

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'D' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

ITA No.1292/Ahd/2014
Assessment Year: 2008-09

Vasudev Manilal Patel

*Shiv Traders, Survey No.6,
Opp. Mahalaxmi Intercity, Kathwada Road,
Naroda, Ahmedabad – 382 330
[PAN: AJGPP 9155 N]*

.....**Appellant**

Vs.

Income Tax Officer

Ward 3(4), Ahmedabad

.....**Respondent**

Appearances by

Pritesh Shah, for the Appellant

Lalit P Jain, for the respondent

Hearing concluded on: 10.09.2018

Order pronounced on : 17.09.2018

O R D E R

Per Pramod Kumar, AM:

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 21st February, 2014, passed by the CIT(A)-6, Ahmedabad, in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2008-09, on the following ground:-

“The learned CIT(A) erred in law and in facts in confirming the addition of Long Term Capital Gain made by AO amounting to Rs.6,71,768/-, which is requested to be deleted.”

2. Briefly stated, the relevant material facts are like this. During the relevant previous year, the assessee had sold land, along with some co-owners, for a total sale consideration of Rs.70,00,000/-. The fair market value of the said property as on 01.04.1981 was claimed to have been computed at Rs.110/- per sq. mtrs. While examining the valuation report in support of the said valuation, the Assessing Officer noted that the average sale price, taken on the basis of comparable sale instances, was Rs.79/- per sq. mtr.; and, yet the valuation has been done at Rs.110/- per sq. mtr. by observing that the location of the assessee's land was “prime location”. He thus adopted Rs.79/- per sq. mtr. as the value of the said land as on 01.04.1981 and thus partly rejected the valuation report.

3. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the learned CIT(A) but without any success. While rejecting the claim of the assessee, the learned CIT(A) relied upon the sale consideration and observed as follows:-

“3.2 The grievance of the appellant is regarding the cost of acquisition as on 01.04.1981 adopted by the A.O., while assessing the LTCG on the sale of immovable property by the appellant. In the ROI filed appellant had not disclosed the sale transaction. On the basis of ITS/AIR information, A.O. called for the details. As per the working furnished by the appellant, cost of acquisition as on 01-04-1981 was taken at Rs. 110 per square metre, on the basis of the report of the approved valuer. As per the information collected by the A.O. from Sub-Registrar, the sale transactions (in the vicinity of the appellant's land) were effected at Rs. 11 per sq. metre in the year 1980-81. For the detailed reasoning given in the assessment order, A.O. adopted the rate at Rs. 79 per sq. metre, which is quite reasonable. The written submission reproduced above is general, vague and is unsubstantiated. A.O.'s observations remain uncontroverted. Hence, this ground of appeal is dismissed.”

4. The assessee is not satisfied and is in further appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case in the light of the applicable legal position.

6. We have noted that the authorities below have proceeded to adopt the valuation of the land as on 01.04.1981 strictly on the basis of comparable sales instances and have completely disregarded the observations made in the valuation report to the effect that the location of the land was relatively prime location vis-a-vis such sale transaction. We are unable to see any merits on this approach. The valuation as on 01.04.1981 cannot be done solely on the basis of “comparable sale instances” inasmuch as the location of two pieces of land, no matter how similar, cannot be the same. The very basis of adopting the comparable sale instances proceeds on sweeping generalizations. In any case, it cannot be open to the Assessing Officer/CIT(A) to partly accept the valuation report and partly reject the same. It is also a known fact that at the relevant point of time i.e. on 01.04.1981, it was more of a practice than an exception that the sale consideration disclosed to the authorities was understated. It was because of this blatant practice of use of unaccounted money in property transactions that several reforms had to be brought in. Keeping these ground realities in mind, reliance on sale instances alone cannot be a decisive factor to ascertain the value of piece of land, at least, so far as 01.04.1981 is concerned. In view of these discussions, and bearing in mind the fact that no material whatsoever to dislodge the findings of the Valuation Officer and that the difference between the valuation as per the registered sale deed and the value adopted in the valuation report is less than 25% which stands reasonably explained, we deem it fit and proper to uphold the plea of the assessee. The impugned addition made by the Assessing Officer thus indeed deserves to be deleted. We order accordingly.

7. In the result, appeal is allowed. Pronounced in the open court today on the 17th September, 2018

Sd/-

Mahavir Prasad
(Judicial Member)

Dated: 17th September, 2018

Bt*

Sd/-

Pramod Kumar
(Accountant Member)

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *DR*
- (6) *Guard File*

True Copy

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*