

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER And
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1753/Ahd/2014
(निर्धारण वर्ष / Assessment Year : 2008-09)

Shri Vinodbhai Naranbhai Vaghani A-4-201 Spring Park Ramdevnagar Road Satellite Ahmedabad-380 005	बनाम/ Vs.	The ITO Ward-7(2) 502/B, Pratyakshar Bhavan Nr.Panjara Pole Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEQPV 7779 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Mr. N.C. Amin, AR
प्रत्यर्थी की ओर से/Respondent by :	Mr. Prasoon Kabra, Sr.DR

सुनवाई की तारीख / Date of Hearing	02/03/2017
घोषणा की तारीख/Date of Pronouncement	08/ 03/2017

आदेश / O R D E R

PER PRADIP KUMAR KEDIA, AM:

The captioned appeal by the Assessee is directed against the order of the Commissioner of Income Tax(Appeals)-XIV, Ahmedabad [CIT(A) in short] dated 26/03/2014 for the Assessment Year (AY) 2008-09.

2. The assessee raised various grounds assailing the order of the CIT(A) which read as under:-

1. That the learned A.O. has passed assessment order U/s 144 on 30.11.2010 assessing the income at Rs.32,37,070/- as against returned income of Rs.84,000/- and in appeal the learned CIT(A) has determined income of the appellant at Rs.5,45,000/- by passing appellate order dated 26.3.2014.

2. On the facts and circumstances of the case of the appellant, the cash deposited of Rs.2,13,000/- in Bank account with IDBI Bank Ltd., is not by the appellant and considering the materials available on record, the additions deserves to be deleted.

3. That the learned CIT(A) has further erred in making an addition of Rs.1,75,000/- being amount of cash balance merely considering the same shown in return of income for the assessment year under consideration but not appreciated the facts that the appellant is assessed to income-tax since last many years and aged about 41 years and considering the same, the additions of Rs.1,75,000/- being cash on hand deserves to be deleted.

4. That the learned CIT(A) has further erred in estimating household expenditure of Rs.10,000/- p.m. without considering that the appellant's status, living standard and family members are residing at Ahmedabad with his elder brother Shri Mohanbhai Vaghani who is a retired Government employee and the appellant is residing with his brother at Surat and considering these facts also, the household expenditure estimated by learned A.O. at Rs.1,20,000/- per year without any base deserves to be reduced to a very reasonable amount.

5. Having regard to the facts and circumstances of the case of the appellant, the short term capital gain of Rs.1,22,199/- assessed by learned CIT(A) instead of Rs.1,12,199/- worked out on page 11 of the appellate order and further the same is required to be adjusted against other losses incurred by the appellant during the year under consideration as per the provisions of the Act.

6. Having regard to the peculiar facts and circumstances of the case of the appellant, the learned CIT(A) assessed income at Rs.5,45,000/- deserves to be modified

7. Your appellant craves leave to add, alter or amend any of the grounds till the appeal is finally heard and decided.

3. At the outset, Ld.AR for the assessee Mr.N.C. Amin submitted that all these grounds emanate on account of enhancement action by the CIT(A) in terms of his co-terminus power. The Ld.AR further stated in elaboration that none of these issues are arising from the assessment order. The Ld.AR contended that no enhancement notice was issued and served on the assessee by the CIT(A) while invoking its power under s.251(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The Ld.AR accordingly submitted that the action of the CIT(A) grossly offends the principle of natural justice as spelt in section 251(2) of the Act.

4. We straight away agree with the contentions raised on behalf of the assessee. Section 251(2) provides that the Commissioner (Appeal) shall not embark on enhancement of an assessment unless the assessee has been granted a reasonable opportunity of showing cause against such enhancement. We find no reference to the issuance of enhancement notice in the appellate order of the CIT(A). Ostensibly, powers conferred under s.251(1)(a) of the Act has been exercised without following the due procedure mandated in the section itself. The action of enhancement

by the CIT(A) is thus unsustainable in law and is therefore required to be set aside. The matter is therefore restored back to the file of the CIT(A) for fresh determination after giving proper opportunity to the assessee in terms of section 251(2) of the Act.

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

This Order pronounced in Open Court on 08/03/2017

Sd/-

(एस.एस.गोदारा)
न्यायिक सदस्य
(S.S. GODARA)
JUDICIAL MEMBER
Ahmedabad; Dated 08/03/2017

Sd/-

(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XIV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad