

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" A " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.592, 593 & 594/Ahd/2024  
निर्धारण वर्ष /Assessment Years : 2013-14, 2014-15 & 2014-15 respectively

Shreenathji Associates SB-1, Shreeji Avenue, 11, Sampatrao Colony Jetalpur Road Vadodara - 390 007	<u>बनाम/</u> <u>v/s.</u>	The ITO W#ard-1(2)(4) Vadodara - 390 007
स्थायी लेखा सं./PAN: ABUFS 4107 P		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :		Shri Mehul K. Patel, AR
Revenue by :		Shri B.P. Srivastava, Sr.DR

सुनवाई की तारीख/Date of Hearing : 02/12/2024  
घोषणा की तारीख /Date of Pronouncement: 04/12/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These appeals filed by the assessee arise from the orders passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], dated 11/05/2023, 30/11/2023 & 02/02/2024 respectively for the Assessment Years 2013-14 & 2014-15 (both under original and reassessment proceedings). Since the issue involved in all these appeals is common, they are being disposed of by this common order for the sake of convenience.

**Facts of the case:**

2. The assessee is a partnership firm engaged in the business of land trading, including purchase, development, and sale of land. The assessee filed its return of income for respective assessment years as per the details tabulated below. In case of A.Y. 2014-15, the return of income was revised. The cases were selected for scrutiny and the assessment was completed by issuing notices u/s 143(2) and 142(1) of the Act. The Assessing Officer [hereinafter referred to as "AO"] made certain additions which are tabulated below with AO's observation:

Particulars	A.Y. 2013-14	A.Y. 2014-15 (Original Assessment)	A.Y. 2014-15 (Reassessment)
<b>Return Filing Date</b>	24.08.2013	30.10.2014 (Revised: 16.03.2016)	14.05.2019
<b>Income Declared by the Assessee</b>	Rs. 22,20,161	Rs. 14,89,280	Rs. 14,89,280
<b>Assessment U/S</b>	143(3)	143(3)	143(3) r.w.s. 147
<b>Order Date (AO)</b>	04.03.2016	29.11.2016	16.12.2019
<b>Additions Made by AO</b>	<b>Brokerage (Sec 37):</b> Rs. 14,61,623 <b>Gross Profit:</b> Rs. 5,25,189	<b>Differential Value of Land (Sec 43CA):</b> Rs. 1,59,58,994	<b>Differential Value of Land (Sec 43CA):</b> Rs. 1,59,58,994
<b>Reasons for Additions (AO's Observations)</b>	- <b>Brokerage:</b> Claimed without sufficient evidence; brokerage payment disallowed	- AO invoked <b>Section 43CA:</b> Stamp Duty Value exceeded actual consideration on sale of land (Stock-in-Trade).	- AO confirmed the same <b>Section 43CA addition</b> as in original assessment order.

	despite TDS compliance.		
	- <b>Gross Profit:</b> Considered income from sale of land in A.Y. 2013-14 instead of subsequent year.		
<b>Income Assessed by AO</b>	<b>Rs. 42,06,970</b>	<b>Rs. 1,76,74,120</b>	<b>Rs. 1,76,74,120</b>

3. The assessee preferred appeal before CIT(A) against these independent orders of the AO. In all three assessment years (2013-14, 2014-15 Original, and 2014-15 Reassessment), the CIT(A) dismissed the appeals *ex-parte* due to the assessee's failure to attend hearings, respond to notices, and comply with the requirements of the appellate proceedings. The CIT(A) did not address the substantive issues raised by the assessee, such as the brokerage disallowance, gross profit addition, and Section 43CA of the Act adjustments. The decisions were solely based on the non-compliance of the assessee without analyzing the merits of the case. The dates of orders of CIT(A) are:

<b>Particulars</b>	<b>CIT(A) Order Date</b>
<b>A.Y. 2013-14</b>	11.05.2023
<b>A.Y. 2014-15 (Original Assessment)</b>	30.11.2023
<b>A.Y. 2014-15 (Reassessment)</b>	02.02.2024

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us with following grounds of appeal(s):

