



IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No. 1059/SRT/2024

(निर्धारणवर्ष / Assessment Year: (2012-13))

Anilbhai Desai 87, Brahman Faliya, Udhna Kharwasa Road, Dindoli, Surat – 394210	Vs.	Income Tax Officer, Ward – 2(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: GCBPD0303J		
(Appellant)		(Respondent)

आयकर अपीलसं./ITA No. 1060/SRT/2024

(निर्धारण वर्ष / Assessment Year: (2012-13))

Dakshaben Ajitbhai Desai 87, Brahman Faliyu, Dindoli,Choryasi. Surat – 394 210	Vs.	Income Tax Officer, Ward – 2(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AYSPD 0711F		
(Appellant)		(Respondent)

आयकरअपीलसं./ITA No. 1061/SRT/2024

(निर्धारणवर्ष / Assessment Year: (2012-13))

Binalben Pinkeshbhai Naik 132/2 Zaveri Faliya, Kachhori Gandevi Navsari – 396445	Vs.	Income Tax Officer, Ward –1, Navsari
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFTPN 6207 L		
(Appellant)		(Respondent)

Appellant by

: Shri Sapnesh R Sheth, CA

Respondent by

: Shri Ajay Uke, Ld. Sr. DR

Date of Hearing

: 05/08/2025

Date of Pronouncement

: 18/08/2025



आदेश / ORDER

PER Dr. DINESH MOHAN SINHA, JM:

Captioned three appeals filed by the different assesses, pertaining to same Assessment Year (AY) 2012-13, are directed against the separate orders passed by the Learned Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, [(in short “Ld.CIT(A)/NFAC”)] which in turn arises out of an assessment order passed by Income Tax Department / Assessing Officer under section (u/s.) 144 r.w.s. 147 of the Income Tax Act, 1961 (in short “the Act”), vide orders dated 22.10.2024.

2. Since, the three appeals filed by the different assessee, for similar issues are involved related to different assessee, these three appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. We take lead case in ITA 1060/Srt/2024 for AY 2012-13 adjudicating the *en-masse*.

3. Grounds of appeal (ITA 1060/Srt/2024 for AY 2012-13) raised by the assessee are as followed:

“On the facts and in the circumstances of the case, as well as the applicable law, the learned Assessing Officer has erred in reopening the assessment by issuing notice under section 148 of the Income Tax Act, 1961.

On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has also erred, both factually and legally, in passing an ex-parte order under section 144 of the Income Tax Act, 1961.

The learned Assessing Officer has incorrectly added a sum of 12,39,000/- as long-term capital gain, based on the facts and legal provisions of the case.

On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has also made an error in invoking section 50C of the Act without referring the matter to the Department's Valuation Officer to determine the fair market value of the property sold.

On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has failed to account for the indexed cost of acquisition



while calculating the income from long-term capital gains, which is erroneous in law and fact.

That the order of the ld. Comm. Of Income Tax is against the law, facts and evidence of the case.

The appellant reserves the right to modify, add, or withdraw any grounds of appeal before or during the course of the hearing.”

4. Brief facts of the case that the assessee has not filed her return of income for A.Y. 2012-13 as the total income of assessee did not exceed the basic exemption limit.

a. Issue of notice u/s 148 of the Act:-

It is observed by assessing officer that assessee has jointly sold an immovable property situated at Survey No. 61/1, Block No. 94, T.P. No 69, Dindoli of Ra 99,12,000/-during the year under consideration, but capital gain on transfer of the capital asset is not disclosed in return of income. However, as assessee has not filed return of income for the year, assessing officer stated that there were reasons to believe that income has escaped assessment and he accordingly issue notice u/s 148 of the Act. In this regard it is submitted that mere fact relating to sale of immovable property of Rs. 99,12,000/- cannot be the ground for arriving at the belief that any income has escaped assessment. This is so because assessee's share in above property is only 12.5% & after allowing deduction of cost of acquisition the income does not exceed basic exemption limit & therefore, no inference as to escapement of income can be drawn merely on the basis of non filing of return of income. Unless and until there are cogent evidence on record which indicates that there is escapement of income, no notice u/s 148 of the Act can be issued because it is a settled law that notice u/s 148 of the Act cannot be issued for making roving inquiry.

b. Ex-parte order u/s 144 of the Act:-



During the course of assessment proceedings, the assessing officer observed that assessee has not complied with various notices issued upon her during the course of assessment proceedings. Assessing officer contended that assessee did not comply with these notices and on this basis he proceeded to finalize the assessment proceedings by passing ex-parte order u/s 144 of the I.T Act. In this regard it is submitted that assessee is an ordinary person and not well versed with income tax matters. Hence, when she was in receipt of notices issued by assessing officer, she was unaware of the procedure to be followed by her. Therefore, she could not comply with the said notices. Thus, the assessing officer is not justified in passing order u/s 144 of the act without giving reasonable opportunity of being heard to the assessee.

