

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1459/Ahd/2024
Assessment Year: 2013-14**

Gunvantbhai Narandas Patel, C/o. Shri S.A. Sukhadia, Advocate, L-3, Meghalaya Avenue, Near Sardar Patel Colony, Naranpura, Ahmedabad – 380 014 [PAN – ARLPP 4168 N]		Vs.	Income Tax Officer, Ward – 2, Gandhinagar.	
(Appellant)			(Respondent)	
Assessee by	Shri Dipen Shukhadia			
Revenue by	Shri C. Dharani Nath, Sr. DR			
Date of Hearing	19.11.2024			
Date of Pronouncement	17.12.2024			

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 18.06.2024 passed by the CIT(A), National Faceless Appal Centre (NFAC), Delhi for the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal :-

- “1. *The Learned CIT(A) has erred in upholding the addition u/s. 68 that of Rs.12,00,000/- as unexplained cash credit though it is received against the possession of the property.*
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.*

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.*

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 assessee alongwith four other co-owners have made *Kabja Karar* of an immovable property bearing survey no.530 & 531 amounting to Rs.4,00,00,000/-. The assessee received one fifth of the consideration amount i.e. Rs.80,00,000/- in various financial year i.e. financial year 2011-12, 2012-13 and 2013-14. The Assessing Officer observed that the assessee has received Rs.12,00,000/- in financial year 2012-13 relevant to assessment year 2013-14. After recording the reasons to believe, the proceedings under Section 147 of the Income Tax Act, 1961 was initiated after approval. Notice under Section 148 of the Act was issued to the assessee on 28.03.2019. The assessee filed his return of income in response to the notice under Section 148 of the Act dated 04.04.2019 declaring total income at Rs.2,08,640/- after claiming deduction under Chapter VIA of the Income Tax Act, 1961 amounting to Rs.32,045/-. Subsequently, the notice under Section 143(2) of the Act was issued on 22.05.2019. The assessee has filed the details and submissions and after taking cognisance of the same, the Assessing Officer observed that the assessee has received one fifth of the consideration amount i.e. Rs.80,00,000/- in various financial year and most specifically Rs.12,00,000/- in the relevant assessment year 2012-13 relevant to the assessment year 2013-14 as mentioned in page no.3 of the Assessment Order. The assessee filed reply dated 21.01.2022 but the Assessing Officer held that the same is not tenable and since the details are not there, therefore, he made the addition of Rs.12,05,045/- as unexplained cash credit under Section 68 of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that in the assessment year 2014-15 in assessee's own case, the Tribunal in ITA No.122/Ahd/2024, order dated 10.07.2024, has passed the following directions after giving finding in paras 8 & 9 of the said order. The observations are as follows :-

“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 Id. 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."

6. After going through the same, it will be appropriate to restore the matter to the file of the Assessing Officer for examining the issues in the context of the subsequent assessment year as well as the present assessment year in reference to the capital gains computed by the assessee with regard to the handing over the possession of the land for relinquishment of the right as per Kabja Karar in assessment year 2013-14. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice. The Assessing Officer will adjudicate the issues as per the observations made hereinabove as per Income Tax Statute.

7. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 17th December, 2024.

Sd/-
(DR. BRR KUMAR)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th December, 2024
PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*