

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./**ITA No. 532/SRT/2024** (AY 2013-14)
(Physical court hearing)

R & R Infraspace Pvt. Ltd. Office No.A1, Giriraj Cinema Compound, Navsari-396 445 [PAN : AAFCR 1504 C]	बनाम Vs	Principal Commissioner of Income- tax, Valsad, 301, 3 rd Floor, Palak Arcade, Shantinagar, Tithal Road, Valsad-396 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	None
राजस्व की ओर से /Revenue by	Shri Ravi Kant Gupta- CIT-DR
सुनवाई की तारीख/Date of hearing	02.01.2025
उद्घोषणा की तारीख/Date of pronouncement	02.01.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Principal Commissioner of Income-tax, Valsad [for short to as "Ld. PCIT"] passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.03.2024 for assessment year (AY) 2013-14, in revising of assessment order passed by Assessing Officer under section 147 r.w.s. 144 r.w.s. 144B of the Act dated 25.03.2023 for assessment year 2018-19. The assessee has raised the following grounds of appeal:

"1. The Hon'ble PCIT ought to have waited till the appeal of the assessee before Hon'ble CIT(A) could be disposed off. An order passed u/s 263 without taking cognizance of a pending appeal before Hon'ble CIT(A) is bad in law and erroneous. The Hon'ble PIT ought to have considered the facts evident from the Tax Audit report filed by the assessee and arguments put forward by the

assessee in Form 35 before coming to the conclusion that income be added u/s 68 instead of being taxed under the head "income from capital gain". As the ingredients laid down u/s 68 are not satisfied, the order is bad in law and erroneous. The said receipts of Rs.1,55,63,560/- were sale proceeds of the inventory of premises held by assessee, from which their purchase price of raw materials, direct costs and other relevant expenses debited to P/L a/c ought to have been deducted before arriving at the taxable income. The income ought to have been taxed under the head "income from business and profession".

2. None appeared on behalf of assessee, despite service of notices of hearing of this appeal on more than two occasions by way of RPAD as well as through e-mail. The registered notice sent at the address provided in Form-36 is returned bank by Postal Authorities. Today neither representative of the assessee appeared nor filed application of adjournment, thus, we left no option except to hear the submission of learned Commissioner of Income-tax Departmental representative (Ld.CIT-DR) for the revenue and to decide this appeal on the basis of material available on record.
3. The Id CIT-DR for the revenue submits that during the relevant financial year (FY) i.e. in 2012-13, the assessee sold immovable property on consideration of Rs.1.55 crore. No return of income was filed by assessee, though audit report inform-3CA and 3CD were filed reporting net income of Rs.69,09,822/- . Thus, case of assessee was reopened by issuing notice under section 148 of the Act. Even during re-assessment proceedings, assessee has not filed return of income in response to notice under section 148, nor filed any submission in response to various show causes notices. Assessment was completed under section 144 rws 147 & 144B on 29.03.2022. In the assessment order, the Assessing officer treated the sale consideration of Rs. 1.08 Crore as Capital

Gain. The assessment was revised by Ld. PCIT by taking view that the assessee has not furnished any details of immovable property nor offered any income on sale of property despite allowing opportunity and the sale consideration was to be added under section 68 of the Act and to be charged @ 30% instead of 20%. The Assessing Officer *suo moto* considered sale consideration as capital gain and taxed accordingly. The order of Ld. PCIT was erroneous and prejudicial to the interest of revenue. The assessee was given opportunity to contest revisional proceedings by issuing show cause notice through e-mail address as Sped Post. The assessee chose not to contest the said proceedings and again assessee is not contested the appeal and same was set aside the assessment order with a direction to pass fresh assessment order after giving reasonable and sufficient opportunity of being heard to assessee. The assessee again, despite filing this appeal failed to appear and neither filed any documentary evidence or any submissions, the appeal of the assessee may be dismissed.

4. We have heard the submission of Ld.CIT-DR for the Revenue and have gone through the order of Ld. PCIT carefully. We find that present appeal was filed on 09.05.2024 and Registry sent notices of hearing through e-mail as well as RPAD, which returned back by the postal authorities. The assessee has avoided the service of notice despite the fact that registered envelope contained the stamp of this Tribunal. The notice was sent at the address provided by assessee in Form-36. On further perusal, we find that this appeal relates to assessment year 2013-14, however, assessee has filed assessment order for assessment year 2018-19 dated 25.03.2023, which was not subject

matter of revision. Thus, appeal is filed in a casual manner. On perusal of order passed by Ld.PCIT, we find that there is categorical finding of lower authorities that no return was filed by assessee either under section 139(1) or in response to notice under section 148 of the Act. The Assessing Officer completed assessment under section 144 r.w.s. 144B of the Act on 28.04.2021 and made addition of Rs.1,55,63,560/- under head "capital gains" and addition of Rs.69,09,822/- on account of business income as reported in Form-3CD. The assessment was revised by Ld. PCIT by taking view that the assessee has not furnished any details of immovable property nor offered any income on sale of property despite allowing opportunity and the sale consideration was to be added under section 68 of the Act and to be charged @ 30% instead of 20%. The Assessing Officer *suo moto* considered sale consideration as capital gain and taxed accordingly. We find that assessee has not countered such finding of Ld.CIT(A) by furnishing requisites details or submission. Therefore, in absence of any submission or details, we do not find any justification in interfering with the order passed by Ld. PCIT under section 263 of the Act. Accordingly, we affirm the same. In the result, the ground of appeal raised by the assessee are dismissed.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 02 /01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated:02/01/2025

Dkp Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत