

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 610/SRT/2025
Assessment Year: 2009-2010**

Kaminiben Gemalshinh Thakor,
B-11, Sun Light Complex, B/h
Bhulka Bhavan, Anand Mahal
Road,, Adajan, Surat-395009.

PAN NO. ACLPT 5623 P
Appellant

Vs.

ITO Ward 1(3)(7),
Room No. 306, Income Tax Office,
Anavil Business Centre, Adajan
Hazira Road, Adajan,
Surat-395007.

Respondent

Assessee by : None for Assessee
Revenue by : Mr. J.K. Chandnani, Sr. Dr

Date of Hearing : 06/10/2025
Date of pronouncement : 07/10/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30.04.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-2010, raising following grounds:

- Ld. CIT(A), NFAC, Delhi has erred in law and on fact to upheld AO's addition of Rs. 49,71,170/- ignoring the fact that the appellant has received not even her investment made at the time of purchase of property (She received Rs. 5,50,000/- as against her investment of Rs. 6,01,000/-) irrespective of documentary value or SAV value*



and balance sale consideration was received by the other co-owner of the property.

2. *Ld. CIT(A), NFAC, Delhi has erred in law and on fact to uphold AO's action to tax LTCG in A.Y. 2009-10 ignoring evidences, which suggests that transaction of sale was completed in A.Y. 2008-09 and appellant has also considered Income of long term loss in A.Y. 2008-09.*

2. Briefly stated, the facts of the case are that the assessee, an individual, did not file a regular return of income for the assessment year under consideration. Based on specific information that the assessee had sold an immovable property for a sale consideration lower than the value adopted for stamp duty purposes, the Assessing Officer recorded reasons to believe that income chargeable to tax had escaped assessment within the meaning of section 147 of the Income-tax Act, 1961 (in short “the Act”). Consequently, a notice under section 148 of the Act was issued on 30.03.2016.

2.1 In response, the assessee filed a return of income on 31.07.2016 declaring a total income of ₹2,82,450/-. During the reassessment proceedings, the Assessing Officer noticed that the assessee had not declared the capital gain arising from the sale of a property, and further that the sale consideration declared in respect of another property was below the value adopted by the stamp valuation authority. The Assessing Officer, therefore, treated the entire sale consideration amounting to ₹49,71,170/- as undisclosed long-term capital gain and added the same to the total income of the assessee alongwith addition under section 50C in respect of another property.



2.2 Aggrieved, the assessee preferred an appeal before the Ld. Commissioner of Income-tax (Appeals). However, the assessee failed to file any documentary evidence either during the assessment or the appellate proceedings to substantiate the claim or to rebut the findings of the Assessing Officer. The Ld. CIT(A), therefore, dismissed the appeal with the following observations:

“5.3. The above submissions have been made by the appellant in 2018 without any supporting documentary evidences. Thereafter, during the appellate proceeding, continued for almost 7 years, the appellant did not file any reply despite issuance of several notices u/s 250 of the Act from time to time. During the assessment proceedings also the AO categorically asked the appellant to furnish the documentary evidences demonstrating that the Long Term Capital Gain accrued on the sale of above mentioned plots of land was actually offered by the appellant to tax in the A.Y. 2008-09. During the appellate proceedings also the appellant has furnished only above produced written submission without any supporting evidences. The impugned additions made by the AO on the basis of information received from the Registrar Office. The appellant could not controvert the above information gathered by the AO. In absence of any documentary evidences the contention of the appellant cannot be accepted. Therefore, I am of the considered opinion that the appellant has nothing to say against the addition made by the AO. Thus, addition of Rs.49,71,170/- made by the AO under the head Long Term Capital Gain on account of sale of properties by the appellant is hereby sustained and upheld. Accordingly, ground no. 1 and 2 of the appeal are dismissed and not allowed.”

3. Before us, despite due service of notice, neither anyone appeared on behalf of the assessee nor was any request for adjournment filed. We, therefore, formed the view that the assessee was not interested in pursuing the appeal and proceeded to dispose of the same **ex parte**, after hearing the arguments advanced by the Ld. Departmental Representative and on perusal of the written submission of the assessee and other material available on record.



4. We have given our thoughtful consideration to the rival contentions and perused the records. The principal contention of the assessee, as advanced through written submissions, is that certain evidences filed in support of the claim were not duly considered by the Ld. CIT(A), and therefore, an opportunity may be afforded to adduce such evidences once again.

4.1 From the record, it is manifest that the assessee remained non-compliant during both the assessment as well as the appellate stages. No explanation was furnished as to why the sale consideration in one case was declared below the stamp duty valuation or why the sale of another property was not disclosed for computation of capital gains. Even before us, no cogent material has been brought on record to demonstrate the bona fides of the omission or to justify the lower declaration of sale consideration.

4.2 Nevertheless, in the interest of substantial justice, and keeping in view the well-settled principle that technicalities should not come in the way of adjudication on merits, we are of the considered view that one final opportunity deserves to be granted to the assessee to substantiate the claim with appropriate evidence. At the same time, we cannot ignore the consistent non-cooperation exhibited by the assessee before the lower authorities. To balance equity and discipline in proceedings before lower authorities, we deem it appropriate to impose a nominal cost of Rs. 5,000/- by the assessee, to be deposited in



the Prime Minister's Relief Fund, as a token for past non-compliance.

4.3 Accordingly, we set aside the impugned order of the Ld. CIT(A) and restore the matter to the file of the Assessing Officer with a direction to re-adjudicate the issue afresh, in accordance with law, after affording due opportunity of hearing to the assessee. The assessee shall file all relevant evidences within 15 days of receipt of the first notice from the Assessing Officer in the consequential proceedings. The assessing officer shall ensure that cost of ₹5,000/- is deposited by the assessee as directed. The grounds No. 1 and 2 of the appeal of the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 07/10/2025.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Surat;
Dated: 07/10/2025
Rahul Sharma, Sr. P.S. (on Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

//True Copy//

BY ORDER,



(Assistant Registrar)
ITAT, Surat