

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 324/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2011-12)

Gajiben Mahotji Thakor C/o Ketan H. Shah, Advocate 512, Times Square –I, Opp. Ram Baug Bungalow, Thaltej Shilaj Road, Thaltej, Ahmedabad, Gujarat – 380059	बनाम/ Vs.	The Income Tax Officer Ward 3(3)(8), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ANVPT0999F		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Ketan Shah, Advocate & Shri Aman Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Abhijit, Sr.DR

Date of Hearing	13/10/2025
Date of Pronouncement	30 /10/2025

(आदेश)/ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi dated 28.03.2023 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2011-12.

2. The grounds of appeal raised by the assessee read as under:

- “1. In making addition of Rs. 1,50,00,000/- to the returned income.*
- 2. That the Lower Authority has erred in not appreciating the facts that there is no such provision applicable u/s 45 r.w.s. 2(14) to the transaction entered into and therefore, there is no justification in making any addition.*
- 3. That the Lower Authority has also erred in not appreciating the facts that, as contended, the provision of sec. 148, 147 as well as 151 has not been complied and therefore, on a legal ground the proceeding is bad in law and void.*
- 4. That the Lower Authority has also erred in not appreciating the facts that upon identical facts the co-owner's case has been accepted and therefore, there is no justification for making addition in the case of the present appellant.*
- 5. In not appreciating the facts that, as per appeal order page 3 para 9, earlier there was inquiry made and also co-owner's case has been accepted and therefore, there is no justification for confirming the addition.*
- 6. In not appreciating the fact that, there is no such original copy of the reason recorded provided nor the copy of the approval u/s 151 as contended in para 11 and 12 in the appeal order and therefore, the proceeding is bad in law and void.*
- 7. That it is prayed that even otherwise the notice u/s 148 dated 29-03-2018 has not been served within time limit of 6 years and therefore, the proceeding is bad in law and void.*
- 8. That the finding given in appeal order page 6 para 5.1, in reference to the provision of 151 and 148 is contrary to the fact and perverse finding and therefore, proceeding is bad in law and void.*
- 9. That even otherwise there is no such 'transfer' and therefore, the provision of sec. 45 is not applicable to the facts of the case.”*

3. Submission in writing were also filed before us dated 10.10.2023.

4. The grounds raised by the assessee are argumentative. Arguments in writing were also filed before us. Since Ld.Counsel for the assessee intended to orally argue the case before us, it was made abundantly clear to him that only the arguments made orally would be dealt with by us. The remaining contentions/arguments made out in the grounds of appeal/written submissions would be treated as not raised before us and accordingly not dealt with by us.

5. As is evident from the grounds raised before us, the assessee has raised both legal grounds and also grounds on merits of the addition made. The arguments made on the legal ground, challenge the assumption of jurisdiction by the AO to reopen the case of the assessee u/s.147 of the Act and also challenge the validity of the assessment order passed on the ground that the AO passed the order without valid jurisdiction. To further clarify the same, his arguments were to the effect that:

i. the jurisdiction assumed by the AO to reopen the case of the assessee was bad in law for the reason that:

(a) complete copy of reasons were not provided to the assessee and only an abstract of the same was provided during assessment proceedings; &

(b) that even otherwise copy of the reasons mentioned no date therein.

ii. the notice issued u/s.148 of the Act, as also the notice issued u/s.143(2) of the Act ,to scrutinize the return filed by the assessee

in response to notice u/s.148 of the Act ,was issued by the ITO, Ward-3(3)(2), while the order u/s.147 of the Act was passed by the ITO, Ward 3(3)(8) without issuing a fresh notice u/s.143(2) of the Act and thus without valid jurisdiction

6. Having said so, we shall now deal with all the arguments as above made by the Ld. Counsel for the assessee before us.

7. On the aspect of the jurisdiction to reopen the case of the assessee assumed by the AO being bad in law on account of complete copy of reasons not being provided to the assessee and only an abstract of the same being given to him, the Ld. Counsel for the assessee was asked at Bar to produce before us the copy of reasons given to the assessee which as per him were only an abstract of the reasons recorded by the AO. Ld. Counsel for the assessee was unable to produce the same before us. In the light of the same, since, the Ld. Counsel for the assessee has not been able to substantiate on facts itself the pleadings taken by him before us, we do not find any merit in the contentions of the Ld. Counsel for the assessee that the AO had not provided complete copy of reasons to the assessee. His contention, therefore, of the jurisdiction assumed by the AO to reopen the case of the assessee being bad in law on account of same, has no legs to stand on and is accordingly rejected.

