

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 2301/Ahd/2014
WITH
CO No. 298/Ahd/14
(Assessment Year: 2010- 2011)

DCIT, Patan Circle, Patan
Room No. 104, 1st Floor,
Santokaba Hall, Rajmahal
Road, Patan - 384265

Appellant

Vs.

Saifee Jubiee High School &
Madressa Yusufiyan Society,
Dr. Syedha Akoshi, Post-Patan

Respondent/Cross Objector

PAN: AABTS3775P

राजस्व की ओर से / By Revenue : Shri Prasoon Kabra, Sr. D.R.

वेदक की ओर से / By Assessee : Shri S. N. Divatia, A.R.

सुनवाई की तारीख/Date of Hearing : 14.03.2018

घोषणा की तारीख/Date of
Pronouncement : 16.03.2018

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This Revenue's appeal and assessee's cross objection for assessment year 2010-11 arise against the CIT(A), Gandhinagar's order dated 22.05.2014, in case no. CIT(A)/GNR/212/2013-14, reversing Assessing Officer's action making long term capital gains addition of Rs.70,34,635/- by invoking Section 50C of

the Act, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short “the Act”.

Heard both the parties. Case file perused.

2. We advert to rival pleadings first. The Revenue’s sole substantive grievance seeks to revive the Assessing Officer’s impugned action making long term capital gains addition of Rs.70,34,635/- as deleted in course of lower appellate proceedings. The assessee’s cross objection on the other hand pleads that Section 50C of the Act is not applicable in its case being a charitable trust already assessed under a special provision u/s.11 of the Act.

3. There is no dispute between the parties about the fact that this assessee is a public trust registered under the Bombay Public Trust Act. It has sold/transferred the capital asset in question bearing survey no. 503 to 510 admeasuring 2447 sq.mtrs. known as “SakinaBaugh” to Sant Rohitdas Charitable Trust, for Rs.12.50lacs by way of the registered sale deed in question dated 24.02.2010. The Assessing Officer received AIR information that the price in question taken for stamp purposes was Rs.74,87,400/-. Both the learned counsel at this stage take us to learned CIT(A)’s findings under challenge indicating the following elaborate discussion on the issue as under:

“4.3 I have considered the facts of the case, assessment order and submission filed by appellant. The AO in the assessment order has adopted the value of land on the basis of value shown by the Stamp Valuation Authority relying on the decision of Ravikant vs ITO (2007) 110 TTJ Delhi 297. Further, AO states that the onus to prove that fair market value is lower than such valuation by the SVA is on the appellant. The AO has also relied on the AIR information which was authenticated by the letter of sub-registrar dated 01/02/2013 wherein fair market value is held to be Rs.74,87,400/-. Further, AO is also of the view that income of the appellant from non-educational activities is not exempt under section 10(23C)(vi). Further, AO states that appellant has not submitted the documents to show acquisition of property and has not even shown Rs.1,250,000/- which is claimed as sale consideration. In view of the above, AO has taken the full consideration of the property to be Rs.74,87,400/- and cost of

acquisition is held to be Rs.71,640/- as per the book value of the appellant and LTCG is worked out at Rs.70,34,635/-.

From the submission made by the appellant, the following facts emerg:

- (i) Appellant has adopted the sales value as per approved by the Charity Commissioner and this value is adopted by the Chanty Commissioner after inviting objections to the proposed sale by advertising in Vernacular Daily 'Sandesh',*
- (ii) Appellant has challenged the Stamp Duty Valuation before the AO by pointing out that the sale value is adequate because some part of the property was encroached by nearby slum areas and as such had not much value.*
- (iii) The appellant had requested the AO to refer the matter to the DVO which was rejected by the AO.*

