.*

- i) Large investment in property (AIR) as compared to total income.*
- ii) Large deduction claimed u/s. 54B, 54C, 54D*

*You are requested to explain the deviation as mentioned in the above reasons along with supporting evidences. You are requested to furnish the following details in support of your return of income, filed by you.*

10. Therefore, the Ld. Counsel contended that the assessing officer has exceeded the scope during the assessment proceedings and did not take the permission from the higher authority to refer the matter to the valuation officer and hence the order passed by the assessing officer should be quashed. The Ld. Counsel for the assessee, to support his argument, relied on the following decisions:

- 1. ITA Nos.02 & 03/Ahd/2023 dated 28.06.2023 in the case of Mohhmed Hanif Nannamiya Kazi.*
- 2. ITA No.981/Ahd/2019 dated 20.03.2020 in the case of Shri Narendra kumar Rameshbhai Patel.*
- 3. ITA No.2611/Kol/2019, dated 22.02.023, in the case of Sukhdham Infrastructures LLP.*
- 4. ITA No.391/Pun/2023 dated 07.08.2023, Manikrao Amrutrao Satav*

11. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submitted that computation of capital u/s 45 of the Act and providing exemption u/s 54B of the Act, are co-related issue, therefore provisions of section 54B of the Act should not be read alone, it should be read with section 45 of the Act. Besides, ld DR relied on the findings of the assessing officer and stated that addition made by the assessing officer may be confirmed.

12. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We

find that assessee's return of income was selected for Limited Scrutiny by "CASS" for two issues to verify:

- (i) *Large investment in property (AIR), as compared to total income, and*
- (ii) *Large deduction claimed u/s 54B, 54C, 54D, 54G, 54GA.*

During the course of assessment proceeding, the assessing officer has verified both the issues and satisfied on account of investment in property and also accepted the deduction of Rs. 3,67,08,930/-, claimed u/s 54B of the Act. No addition on account of both the issues were made by the assessing officer. However, during the course of hearing, the assessing officer had noticed the different fact, about 'Fair Market Value' (FMV) claimed u/s 45 of the Income Tax Act, 1961, by the assessee, and observed that assessee has claimed fair market value, (FMV), under section 45 of the Income Tax Act, on higher side and therefore invoked provision of section 55A of the Act and adopted the FMV Rs. 5,82,092/- estimated by the DVO instead of FMV Rs. 35,61,360/- adopted by the assessee and thereby reduced the FMV claimed by the assessee and made the addition of Rs.2,50,07,170/- on account of Capital Gain.

13. We find that case of the assessee, was selected for Limited Scrutiny, for verification of limited issue of deduction claimed u/s 54B of the Act, however, the assessing officer has exceeded his jurisdiction by disallowing the fair market (FMV), claimed u/s section 45 of the Act, which is beyond the jurisdiction assigned to the assessing officer, under the limited scrutiny therefore, we find that assessing officer has violated the CBDT instruction No. 5/2016, dated 14.07.2016, read with instruction No. 20/2015, dated 29.12.2015. Thus, the assessment orders passed u/s 143(3) of the Act, dated 14.12.2016, become bad in law. The assessee's case was selected for limited scrutiny to examine the provisions of section 54B of the Act and not for examination of provisions of

section 45 of the Act, (*determination of cost of acquisition*) therefore, we find that assessing officer has exceeded his jurisdiction assigned to him. If the assessing officer wants to examine cost of acquisition, (which is not the subject matter of limited scrutiny) then in that circumstances, the assessing officer has to take permission from the higher authorities, which the assessing officer failed to do so.

14. We note that assessee`s case was selected for limited scrutiny to examine two issues, viz: (i) Large Investment, and (ii) Deduction claimed u/s 54B of the Act, however, the assessing officer has not made addition on both the issues of Limited Scrutiny Notice. The assessing officer cannot travel beyond the issue raised under Limited Scrutiny, as stated in the two instructions of CBDT, which are binding to all the Assessing Officer, viz, (i)Instruction No. 20/2015, dated 29.12.2015 and (ii)Instruction no. 5/2016, dated 14.07.2016. The Limited Scrutiny has narrow scope of inquiry, as mentioned in Para 3 (d) of Instruction No. 20/2015 and Para No. 4 of Instruction No. 5/2016 of the CBDT.

Thus, we find that the assessing officer has violated the Board Instructions and therefore the addition needs to be deleted, for that reliance can be placed on the following decisions:

1. *Manikrao Amrutrao Satav V/s Dy. CIT ITA NO. 391/PUN/2023.*
2. *Narendra Kumar Rameshbhai Patel v/s Dy. CIT ITA No. 981/Ahd/2019.*
3. *Sukhdham Infrastructures LLP v/s ITO ITA No. 2611/Kol/2019*

15. Thus, we find that provisions of section 54B of the Act, cannot be linked with section 48 of the Act, for enhancement of Capital gain u/s 45 of the Act. If the assessing officer wants to enhance the Capital Gain u/s 45 of the Act, the assessing officer must have to take prior permission of Pr. CIT, which he has failed to do so. It is settled law that the Revenue Authorities are not allowed to

travel beyond the issues involved in limited scrutiny cases, except by completing the relevant formalities before proceeding to other issues, which in the instant case does not appears to have adhered to. That is, if a case is taken for limited scrutiny by the A.O., he cannot exceed the jurisdiction beyond the one which he has carved out himself in the notice issued for limited scrutiny. In the present case, the Ld. Assessing Officer has travelled beyond his jurisdiction and made addition on the issues which are not part of the reasons for limited scrutiny. Therefore, A.O. has committed an error in making the addition, hence, we delete the addition. Consequently, the appeal of the assessee is allowed.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 02-09-2024

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

Rajkot

Dated: 02/09/2024

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

**Sd/-**  
**(Dr. A. L. SAINI)**  
**ACCOUNTANT MEMBER**

By order/आदेश से,

// TRUE COPY //

Assistant Registrar/Sr. P.S./P.S.  
ITAT, Rajkot