8. The other argument raised by the Ld. Counsel for the assessee before us was that the reasons were undated and,

therefore, the jurisdiction assumed by the AO basis such undated reasons recorded by him was not valid. At the outset itself, this argument of the Ld. Counsel for the assessee needs to be rejected because his plea before us, and also before the AO and the Ld. CIT(A), was that he had not been given the copy of reasons at all by the AO or had been given an incomplete or abstract copy of reasons. When the claim of the assessee is that he had not been given any copy of reasons or had been given only an abstract of the reasons how is it possible now for him to come up and state before us that the order was undated. Be that so, it transpires that during the course of hearing before the ITAT, the Ld. DR was directed to produce the copy of reasons and it is based on the said copy probably that the Ld. Counsel for the assessee has raised this ground before us. In fact, during the course of hearing before us, the Ld. Counsel for the assessee referred to the copy supplied by the Ld. DR vide his letter dated 12.09.2024 for stating that the reasons were undated. We have gone through the entire documents, which were filed by the Ld. DR vide the said letter. It contains the proposal for reopening the assessment u/s.147 of the Act which is dated 16th March, 2018 approved by the PCIT on 25th March, 2018 and the same reasons recorded by the AO on 16th march, 2018 for approval by the PCIT are further recorded separately as reasons for reopening the case of the assessee. What transpires from the same is that the AO had recorded his reasons on 16th March, 2018, which was approved by the PCIT on the 25th March, 2018. Therefore, the reasons for reopening were not

undated at all. The argument of the Ld. Counsel for the assessee to this effect is also found to be factually incorrect and his challenge to the valid assumption of jurisdiction by the AO u/s.148 of the Act, for the aforementioned reason, is rejected as based on incorrect facts.

9. The next argument of the Ld. Counsel for the assessee is to the effect that the AO who had issued notice u/s.148 of the Act and u/s.143(2) of the Act was different from one who ultimately passed order u/s.147 of the Act. The AO who assumed jurisdiction by issuing notice u/s.148 and 143(2) of the Act was the ITO, Ward – 3(3)(2), while the AO who had passed the order was ITO, Ward – 3(3)(8). His contention was that the case of the assessee was transferred vide order passed u/s.127 of the Act by the CIT from the ITO, Ward – 3(3)(2) to ITO, Ward – 2(3)(8) that on transfer to ITO, Ward – 3(3)(8). That the succeeding ITO ought to have issued notice u/s.143(2) of the Act again so as to assume a valid jurisdiction to pass order u/s.147 of the Act. He relied upon the decision of the ITAT in the case of Veerendra Gurulingappa Mangalge vs. ITO in ITA No.695/Pun/2019, dated 06.08.2019 for the proposition that Officer who ultimately completed the assessment on transfer of case should issue notice u/s.143(2) of the Act to the assessee again for framing a valid assessment.

10. In the facts of the present case, the case was assigned to ITO, Ward – 3(3)(8) from ITO, Ward – 3(3)(2) vide order passed u/s.127(1) of the Act. This fact is recorded in para 5.2 of the

CIT(A)'s order. Section 127 of the Act deals with power to transfer cases. The said Section gives the power to transfer cases from one AO to another AO within the same jurisdiction of an authority as per conditions specified in the said Section. The Section provides that the assessee be given opportunity of hearing before transfer of case so happens within the same jurisdiction. Sub-Section (3), however, states that where the transfer is from an AO to another AO situated in the same city, location or place, there is no need for any opportunity to be given to the assessee before transferring the cases to such AO situated in the same city, locality or place. Sub-section (4) of Section 127 of the Act further states that transfer of cases so made u/s.127 of the Act may be made at any stage of the proceedings and shall not render necessary reissue of any notice already issued by the AO from whom the case is transferred. The provisions of Section 127 of the Act to this effect are reproduced hereunder for clarity:

“Power to transfer cases.

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director

General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

- (a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;*
- (b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.*

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this

Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.”

11. It is evident therefore, that in terms of provisions of Section 127 of the Act where cases are transferred between AOs in the same city, location or place, there is no requirement of providing assessee any opportunity of hearing before such transfer take place and the succeeding AO can resume the proceedings from where the earlier AO had left off without the requirement of reissuing any notice by the succeeding AO.

