

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 941/Ahd/2024
(Assessment Year: 2020-21)

Jagdish Rasiklal Dave, 12/B, Shereyanath Society, New Vikas Gruh, Paldi, Ahmedabad-380007 PAN: AHOPD 5126 D	Vs.	Income Tax Officer, National e-Assessment Centre, Delhi (Jurisdiction Officer DCIT, Circle-(2)(1)(1), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Ms. Nupur Shah, AR
Respondent by:	Smt. Mamta Singh, Sr DR

Date of Hearing	19.11.2024
Date of Pronouncement	.11.2024

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi (hereinafter referred to as "CIT(A)" for short), dated 12.03.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2020-21.

2. The Assessee has taken following grounds of appeal:-

"1. The Ld. CIT (A) has grossly erred in law and on facts in dismissing the appeal. He ought to have allowed the appeal fully in accordance with the grounds of appeal raised by the appellant before him.

1. Not granting the opportunity of personal hearing through personal hearing via video conferencing

1. The Ld.CIT(A) has erred in law and on facts in not granting the opportunity of personal hearing via Video Conferencing even though repeated requests have been made by the appellant and not to pass any adverse order without granting an opportunity and hearing to the appellant.

Hence the Impugned Order passed by the Ld CIT (A) is ex-facie bad, arbitrary, unreasonable, illegal, unauthorized as without jurisdiction, in violation of principles of natural justice, and is required to be quashed and set aside.

3. The Ld. CIT(A) has erred in law and on facts in not appreciating the fact that the provisions enshrined under Section 250(1) of the Income Tax Act, which unequivocally mandates that upon the filing of an appeal "The Commissioner will be scheduling a day as well as fixing a venue to hear the appeal and notify the appellant and Assessing Officer against whom the appeal was favoured". This statutory provision is not merely directory but imperative in nature, signifying the legislature's intent to ensure that appellants are accorded a fair and impartial opportunity to present their case and have their responses/concerns addressed through due process. However the Ld. CIT(A) disregard for this statutory mandate has resulted in flagrant violation of the appellant's statutory entitlement and constitutional rights

II. ADDITION MADE OF RS.57,47,724/- WHICH WAS OFFERED BY APPELLANT AS ADDITIONAL INCOME SUO MOTO DURING ASSESSMENT PROCEEDINGS.

1. The Ld.CIT(A) has erred in law and on facts in confirming the addition of Rs 57,47,724/- merely on surmises and conjectures while observing that " appellant's plea, as I find, to accept revised claim and disclosure of income without filing revised return is beyond the purview of the AO".

2. The Ld.CIT(A) has erred in law and on facts in not appreciating that appellant had furnished before the Ld.AO a revised computation of income by offering additional income of Rs.57,47,724/- which should have been considered and accepted by Ld. AO as the same is offered by appellant suo moto owing to omission and bonafide lapse on part of appellant and that due tax on additional income was also calculated in return of income filed thereby reducing the refund claim in original return of income meaning thereby the additional tax was also paid on the said income. Thus, Ld. AO should have accepted the revised computation of income filed by appellant and no separate addition should have been made by the Ld. AO in view of various judicial pronouncements relied upon by the appellant.

3. The Ld.CIT(A) has erred in law and on facts in not appreciating the various judicial pronouncements relied upon by the appellant clearly state that in case of assessment u/s. 143(3) of the Act, an assessee is entitled to make a fresh claim or modify a claim already made in the return of income, during the course of assessment proceedings, with the restriction that such a fresh claim or modification of a claim must be presented to the A.O. before the completion of assessment. Thus, if a claim has been made in the course of assessment proceedings, the A.O. is obliged to entertain and consider it on merits. Hence, Ld. AO should have considered the said additional income offered by appellant during the course of assessment proceedings u/s. 143(3) of the Act.

4. The Ld.CIT(A) as well as the Ld. A.O failed to properly consider the written submission made before them by the appellant as well as various judicial pronouncements relied upon by the appellant.

III. DISALLOWANCE OF COST OF IMPROVEMENT RS. 3,38,16,395/-

1. The Ld.CIT(A) has erred in law and on facts in confirming the addition of Rs.3,38,16,395/ on account of cost of improvement merely on surmises and conjectures

2. The Ld.CIT(A) has erred in law and on facts in not appreciating that the appellant in order to acquire the different land parcels, he had received unsecured loan from various parties and the same has been capitalized in view of provisions of section 48 of the I.T. Act and from perusal of section 48 of the Act, it is very crystal clear that the interest expenditure incurred on funds specifically borrowed for the acquisition of various land forms part of cost of acquisition of land as per provisions of section 48 of the Act, since the interest expenditure is wholly and exclusively for the purpose of acquiring the land. Further, the interest expenses incurred were related to the land parcels and hence, the same has been capitalized in respect to section 48.

3. The Ld.CIT(A) has erred in law and on facts in not appreciating that once it has been established that appellant had borrowed the funds for acquisition of land and the burden of interest has been capitalized, then interest burden could not be segregate from the amount of investment and the said interest should be allowed as per clause (ii) of section 48.

4 The Ld.CIT(A) has erred in law and on facts in not appreciating the fact that in a catena of decisions that the interest on funds borrowed for the purpose of acquisition of capital asset forms part of cost of acquisition. Therefore, the appellant has capitalized the interest expenditure incurred to acquire the said land.

5. The Ld.CIT(A) as well as the Ld. A.O failed to properly consider the written submissions made before them by the appellant as well as various judicial pronouncements relied upon by the appellant.”

3. The brief facts of the case as culled out from the records are as under:-

3.1 The Assessee e-filed return of income for the year under consideration on 26.10.2020 declaring total income at Rs. 71,50,970/-. While passing the order u/s. 143(3) read with section 144B of the Act, the Assessing Officer has determined the total income of the assessee at Rs. 4,67,15,090/- after making a disallowance of Rs. 3,38,16,395/-.

3.2 Aggrieved by the order of the Assessing Officer, the assessee has filed appeal before the Id. CIT(A) who, without granting the opportunity of personal hearing via video conferencing as requested by the assessee, dismissed the appeal of the assessee.

3.3 Aggrieved, the assessee is now in appeal before the Tribunal.

4. Heard both the parties and perused the material available on record. Considering the fact that the order impugned has been passed *ex-parte* without granting Assessee's request for personal hearing via Video Conferencing, we deem it fit and proper and in the interest of justice to restore the matter to the file of the Id. CIT(A) for fresh adjudication after allowing opportunity of being heard to the assessee.

5. In the result, the appeal of the Assessee is allowed for statistical purposes.

The order is pronounced in the open Court on 22.11.2024

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Ahmedabad; Dated 22/11/2024

btk

आदेश की प्रतिलिपि □ ग्रेषित / 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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad