

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT – RAJKOT BENCH**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकरअपीलसं.ITA No. 23/RJT/2018

निर्धारणवर्ष/Asstt. Year: 2007-08

<b>Shri Rajesh Kuverjibhai Nandani</b> C/o. M/s. Tha Tulshidas Narshidas, Para Bazar, Rajkot	Vs.	<b>ITO</b> Ward-1(2)(2), Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAS PN1 993 K		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri D. V. Lalchandani, AR
Revenue by :		Shri Anil Kumar Das, Sr. DR

सुनवाईकीतारीख/Date of Hearing : 12/09/2019

घोषणाकीतारीख/Date of Pronouncement: 23/09/2019

**आदेश/ORDER**

**PER AMARJIT SINGH - AM:**

The appeal filed by the assessee for A.Y. 2007-08, arise from order of the CIT(A)-1, Rajkot dated 22.12.2017, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short “the Act”.

2. The solitary ground of appeal of the assessee is against the decision of Ld. CIT(A) in confirming the addition on account of long-term capital gain to the amount of Rs. 2,09,950/-.

4. The fact in brief is that assessee has filed return of income declaring income of Rs. 1,02,734/- on 31.07.2007. Subsequently, the case was reopened u/s. 147 of the Act by issuing of notice u/s. 148 of the Act on 25.02.2014 on the ground that as per the information the assessee has sold flat No. 201 at Nilkant Apartment, Rajkot for consideration of Rs. 4,90,000/- however, the Stamp Valuation Authority had adopted the value of the property at Rs. 7,60,860/- and assessee has not shown the capital gain

from the aforesaid transaction according to Sec. 50C of the Act. Considering the above fact we do not find any error in the action of the AO in reopening the assessment u/s. 147 of the Act, therefore, first ground of appeal of the assessee is dismissed.

5. During the course of assessment proceeding the assessee has made reference to the Department Valuation Officer for determination of fair value of the property u/s. 55A of the Act. The Valuation Officer has estimated the fair market value of the property at Rs. 9,71,800/- on 10.07.2016. Thereafter, the AO has determined the long-term capital gain at Rs. 20,09,950/- after taking into consideration the fair market value of the sold property determined by the Department Valuation Officer at Rs. 9,71,800/-.

6. The assessee has preferred appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee.

7. We have heard the rival contention and perused the material on record and noticed that Ld. CIT(A) has wrongly interpreted the provision of Sec. 50C(3) of the Act while adjudicating the appeal of the assessee stating that full value of consideration is to be taken as determined by the DVO. In this regard, we have perused to provision of Sec. 50C(3) of the Act which is reproduced as under:-

*“(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed [or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed [or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]”*

It is clear from the above cited provision of Sec. 50C(3) that where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1) the value so adopted or assessed by such authority shall be taken as the full value of consideration received or accruing as a result of the transfer. Since, the fair market value determined by the department valuation officer has exceeded the value determined by the stamp valuation authority, therefore, as per provision of Sec. 50C(3) of the Act the value adopted by the stamp

valuation authority shall be taken as the full value of the consideration on the sale of the property. In view of the above facts and findings we are not inclined with the decision of the Ld. CIT(A). Therefore, the AO is directed to compute the long-term capital gain after adopting the sale price of Rs. 7,60,863/- as determined by the stamp valuation authority. Therefore, the appeal of the assessee is allowed.

8. In the result, appeal of the assessee is partly allowed.

[Order pronounced in the Court on 23-09-2019.]

Sd/-  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER** *TRUE COPY*  
Ahmedabad; Dated 23/09/2019  
TANMAY

Sd/-  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of 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/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER

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