**I. Grounds in ITA No. 592/Ahd/2024 – A.Y. 2013-14**

**[I] *The appeal be set-aside to the file of the Id. CIT(A) for deciding the same afresh.***

1. *The appellant humbly states that the submissions in support of the Grounds of Appeal could not be filed since the A.R. who was entrusted with and was handling the Income Tax matters neither informed the appellant about the notices received from the office of the Id. CIT(A) nor complied with the same by filing written submissions so much so that the appellant was also not aware of passing of an ex-parte order by the Id. CIT(A) since the same in all likelihood must have been uploaded on the email ID of the previous A.R. as appearing on ITBA platform. In view of above peculiar circumstances, the appellant humbly requests your honour to set-aside the matter to the file of the Id. CIT(A) for deciding the same afresh after giving adequate opportunity to the appellant.*

**[II] *Addition on account of disallowance of brokerage paid on sale of land - Rs.14,61,623/-***

1. *The Id. CIT(A) has grievously erred in law and on facts in confirming the addition of Rs.14,61,623/- made by the AO being brokerage paid to two parties for their services rendered on sale of land. In view of facts, submission and evidences filed and available on record, the impugned addition which is an allowable business expenditure u/s.37(1) of the Act requires to be deleted.*
2. *The Id. CIT(A) has erred in not considering the fact that the AO had failed to furnish the copy of material or evidences relied upon including the statements recorded as referred to and relied upon in the assessment order, along with an opportunity of cross examination of such persons by the appellant. The impugned addition was thus arbitrary in nature and wholly unjustified.*
3. *The Id. CIT(A) has also erred in not considering and appreciating the fact that the appellant had not only deducted TDS from the brokerage payment but had also deposited the same in government account and had filed sufficient evidences in support of the genuineness of the payments made. That apart, the payment made being through banking channel, it could not have been disbelieved merely on some statements extracted from the parties, more*

*particularly in absence of cross-examination having been granted to the appellant.*

*In view of the above facts, the addition of Rs.14,61,623/- being disallowance of brokerage paid on sale of land requires to be deleted.*

**[III] Addition on account of Gross Profit in respect of sale of land - Rs.5,25,189/-**

- 1. The Id. CIT(A) has erred in law and on facts in confirming the impugned addition of Rs.5,25,189/- made by the AO on account of gross profit on sale of land by treating the same as having been made during A.Y.2013-14 as against income offered by the appellant in A.Y.2014-15. The appellant states that since the income on sale of the said land having been offered by the appellant in subsequent year, the AO be directed to reduce the income of A.Y.2014-15 to the extent of addition made in A.Y.2013-14 as not doing so would result in double taxation of the same income.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.*

**II. Grounds in ITA No. 593/Ahd/2024 - A.Y. 2014-15**

**[I] *The appeal be set-aside to the file of the Id. CIT(A) for deciding the same afresh.***

- 1. The appellant humbly states that the submissions in support of the Grounds of Appeal could not be filed since the A.R. who was entrusted with and was handling the Income Tax matters neither informed the appellant about the notices received from the office of the Id. CIT(A) nor complied with the same by filing written submissions so much so that the appellant was also not aware of passing of an ex-parte order by the Id. CIT(A) since the same in all likelihood must have been uploaded on the email ID of the previous A.R. as appearing on ITBA platform. In view of above peculiar circumstances, the appellant humbly requests your honour to set-aside the matter to the file of the Id. CIT(A) for deciding the same afresh after giving adequate opportunity to the appellant.*

**[II] *Addition on account of differential value of land while invoking the provisions of Section 43CA of the Act - Rs. 1,59,58,994/-***

- 1. The Id. CIT(A) has grievously erred in law and on facts in confirming the addition of Rs. 1,59,58,994/- made by the AO invoking the provisions of Section 43CA of the Act without proper consideration and appreciation of the facts of the case and settled legal position. In view of facts, submission and evidences filed and available on record as also the submission of the appellant reproduced in the*

assessment order, coupled with settled legal position, the impugned addition of Rs. 1,59,58,944/- requires to be deleted.

2. The Id. CIT(A) further failed to appreciate the fact that if an immovable property is held as stock-in-trade, then it becomes part of trading operations for the assessee and as a natural corollary, any income derived there-from would be Business Income and not Income from Capital Gains so as to attract provisions of Section 43CA or 50C of the Act by applying the value of land according to the stamp duty authorities on sale of land held as stock-in-trade. In view of the fact that the appellant had duly shown the sale consideration arising out of sale of land in question held as stock-in-trade as Business Income in its Profit & Loss Account, the impugned addition requires to be deleted.