12. In the facts of the present case, Ld. Counsel for the assessee fairly admitted before us that both the AOs from whom the case was transferred and to whom the case was transferred, were located in the same city. Therefore, there was no requirement in law of providing the assessee any opportunity of hearing before such transfer took place. Further, Section 127 of the Act as noted above clearly states that succeeding AO is not required to re-issue any notice to the assessee. The argument of the Ld. Counsel for the assessee therefore that succeeding AO in the present case i.e. ITO, Ward-3(3)(8) could have validly assumed jurisdiction to assess the case of the assessee only on re-issuing notice u/s.143(2) of the Act which had already been issued by the earlier AO i.e. ITO, Ward 3(3)(2), is clearly against the provisions of law. In the light of the same, there is no merit in the contention of the Ld. Counsel for the assessee that succeeding AO in the present case

i.e. ITO, Ward-3(3)(8) had not assumed valid jurisdiction to frame assessment u/s.147 of the Act, since he failed to re-issue notice u/s.143(2) of the Act.

No other arguments challenging the validity of the assessment framed in the present case were made before us. Therefore, all grounds raised by the assessee vis-à-vis the legal challenge stands rejected.

13. Coming to the merits of the case, the addition was made in the hands of the assessee on account of the assessee having not returned to tax Capital gains earned on sale of immovable property. The reopening was resorted to by the AO on the basis of information in his possession that the assessee had sold immovable property alongwith other co-owners for a total sale consideration of Rs.50 Crores. The assessee's portion/part in the said transaction was Rs.1.50 Crores. The AO also had information that the impugned land was converted from agricultural to non-agricultural immediately before its sale. He, therefore, was of the belief that the assessee had earned taxable capital gains on the sale of land and having not returned to tax the said capital gains, he formed the belief of escapement of income of the assessee to the extent of sale consideration received by the assessee.

14. The argument of the Ld. Counsel for the assessee on the merits of the case was that:

i. in the case of two other co-owners no reopening was resorted to by the department. His case was that the department in effect and in principle had accepted that no capital gains was taxable on account of the impugned transaction in the hands of the said two co-owners and, therefore, could not have taken a contrary stand in the case of the assessee. However, during the course of hearing before us, it transpired that in the case of another co-owner identical addition was made by reopening the case. In the light of the above, we find no merit in the contention of the Ld. Counsel for the assessee that the department having accepted no taxable capital gains to have accrued in the impugned transaction. It cannot have taken a contrary stand in the hands of the assessee.

15. Moreover, merely because the case of two other co-owners were not reopened by the department does not mean that the department had accepted no taxable capital gains to accrue on account of impugned transaction. The same could have been the position only if the department would have taken this stand after examining the facts of the case. However, the fact of the matter is that in the case of two co-owners, the case was neither reopened nor assessed by the AO. Therefore, the plea of the assessee that the department had accepted the capital gains in the impugned transaction be non-taxable in the hands of two co-owners, we hold, has no merits and reject the same. Even otherwise, the Ld. Counsel for the assessee himself has pointed out that in the case of another co-owner, the Department found the capital gains to the

extent of his share in the sale consideration to be identically taxable as in the case of the assessee. Therefore, it cannot be said that the department has accepted no capital gains to be taxed in the impugned transaction. This argument of the Ld. Counsel for the assessee is accordingly, rejected.

16. Other contention raised before us was that in the hands of one of the co-owners, the assessee had been given the benefit of cost of acquisition and indexation thereof while computing the capital gains earned on the sale of land. The plea of the Ld. Counsel for the assessee before us was that the present assessee should also be given the benefit of indexed cost of acquisition while computing capital gains. However, we may add that no evidence with regard to the cost incurred by the assessee for acquiring the impugned land was filed before us.

17. Ld. DR further pointed out that the assessee had never raised this plea either during assessment or even in the appellate proceedings and was raising it for the first time before us. That too without filing any evidence to corroborate its claim of having incurred any cost of acquisition on asset. The Ld. Counsel for the assessee was pointed out at bar that as to how a factual plea of the assessee be entertained at this stage that too after a lapse of almost seven years since the assessment was first framed and approximately 13 years since the impugned assessment year, more particularly when the assessee has not come up with any evidence regarding the cost incurred by it to acquire the impugned asset

despite the lapse of so many years. Ld. Counsel for the assessee except for pleading that the other co-owners had also been given the benefit of indexed cost of acquisition has nothing else to say. Considering all of the above, we are of the view that the assessee has not made out any case for admitting this contention that he should be granted the benefit of the cost of acquisition of the asset

This plea of the assessee is therefore, rejected.

All arguments made by the Ld.Counsel for the assessee are rejected.

18. In the result, appeal filed by the assessee is dismissed.

This Order pronounced on 30 /10/2025
--

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30/10/2025

S. K. SINHA/vk