

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Dr. BRR Kumar, Vice President
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 1416/Ahd/2024
Assessment Year 2016-17**

Kantibhai Babubhai Patel, Ghuma Village, Daskroi, Ahmedabad-380056 PAN: BGWPP6306H (Appellant)	Vs	The ITO, Assessment Unit, ITD,(Jurisdictional Officer, DCIT, Circle 3(1)(1), Ahmedabad) (Respondent)
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**Assessee by: Shri Karan Shah, A.R.
Revenue by: Shri Rignesh Das, Sr. D.R.**

Date of hearing : 30-12-2024
Date of pronouncement : 31-12-2024

आदेश/ORDER

PER : TR SENTHIL KUMAR , JUDICIAL MEMBER:-

This appeal is filed by the assessee as against ex-parte appellate order dated 04-06-2024 passed by the Commissioner of Income Tax, (Appeals), National Faceless Appeal Centre, Delhi arising out of the re-assessment order passed u/s. 147 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") relating to the assessment year 2016-17.

2. Brief facts, the assessee is an individual and a farmer and has not filed his Return of Income. On verification of information available with the Department, the assessee purchased an immovable property wherein the market/stamp duty value of the property was Rs. 40,32,000/- whereas assessee registered the same for 28 lakhs. Thus, there is a difference of Rs. 12,32,000/- which is required to be treated as undisclosed income of the assessee and therefore the assessment was reopened by issuing a notice u/s. 148 of the Act. The assessee filed a return in response of the notice and the matter was referred to the Department Valuation Officer and determined the value of the property at Rs. 48 lakhs and the difference in sale consideration of Rs. 20 lakhs is treated as an undisclosed income of the assessee and taxed thereon.

3. Aggrieved against the re-assessment order, the assessee filed an appeal before Id. CIT(A) who has given four opportunities of hearing between 01-02-2024 to 28-05-2024. Since there was no response from the assessee, the appeal was dismissed for non-prosecution and without adjudicating the case on merits.

4. Aggrieved against the same, the assessee is in appeal before us raising the 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. ADDITION ON ACCOUNT OF ALLEGED UNDISCLOSED INCOME UNDER THE HEAD LONG TERM CAPITAL GAIN RS. 20,00,000/-

1. The Ld. CIT(A) has erred in law and on facts in confirming the addition on account of alleged undisclosed income under the head Long Term Capital Gain of Rs. 20,00,000/- as made by the Ld. AO merely on surmises and conjectures.

2. The Ld. CIT (A) has erred in law and on facts in not appreciating the fact that the appellant had purchased the land at Village Moraiya, Taluka: Sanand, District: Ahmedabad bearing survey no.274/P/17 admeasuring 4856 sq mtrs for a total value of Rs.3,20,000/- vide purchase deed dated 18.11.2016 and sold 2400 sq. mtrs during the year under consideration to M/s. Siya Industrial Developers vide registered sale deed dated 06.06.2015 for a total amount of Rs.28,00,000/- and earned long term capital gain of Rs.11,88,207/- and the same has already shown by appellant in the return of income filed for A.Y.2016-17.

3. The Ld. CIT(A) as well as the Ld. AO erred in not considering the fact that the sale value determined of the land at Survey No.274/P/17, Village Moraiya, Taluka Sanand, Dist. Ahmedabad on the basis of the valuation report obtained from Mr. Dharmesh Kalathia for Ekistic Advisory and the said registered valuer in the valuation report had determined the value of land of Rs. 1133/- per sq. mtr of the land area as on 01.06.2015 and the value of the land was worked out at Rs. 27,19,200- (2400 sq.mtr x 1133 per sq.mtr.) and for the purpose of rounding off had entered into final sale deed for an amount of Rs. 28,00,000/- The appellant has also submitted the comparative sales instances mentioning the amount, location of the land, area, rate of the land situated in the same vicinity to the land of the appellant at Survey No. 274/P/17, located at Village Moraiya, Taluka Sanand, District Ahmedabad.

4. The Ld. CIT(A) has not appreciated the fact that the Ld. AO has blindly relying upon Valuation report of DVO Rs.2,000/- per sq. mtr, wherein there are various infirmities and also no sale instances on basis of which valuation is done by DVO as the sale deed rate of Rs. 2000/- per sq.mtr or nearby rate to Rs. 2000/- per sq. mtr.

5. The Ld. CIT(A) has erred in law and on facts in making an observation that "in the instant case, the appellant failed to make any submissions in support of the grounds of appeal". It is

submitted that appellant is a farmer engaged in farming activities and is not well-versed in computer operations, he could not comply with the hearing notices served on the ITBA Portal. Under the circumstances, the Ld. CIT(A) should have taken into account the Statement of Facts and Grounds of Appeal regarding the merits of the case as the appellant has made a detailed submission stating all the relevant information to be considered before a decision is reached in respect of the addition on account of alleged undisclosed income under the head Long term capital gain of Rs. 20,00,000/-.

6. The Ld. CIT(A) has erred in not properly considering various judicial pronouncements relied upon by the appellant.

The appellant reserves his right to add, amend, alter or modify any of the grounds stated hereinabove either before or at the time of hearing.

PRAYER

The appellant therefore respectfully prays that:

1. The addition of Rs, 20,00,000/- confirmed by the Ld. CIT(A) may kindly be deleted.

2. Such and further relief as the nature and circumstances of the case may justify.”

5. Ld. counsel submitted that the assessee being a farmer engaged in farming activities is not well versed in computer operation thereby he could not comply with the hearing notices served on the ITBA portal and requested one final opportunity be given to the assessee to argue the case on merits and pleaded for setting aside the ex-parte appellate order.

6. Ld. Sr. D.R. appearing for the assessee has no serious objection in setting aside the matter back to the file of the NFAC and to decide on merits of the case.

7. Recording the above submissions of both the parties, the ex-parte appellate order is hereby set aside to the file of CIT(A), NFAC and direct to decide the case on merits by giving proper opportunity of hearing to the assessee. Needless to say, the assessee should make use of this final opportunity and file all relevant materials/documents before NFAC to pass order on merits of the case.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31-12-2024

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 31/12/2024

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