In view of the above facts, the addition of Rs.1,59,58,944/- u/s.43CA of the Act requires to be deleted.

The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.

### III. Grounds in ITA No. 594/Ahd/2024 - A.Y. 2014-15

**[I] The reopening of assessment is bad in law and without jurisdiction as well as on same material on which the assessment order has been passed u/s.143(3) of the Act.**

1. The Id. CIT(A) has grievously erred in law and on facts in confirming the action of the AO in reopening of assessment despite the fact that the same was based on incorrect facts and merely on surmises and conjectures, which stood substantiated and proved beyond doubt by the AO's own action while assessing the same income as assessed in the original order passed u/s.143(3) of the Act, while previously alleging difference between Jantri Value taken in original assessment order and as stated and assumed by him for reopening the assessment.
2. The appellant states that the Jantri value assumed for reopening of assessment being without any basis and which also stood confirmed by the Stamp Duty Authorities as observed by the AO himself, the reopening of assessment and the consequential order in dispute requires to be quashed as void-ab-initio.
3. The Id. CIT(A) failed to appreciate the fact that when no addition as proposed in the reasons recorded having been made by the AO and the income assessed vide earlier order passed u/s.143(3) having been accepted, the impugned reassessment order is not sustainable in law and thus requires to be quashed/vacated.

**[II] Addition on account of differential value of land while invoking the provisions of Section 43CA of the Act - Rs.1,59,58,994/-**

1. The appellant states that since the AO having made the same addition as made in the original order passed u/s.143(3) of the Act and having accepted

*the assessed income as per earlier order, the impugned addition having already been disputed in the Grounds of Appeal filed against the original order, no further action is warranted in the present appeal.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds and to submit additional grounds at the time of hearing of the appeal.*

5. It was observed that the appeals for A.Y. 2013-14 and A.Y. 2014-15 (Original Assessment) were filed with delay of 266 days and 63 days, respectively. The assessee submitted separate applications for condonation of delay, explaining the reasons for the delay in filing these appeals. In the said applications, the assessee attributed the delays to the negligence of the previous Authorized Representative (AR), who neither informed the assessee about the notices issued by the CIT(A) nor communicated the passing of *ex-parte* orders. The assessee claimed that the CIT(A)'s orders and notices were uploaded to the email address registered by the A.R. on the ITBA portal, which was inaccessible to the assessee. The delay came to light only when the assessee received the CIT(A)'s order for A.Y. 2014-15 (Reassessment) dated 02.02.2024 and the order for A.Y. 2011-12 dated 12.03.2024 on the updated email address. Thereafter, the appeals were filed before us, accompanied by applications seeking condonation of the delays.

5.1. Considering the reasons provided in the applications, the Departmental Representative (DR) did not object to the condonation of delay. We have carefully examined the applications and observed that while the reasons for the delay appear genuine, the assessee has a duty to actively track and manage its income tax matters. Merely attributing the delay to the negligence of the A.R. does not fully absolve the assessee of its responsibility. However, considering the interest of justice, the delay is condoned, and the

appeals are admitted for adjudication. To ensure accountability and deter future negligence, we direct the assessee to pay costs of Rs.5,000/- per appeal and the same to be deposited in the Prime Minister's National Relief Fund and receipt of the same be submitted to the Income Tax Department, before the next hearing of the appeal(s) before the CIT(A).

5.2. As the CIT(A) dismissed all three appeals ex-parte, without adjudicating the issues on merits, we set aside the orders of CIT(A) and restore the appeals for A.Y. 2013-14, A.Y. 2014-15 (Original Assessment), and A.Y. 2014-15 (Reassessment) to the file of the CIT(A) for fresh adjudication. The CIT(A) is directed to provide adequate opportunity to the assessee to present its case and decide the appeals on merits.

5.3. The Authorized Representative (AR) of the assessee has undertaken before the Tribunal to produce all necessary documents and ensure full compliance during the appellate proceedings before the CIT(A).

5.4. The DR has not objected to restoration of the matter to the CIT(A) for fresh adjudication.

6. In the result, all the three appeals of the assessee are treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 4<sup>th</sup> December, 2024 at Ahmedabad.**

Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER

Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 04 /12/2024  
टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad