

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 1362/Ahd/2024
(Assessment Year: 2020-21)

Yogesh Himatlal Thakker, 70, Stadium House, Stadium Six Roads, Navrangpura, Ahmedabad-380009 [PAN : AAVPT 0060 C]	Vs.	The Income-Tax Officer, Ward-4(1)(1), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Shri Mehul Thakker, CA
Respondent by:	Shri Yogesh Mishra, Sr DR

Date of Hearing	07.01.2025
Date of Pronouncement	11.02.2025

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

This appeal has been filed by the Assessee against the order passed by the Ld. ADDL/JCIT (A), Aurangabad (hereinafter referred to as "CIT(A)" for short) dated 15.05.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2020-21

2. The grounds of appeal raised by the Assessee are as follows:-

1 The learned CIT (A) has erred both in law and on facts of the case in confirming the addition of Rs. 28,03,587/- as income under the head income from business by making a wrong adjustment.

2. The lower authorities have passed the orders without properly appreciating the facts. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed. "

3. The brief facts of the case are that the assessee had filed return of income on 25.01.2021 declaring total income of Rs. 1,03,87,440/- . During

- 2-

the year under consideration, the assessee had earned Long Term Capital Gain on sale of property. As per the Profit and Loss account, the long-term gain was of Rs 53,01,700/-. As the gain is to be included under the head Capital Gain, the assessee had reduced Rs 53,01,700/- from business income and added it under the head 'Capital Gain'. As this is long term gain, the assessee worked out long term capital gain at Rs.24,98,113/- after considering indexed cost of acquisition as provided in Section 48 of the Act. The CPC has correctly computed long term capital gain in the intimation sent u/s 143(1) of the Act, but has added the difference of Rs 28,03,587/- which is the difference between long term gain as per Profit & Loss account of Rs 53,01,700 and long-term gain as per working after indexation Rs.24,98,113, as income from business. The CPC, therefore, has allowed deduction of long-term capital gain which is included under the head Capital gain from Business income instead of the long term capital gain as per profit and loss account. The CPC has also made adjustment by adding Rs.2,46,925/- twice. The assessee had debited Rs 2,46,925/- to its profit and loss account due to share of loss from partnership firm. This amount was added to the total income. The CPC has also made an addition of Rs.3,350/- on account of addition u/s 36 of the Act. However, as per tax audit report, there was no delay in depositing ESI contribution for the month of March 2020 since due to lockdown in April 2020, the EPFO had extended due date of payment of PF and ESI contribution for the month of March 20 from 15th April 2020 to 15th May 2020.

4. The CPC processed the return u/s 131(1) determining refund of Rs.25,89,060/- as against the refund claimed by the assessee of Rs.35,88,770/-.

- 3-

5. Aggrieved, the assessee filed application for rectification before the CPC. The CPC has rectified the intimation issued u/s 131(1) of the Act dated 16.12.2021 and passed rectification order on 21.06.2022, determining the total refund at Rs.37,12,170/- and the matter came to rest.

6. Meanwhile, the assessee filed appeal before the Ld. CIT(A) on 27.01.2022 who has passed the order on 15.05.2024. The sequence of events are as under:-

- Date of filing of return - 25.01.2021
- Date of intimation of 143(1) by CPC - 16.12.2021
- Date of filing of appeal before Ld. CIT(A)- 27.01.2022
- Date of rectification of 143(1) by CPC - 21.06.2022
- Date of Webex meeting - 08.05.2024
- Date of order of Ld. CIT(A) - 15.05.2024

Now comes the fascinating part of the issue.

The CPC has rectified the order on account of the capital gains which the Ld. CIT(A) has confirmed. The Ld. CIT(A), while confirming the adjustments made by the CPC, held that ***“the appellant has claimed that he has offered the same amount as Capital Gain as he has debited from Income from Business & Profession in the computation of income. However, the same is not found to be true. During the VC, the appellant has failed to produce/substantiate the claim that income of Rs. 28,03,587/- has been disclosed. Hence, the addition made by the CPC is found to be justified and is confirmed.”***

- 4-

7. Thus, we find two defaults. Why the assessee has not brought the factum of rectification already carried out by the CPC before the Ld. CIT(A) and why the Ld. CIT(A) could not examine the facts apparent on the record?

8. Since the matter has already had a breather as mentioned at paragraph No. 5 of this order, we are not inclined to dissect the questions raised at paragraph No. 7 of this order.

9. In the result, the order of the Ld. CIT(A) is treated as infructuous on this issue.

10. The appeal of the Assessee is hereby allowed.

The order is pronounced in the open Court on 11.02.2025

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Ahmedabad; Dated 11/02/2025

btk

आदेश की प्रतिलिपि □ ग्रेषित/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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

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