After considering the facts and circumstances of the case, I find that the transaction of sale of the property has been made with the prior approval of the Charity Commissioner, Ahmedabad. Before the finalization of transaction, the Charity Commissioner had invited objections to the proposed sale of the property and accordingly advertised in Vernacular Daily 'Sandesh'. Only thereafter, a written order was passed permitting the appellant to sell the said property for Rs.12,50,000/-. As the transaction took place under the supervision and directions of an Authority i.e. Charity Commissioner. I find that the Stamp Authority has not arrived at the value of Rs.74,87,400/- but the AO has worked out such amount on the basis of details furnished. The Charity Commissioner has stated in the order of approval passed that the said property could not be used for commercial purpose and the same has to be put to use for the objects of the purchaser trust, the valuation of this property could not be the same as any unrestricted property. The Fair Market Value of the property has been estimated Rs.12,41,000/- by a Registered-Valuer and a copy of such certificate is produced before me. The alternate claim made by the appellant stating that even any income of appellant is exempt to tax u/s 10(23C)(vi) is also found tenable as it is running an education institution and approval has also been granted by the Competent Authority.

In the entirety of facts and circumstances discussed above, it is held that the AO was not justified in working out and making addition of Rs.70,34,640/- on account of LTCG. The same is hereby directed to be deleted. The relevant grounds of appeal are allowed. "

4. Learned Departmental Representative vehemently contends that the CIT(A) has violated the provision contained in Rule 46A of the Income Tax Rules in admitting assessee's additional evidence in the nature of its registered

valuer's report that the above capital assets' fair market value was Rs.12.4lacs only. His case is that the CIT(A) did not issue any notice to the Assessing Officer for factual verification of the said details. We find no merit in the instant argument. Page 11 of the paper book indicates that the Charity Commissioner had passed his order as per the provisions of the Bombay Trust Act and Rules (as applicable in Gujarat state) approving the impugned sale at a price of Rs.12.50lacs which ultimately culminated in the sale deed. There can hardly be any quarrel that such an approval involves a long drawn procedure of public notice inviting relevant bids. The Revenue fails to dispute that the assessee Trust is bound by such an approval order passed by the statutory authority. We further find that hon'ble jurisdictional high court's judgment in Om Shri Jigar Association Vs. Union of India (1994) 209 ITR 608 (Guj) as followed in (2010) 327 ITR 185 (Bombay) Virendra vs. appropriate authority & Ors. holds that there is no inference of understatement of consideration in such a case involving an approval accorded by the Charity Commissioner under the Bombay Trusts Act. Mr. Kabra seeks to distinguish the same by pleading that the said case law pertains to the proceedings u/s.269UD of the Act instead of Section 50C of the Act. We observe that this distinction fails to rebut the fact that the above hon'ble high courts have considered the relevant provisions enshrined in Bombay Trust Law vis-à-vis understatement of sale considerations of the relevant capital assets therein. We conclude in this factual backdrop that whatever sale price Charity Commissioner had approved had to be followed in assessee's impugned sale deed. Couple with this, the lower appellate authority has already observed that there are various restrictions on usage of the capital asset. All this findings have gone uncontroverted from Revenue side. We thus see no reason to accept Revenue's sole substantive ground. The same is therefore rejected. So is the outcome of its appeal ITA No. 2301/Ahd/2014.

5. Learned Authorized Representative at this stage submits that the assessee no more wishes to press for its cross objection in view of our findings in

Revenue's appeal. The assessee's cross objection CO No. 298/Ahd/2014 is therefore dismissed as not pressed.

6. The Revenue's appeal ITA No. 2301/Ahd/14 is dismissed and assessee's CO No. 298/Ahd/14 is dismissed as not pressed.

[Pronounced in the open Court on this the 16th day of March, 2018.]

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad: Dated 16/03/2018

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. वेदक / Assessee
3. संबंधित यकर युक्त / Concerned CIT
4. यकर युक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, यकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/देश से,

उप/सहायक पंजीकार
यकर अपीलीय अधिकरण, अहमदाबाद ।