c. Addition of Rs. 12,39,000/-:-

During the course of assessment proceedings, assessing officer observed that assessee has sold property along with other seven co-owners at Survey Number 61/1, Block No.94, T.P. Number 69, Dindoli, Surat for sale consideration of Rs. 29,00,000/-. Assessing officer further observed that Jantri value of property comes to Rs. 99,12,000/-. Show cause notice dated 18.10.2019 was issued asking assessee as to why amount of Rs. 12,39,000/- should not be added in the total income of assessee on account of long term capital gain on sale of impugned property. However, as assessee was unable to reply due to reasons stated above, assessing officer made huge addition of Rs. 12,39,000/- to income of assessee. In this regard, it is submitted that the actual sale of land was made in year 2002 and also possession was duly transferred in that year only so the same should have been taxed in relevant assessment year and not in the A.Y. 2012-13 merely on the ground that sale deed was executed in A.Y. 2012-13. Hence, no addition is required to be made during the year under consideration.

d. No deduction of indexed cost of acquisition:-



Without prejudice to above, it is submitted that assessing officer has erred in making addition of full Jantri value of Rs. 12,39,000/- without giving deduction of indexed cost of acquisition. The impugned land is an ancestral property hence, assessing officer ought to have allowed deduction of indexed cost of acquisition based on FMV of impugned land as on 01.04.1981.

e. Reference to DVO:-

In this regards, it is relevant to mention here that assessing officer failed to provide any evidence on record indicating that assessee is in receipt of any extra consideration i.e. over and above the amount mentioned in sale deed. It is further submitted that value of property is decided by buyer and seller and the same is decided based on various factors which differs from one property to another. Also, there are various negative factors associated with it. Moreover, in case of such huge difference in valuation, assessing officer ought to have made reference to DVO for determining fair market value of the impugned land as on date of sale, but he failed to do so. Hence, in absence of the valuation report of DVO, the assessing officer is not justified in making addition on the basis of Jantri value of property. Thus, addition made by assessing officer is required to be deleted or reference may kindly be made to DVO for determining the value of property sold by assessee.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). The Ld. CIT(A) partly allowed the case with following observation:

“5.16 Vide around no. 5. the appellant has contended that the AO had not given her the indexation benefit. In this regard it was observed that the AO considered the entire sale receipts as undisclosed income of the appellant, primarily on account of the fact that and did not file Return or made available the computation of income. The AO was constrained to add the entire receipts as undisclosed income due to non-availability of any submission before him. The income arising out of transfer of capital asset should necessarily be charged under the head "Capital Gains as per provisions of Section 45 of the Act. The mode of



computation of Capital Gains is given in Section 48 of the Act, according to which the cost of acquisition of asset is to be reduced from the Sales consideration. In case of transfer of a Long-term capital asset, the cost of acquisition is to be replaced by indexed cost of acquisition. Accordingly, as per the provisions of Section 45 of the Act, the sale proceeds from sale of land need to be characterised as capital gains and as per the provisions of Section 48 of the Act, the cost of acquisition is to be deducted from the sale consideration. Hence, the AO is not correct in treating the entire receipts as undisclosed income of the appellant. Accordingly, the AO is directed to allow the cost of acquisition (or indexed cost of acquisition, whatever be the case). The appellant is required to produce before the AO the proof of cost of acquisition of the said property. If the appellant does not appear before the AO or does not produce the necessary details, the AO may take the decision based on material available on record and as per law. Ground no. 5 is thereby allowed.

5.1.7 The appellant has not added, altered, deleted any or all of the above grounds of appeal during the appellate proceedings. Hence ground no. 6 is dismissed.

6. In the result, the appeal is partly allowed”

6. That the assessee filed an appeal against the impugned order of the Ld. CIT(A) dated 22.10.2024 before us.

7. During the course of argument, the Ld. AR of the assessee made submission before us.

8. On the other hand, Ld. DR for the revenue, relied upon the order of the Ld. CIT(A) and on the prayer of the Ld. AR.

9. We have heard both the parties and perused the material available on record and also perused the order of Ld. CIT(A) and paper books submitted by Ld. AR. We note that several notices have been issued by the Ld. CIT(A), but there was no compliance to the notice by the assessee, because the CA of the assessee did not inform to the assessee about notices. The Ld. CIT(A) disposed off the appeal by an ex-parte order without adjudication on merit. Thereafter, we are of the view that in the interest of justice, and considered the fact and circumstances of the case, we consider that an opportunity should be given to the assessee to present his case before the



Lower Authority. We remand the matter back to the file of Ld. CIT(A) for fresh adjudication on merit after giving due opportunity to the assessee of being heard.

ITA 1059/Srt/2025 & ITA 1061/Srt/2025 for AY 2012-13:

10. We have to adjudicate the appeals (ITA 1059 & 1061/Srt/2025 for AY-2012-13). That these two are appeals are disposed off with the above terms.

11. In the result, these three appeals (ITA 1059 & 1060 & 1061/Srt/2025 for AY 2012-13) of the assessee are allowed for statistical purposes.

**Order pronounced under proviso to Rule 34 of the ITAT Rules,
1963 on 18/08/2025.**

**Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER**

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

Surat

दिनांक/ Date: 18/08/2025

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot