



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT**  
**BEFORE DR. ARJUN LAL SAINI, AM.**

**&**

**DINESH MOHAN SINHA, JM**

**आयकर अपील सं./ITA No. 23/RJT/2024**

**(निर्धारण वर्ष / Assessment Year: (2015-16))**

**(Hybrid Hearing)**

Assistant Commissioner Of Income Tax, Circle – 1(1), Room No. 502, Aayakar Bhavan, Race Course Ring Road, Rajkot – 360001 Gujarat	<b>Vs.</b>	Khodidas Ganeshbhai Sakariya Street No. 2, “Bhumi Krupa”, University Road, Bombay Housing Society, Rajkot - 360005 Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AIAPP6533D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri Sanjay Punglia, Ld. CIT (DR)

Respondent by : Shri Mehul Ranpura, Ld. AR

**Date of Hearing : 04 /11 /2024**

**Date of Pronouncement : 03 / 02 /2025**

**आदेश / ORDER**

**PER DINESH MOHAN SINHA, JM:**

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”] vide order dated 10.11.2023, which in turn assessment order passed u/s. 144 r.w.s. 263 vide order dated 30.03.2022 by Assessment Unit, Income Tax Department / Assessing Officer of the Income Tax Act, 1961 (in short “the Act”)

2. Grounds of appeal raised by the Revenue are as follows:

1) *The Learned CIT(A) has erred in law and on facts in quashing order u/s. 144 r.w.s. 263 of the Act dated 30.03.2022 when departmental appeal against the order of the*



*Hon'ble ITAT, Rajkot in ITA No. 95/Rjt/2021 is against with Hon'ble High Court of Gujarat.*

3. Facts of the case enumerated by appellant is Column 11 of Form 35 are reproduced as under:-

1. The appellant, an individual, is assessed to tax by the Assistant Commissioner of Income-tax, Circle-1(1), Rajkot (hereinafter referred to as the "AO"). During the year under consideration, he has derived capital gain sale of property and income from agriculture activities. Apart from that he has also derived income from other source i.e. interest income etc. The Return of income for the assessment year under consideration was filed on 24.09.2015 declaring the total income at Rs. 45,43,200/-

2. During the year under consideration, the appellant has sold an agriculture land situated at Survey No.11/1/p3, Raiya Village. Dist. Rajkot for sale consideration of Rs. 10,92,69,000/ The appellant has after claiming index cost of acquisition of Rs. 9,19,99,641/- and exemption u/s.54 B of Act of Rs. 1,28,57,670/- offered long term capital gain of Rs. 44,11,688/-

3. The assessment in case of appellant was originally finalized vide order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "Act") dated 18.09.2017 accepting the returned income as such. During the course of assessment proceeding u/s.143(3) of the Act the appellant has furnished necessary documents in support of the claim of index cost of acquisition and exemption claimed u/s.54B of the Act which Inter alia Includes copy of sale deed, purchase deed, valuation report and purchase of investment made in now agriculture land etc. The AO after verification of all the details/evidence furnished before him finalized the assessment.

4. However, subsequently, the Pr. Commissioner of Income-tax-1, Rajkot has vide order u/s.263 of the Act dated 20.01.2021 alleged that order passed u/s. 143(3) of the Act dated 18.09.2017 is erroneous and prejudicial to the interest of revenue as the AO has not inquired/verified appellant's claim of index cost of acquisition Rs. 9,19,99,641/- and exemption claimed u/s. 54B of the Act of Rs. 1,28,57,670/- and thereby set aside the assessment order passed u/s.143(3) of the Act dated 23.11.2017 and directed the AO conduct independent inquiries for determination of market value of land as on 01.04.1981 by way of referring the matter to the



Valuation Cell as also by way of inquiries from the Revenue Authorities of the Jurisdictional area.

6. Being aggrieved by the order of Ld. PCIT-1, Rajkot dated 20.01.2021, the appellant has filed an appeal before the Hon'ble Income-tax Appellate Tribunal; Rajkot Bench, Rajkot on 23.06.2021 which is pending till date.

7. During the course of do-novo assessment proceeding appellant has in order to verify the claim of index cost of acquisition and exemption claimed u/s. 54B of the Act furnished the required details. However, the AO in total disregards to the submissions replies furnished with documentary evidence finalized the assessment vide order u/s. 143(3) r.w.s. 263 of the Act dated 30.03.2022 assessing the total income of the appellant at Rs. 10,90,15,110/- by estimating cost of acquisition of property at Rs.37,637/- as per valuation report of Assistant Valuation Officer. Thus, the AO recalculated long term capital gain at Rs.9,60,25,927/- as against the same calculated in return of income at Rs.44,11,688/- and thereby added difference LTCG of Rs. 9,16,14,239/- to the appellant's total income. The AO also disallowance exemption claimed u/s.54B of the Act of RS.1,28,57,670/- on the alleged ground of non-furnishing documentary evidences.

4. That the assessee filed an appeal before the Ld. CIT(A) against the order dated 30.03.2022. The appeal was disposed with following observation:

*"During the appeal has submitted as under: The Hon'ble ITAT, Rajkot Bench, Rajkot has vide order dated 15.02.2023 in ITA No. 95/Rjt/2021 quashed the order passed u/s. 263 of the Act, copy of which is herewith. attached*

*As the order passed u/s. 263 of the Act has been quashed, all subsequent proceedings become infructuous and non est as such the order under appeal does not survive and requires to be quashed therefore the same may kindly be quashed." Since the order u/s 263 has been quashed by ITAT the order u/s 143(3) r.w.s 263 does not survive and this order is quashed accordingly. Appeal is allowed.*

*In the result, the appeal is allowed.*

5. That the revenue has filed an appeal against the order dated 10.11.2023 of Ld. CIT(A). The department of Revenue is in appeal before us.



6. During the course of hearing, the Ld. CIT(DR) has submitted that the Revenue Department has challenged the legality and validity of order of this Tribunal dated 15.02.2023 (ITA No. 95/Rjt/2021) by moving of an appeal before the Hon'ble High Court of Gujarat, and the same is pending for disposal.

7. Ld. AR of the assessee relied on the judgment of Ld. CIT(A).

8. We have heard both the parties and perused the material available on record. There is no infirmity in the order of the Ld. CIT(A). We are agree with the decision of the Ld. CIT(A) dated 10.11.2023 and the appeal filed by the department is hereby dismissed.

In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 03 -02-2025**

**Sd/-**  
**(A. L. SAINI)**  
**ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 03/02/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot