

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.689/SRT/2024** (AY 2013-14)
(Hybrid processing hearing)

Dhirubhai Bavabhai Gevaria Kamalpark Society, Jalalpore Road, Navsari-396 445 [PAN : ASJPG 2040 H]	बनाम Vs	Income Tax Officer, Ward-2, Navsari, Income Tax Office, Room NO.207, Aaykar Bhavan, Nr. Charpool, Navsari-396 445
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	07.01.2025
उद्घोषणा की तारीख/Date of pronouncement	10.01.2025

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 National Faceless Appeal Centre, Delhi/Commissioner of Income tax (Appeals) [for short to as "NFAC/Ld.CIT(A)] dated 03.05.2024 for assessment year (AY) 2013-14, which in turn arises out of assessment order passed by Assessing Officer under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 22.11.2018. The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in passing the order without providing reasonable opportunity of hearing to assessee & without even considering the written submissions dated 03.09.2019 uploaded on income tax portal.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of Assessing Office in reopening assessment by issuing notice u/s 148 of the I. T. Act, 1961.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), has erred in confirming the action of Assessing Officer in making addition of Rs.71,68,000/- on account of long term capital gain u/s 50C of the I.T. Act of the I. T. Act, 1961.

4. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), has erred in not making reference to Departments Valuation Officer for determining the fair market value of property u/s 50C(2) of the I. T. Act, 1961.

5. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of the Assessing Officer has erred in not giving any deduction towards cost of acquisition of Rs.9,00,400/- and cost of improvement of Rs.14,50,000/- of impugned property.

6.It is therefore prayed that above addition made by Assessing Officer and confirmed by Commissioner of Income-tax (A0ppeals) may please be deleted.

7.Appellant craves leave to ad, alter or delete any ground(s) either before or in the course of hearing of appeal."

2. Rival submissions of both parties heard and record perused. The Ld. Authorized Representative (Ld.AR) of the assessee submits that Assessing Officer as well as Ld.CIT(A) have passed *ex parte* order. The Ld. AR of assessee submits that assessee was not offered reasonable and proper opportunities to contest the case on merit before lower authorities. The Ld.AR of the assessee submits that assessment was completed in 2018, the assessee

immediately filed appeal before Ld.CIT(A) on 28.12.2018, however appeal of assessee was adjudicated vide order dated on 03.05.2024. The Ld.CIT(A) in para-1 of his order has recorded that notices were sent only on 05.08.2019 and 22.09.2020. The appeal of assessee is disposed of after consideration of materials available on record. However, Ld.CIT(A) not considered the submission filed by assessee on 03.12.2019. The Ld.CIT(A) dismissed the appeal in a non speaking order. During assessment, the Assessing Officer invoked the provision of section 50C. The Ld. AR of the assessee submits that before Assessing Officer the assessee has made request to refer the matter to DVO. Before Ld CIT(A), the assessee again made such request by filing additional grounds of appeal. The assessee also filed response in faceless regime, copy of such screen shot is also filed on pages 5 to 7 of the paper book. The Ld.CIT(A) neither considered materials available on record nor gave any finding on additional ground of appeal. The Assessing Officer also passed assessment order under section 144 of the Act. Therefore, matter may be restored back to the file of Assessing Officer with a liberty to assessee to contest various issues. The Ld.AR of the assessee submits that one more opportunity may be given to assessee to contest his case on merit before Assessing Officer, and he undertakes on behalf of assessee to be more vigilant in future.

3. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities.
4. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We find that assessment was

completed under section 144 of the Act on 2.11.2018. The Assessing Officer while passing assessment order made addition of Rs.71,68,000/- by invoking the provisions of Section 50C. The Assessing Officer invoked the provisions of section 50C by taking view that assessee has sold immovable property on 16.05.2012 and has shown sale consideration at Rs.24,61,100/-. However, the value determined by Stamp Valuation Authority is Rs.72,78,600/-. On verification of returned of income, Assessing Office found that cost of acquisition and improvement was shown at Rs.23,50,400/- and assessee has shown capital gains of Rs.1.10 lakh. The Assessing Office noted that on show cause notice, assessee has not furnished any reply. Hence, Assessing Officer by allowing set off of capital gains declared by assessee, he treated the remaining sale consideration of Rs.71,68,000/- as "capital gains". We find that manner of addition is not justifiable. The Assessing Officer has simply reduced the short-term capital gains instead of considering alleged cost of acquisition and improvement from total deemed consideration. Thus, considering the fact that Assessing Officer as well as Ld.CIT(A) have passed *ex parte* order, we set aside the order of Ld.CIT(A). Further considering the peculiar facts of the present case that Ld. CIT(A) has dismissed the appeal in *ex parte* order without discussing the various response made by the assessee and merit of the case. Therefore, in the interest of justice, we deem it appropriate to restore the appeal back to the file of Assessing Officer to pass the assessment order afresh. Needless to direct that before passing order afresh, the Assessing Officer shall allow reasonable opportunity to the assessee. The assessee is at liberty to make request for reference to DVO for estimating of fair market value of asset

and to be more vigilant and to make timely compliance of the notice issued by Assessing Officer. With these directions, the grounds of appeal raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 10/01/2025.

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

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

सूरत / Surat Dated: 10/01/2025

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 आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय आधिकरण, सूरत