

आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.923/RJT/2024
निर्धारणवर्ष /Assessment Year: 2015-16

Rasilaben Bharat Parmar Block NO.1252, Narayannagar Opp: Gulabnagar Jamnagar. PAN : CKVPP 5590 F	बनाम Vs.	The ITO, Ward-2(1) Jamnagar.
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sagar Shah, Id.AR
राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 28/01/2025
घोषणा की तारीख/Date of Pronouncement : 21/03/2025

ORDER

PER DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), vide order dated 08.11.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961, vide order dated 01.03.2022.

2. The ground of appeal raised by the assessee in this appeal, pertains to addition of Rs. 7,60,800/-, made by the assessing officer, and confirmed by the Id. CIT(A), on account of long-term capital gain.



3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and has filed the Return of income for the assessment year (A.Y.) 2015-16, on 28/02/2017, declaring total income of Rs.1,79,230/-, which was processed by the Department u/s 143(1) of the Income tax Act, 1961, on 23.03.2017. In this case, the information in respect of sale of immovable property (on the issue of section 50C of the Income-tax Act, 1961) was shared by ITO, Ward-1(1), Jamnagar vide letter dated 20.06.2017. The assessment proceeding u/s 147 under the Income Tax Act, 1961 (referred as "Act") was initiated after taking necessary approval from the competent authority and accordingly a notice u/s 148 was issued on 31/03/2021 by the then jurisdictional assessing officer, which was duly served upon the assessee. In response to notice u/s 148 of the Act, the assessee has filed return of income on 16.07.2021. The assessing officer has gone through the Income Tax Return and other details available on record and it was noticed by the assessing officer that the assessee was required to show-cause that Rs.7,60,800/- (Market value), as value of sale consideration of the immovable property sold by her, has been shown in her return of income or not for the assessment year 2015-16. In response, the assessee has not submitted reply, on time, before the assessing officer, therefore, assessing officer added back Rs.7,60,800/- (including amount of Rs.85,800/- u/s 50C of the Act), as Long Term capital gain (without indexation).

4. Aggrieved by the order of the assessing officer, the assessee, carried the matter in appeal, before the Id.CIT(A), who has just narrated the facts of the assessing officer and confirmed the action of the assessing officer. During the appellate proceedings, the assessee submitted detailed reply before the Id.CIT(A), along-with documentary evidences. The important part of the reply filed during the appellate proceedings, by the assessee, is reproduced below:



“There was no basis, or no material evidence brought on records for the calculation of market value of property i.e. Rs. 7,60,800/- provided by the Ld. assessing officer.

As stated by the Ld. assessing officer that the market value of the property amounts to Rs.7,60,800/-. There was no documentary evidence submitted by the Ld. assessing officer nor any valuation report from the Departmental Valuation Officer have been placed on records to support his contention of the market value of the property Rs. 7,60,800/-.

Based on the same, it is evident that the Ld assessing officer just received some information from other ITO and the Ld. assessing officer merely re-opened the case without any independent inquiry on the matter, which is bad in law.

The Ld. assessing officer added Rs 7,60,800/- to the income of the appellant, which contains the amount of Rs. 6,75,000/- already taxed vide the Return of Income, since the same is included in the clause No. 1-A-(iii)(c) of the Part A-P&L in the detailed ITR dated 23.02.2017, being the sales consideration of Rs. 6,75,000/- as per sales deed.

The amount of Rs. 15,25,000/- is showed in the Part A - P&L in the detailed ITR dated 23.02.2017, which includes the amount of Rs 6,75,000/- and the amount of Rs.8,50,000/- for the sale of the immovable properties respectively. Please find the copy of the ITR, Property Documents and Profit & Loss A/c attached herewith from page no. 07 to 92.

5. However, ld. CIT(A) ignored the above submission of the assessee and confirmed, the addition made by the assessing officer. Aggrieved by the order of the ld.CIT(A), the assessee is in further appeal before us.

6. Shri Sagar Shah, Learned Counsel for the assessee, vehemently argued that the amount which was added by the assessing officer, was already taxed in the subsequent years, therefore, the same amount should not be taxed in the assessment year under consideration. The ld.Counsel for the assessee submitted that the income has been offered by the assessee and adequate reply to this effect, has been submitted before the lower authorities. The ld. Counsel stated that the sales turnover displayed in the profit and loss account for the year to the tune of Rs. 15,25,000/-, has included Rs. 6,75,000/-. The addition made of Rs. 7,60,800/- by the assessing officer, has included Rs. 6,75,000/-, which is already



taxed under the head Profit or Gains from Business and Profession in return of income filed on 23.02.2017, u/s 139(1) of the Act. Despite of specifically mentioning the said fact, again and again, neither the assessing officer nor the CIT(A) have considered the above facts and made addition to the total income which leads to double taxation and hence required to be deleted.

7. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We find that assessing officer has not considered the fact that the sales consideration received from the property sold of Rs.6,75,000/- has already been included in the sales turnover of Rs. 15,25,000/-, and also, the fact that it is also offered for income during the year while filing the return u/s 139(1) of the Act, vide clause No.1-A-(iii)(c) of the Part A-Profit &Loss, in the detailed Income Tax Return, dated 23.02.2017. In spite of offering the income for tax, again addition is made u/s 50C of the Act which leads to double taxation of the same income of Rs. 6,75,000/-, and such an act, of the assessing officer is not valid. Moreover, the provisions of Section 50C of the Act can be invoked only in case of capital asset, however, in the instant case, the property in question is not capital asset but held as stock in trade for the assessee, thus, the addition made u/s 50C of the Act, is illegal and required to be deleted. Hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence this ground of the assessee is allowed.



9. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 21/03/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(DR.ARJUNLAL SAINI)
ACCOUNTANT MEMBER

(True Copy)

राजकोट /Rajkot

दिनांक/ Date: 21/03/2025

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot