आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.2057/Ahd/2017**
निर्धारण वर्ष/**Asstt. Year: 2012-13**

Smt. Mahinabanu Nainabanu Sipai (Jadeja) 2, Kasba Vas At-Chhatral Tal-Kalol, Gandhinagar. PAN : AZPPJ 9677 G	Vs.	DCIT, Mehsana, Circle Mehsana.

आयकर अपील सं./ **ITA No.2058/Ahd/2017**
निर्धारण वर्ष/**Asstt. Year: 2012-13**

Shri Anvarmiya Alamiya Sipai (Jadeja) 2, Kasba Vas At-Chhatral Tal-Kalol, Gandhinagar. PAN : APUPJ 5927 Q	Vs.	DCIT, Mehsana, Circle Mehsana.

आयकर अपील सं./ **ITA No.2059/Ahd/2017**
निर्धारण वर्ष/**Asstt. Year: 2012-13**

Shri Husenmiya Nanumiyan Sipai (Jadeja) 2, Kasba Vas At-Chhatral Tal-Kalol, Gandhinagar. PAN : ARHPJ 5934 E	Vs.	DCIT, Mehsana, Circle Mehsana.

आयकर अपील सं./ **ITA No.2060/Ahd/2017**
निर्धारण वर्ष/**Asstt. Year: 2012-13**

Shri Bhikhumeeya Alammiya Sipai 2, Kasba Vas At-Chhatral Tal-Kalol, Gandhinagar. PAN : AZOPJ 8817 H	Vs.	DCIT, Mehsana, Circle Mehsana.

अपीलार्थी/ (Appellant)		*प्रत्यर्थी/* (Respondent)

Assessee by	:	Shri Tushar P. Hemani, AR
Revenue by	:	Shri Vidhyut Trivedi, Sr.DR

*सुनवाई की तारीख/*Date of Hearing : 16/10/2019
*घोषणा की तारीख /*Date of Pronouncement: 18/11/2019

*आदेश/***O R D E R**

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present four appeals are directed at the instance of the assessees against separate orders of the ld.CIT(A), Gandhinagar, Ahmedabad dated 17.07.2017 passed on the respective appeals of the appellants for the Asstt.Year 2012-13.

2. Though the assessees have taken nine grounds of appeal while impugning orders of the ld.CIT(A) in their respective cases, but common issue involved in all appeals is with regard to determination of full sale consideration for a sale of capital asset on the basis of which capital gain required to be computed in each hand of the assessees.

3. Facts on all vital points are common, therefore, for the facility of reference, we take up facts from the case of Smt.Mahinabanu Nainabanu Sipai (Jadeja) in ITA No.2057/Ahd/2017.

4. Brief facts of the case are that according to the assessee, she is a farmer at Chatral. She has filed her return of income for the Asstt.Year 2012-13 on 21.10.2016 declaring total income at Rs.2.11.092/-. The land bearing survey no.242 at Chatral, Teh.. Kalol, District Gandhinagar was owned by four co-owners viz.

assessee herself, Sipahi Mahinabanu, Sipai Hussainmiya and Sipahi Bhikhameeya. They entered into an agreement for sale of the above land on 1.2.2010. Agreement was registered with office of Sub-registrar on 4.3.2010. The sale consideration in the agreement was fixed at Rs.24,88,880/-. The above land was converted into a non-agriculture land on 8.4.2011. It was sold vide sale deed dated 19.5.2011. The sale consideration was reflected in the sale deed was Rs.1,10,00,000/-. In the hands of each assessee, sale consideration was fallen at Rs.27,30,000/-. By taking this amount as full value of sale consideration, each assessee has computed the long term capital gain, and showed in the return of income.

5. The AO got an information that for the purpose of stamp duty, value of the property was determined at Rs.6,47,14,285/-. Armed with this information, he issued notice under section 148 and reopened the assessment. He confronted the assessee that the sale consideration fallen to each assessee came to Rs.1,61,78,571/-. They have disclosed the sale consideration at Rs.27.50 lakhs only, and therefore, the difference of Rs.1,34,28,571/- was to be assessed in each hand of the appellants. In response to the show cause, the assessees have filed detailed submissions contending therein that they entered into an agreement on 1.2.2010. It was registered with sub-registrar's office. They have received advances through banking channel. The assessee, Smt.Mahinabanu Nainabanu Sipai received Rs.9.00 lakhs, vide cheque no.005422 on 4.3.2010 and Rs.3.00 lakhs vide cheque no.017103 on 5.3.2010. Thus, according to the appellant, there is no dispute with regard to the genuineness of the agreement entered into by the assessee on

1.2.2010, which was registered with sub-Registrar on 4.3.2010. The transaction ought to be construed as complete on 4.3.2010. At the most, the stamp duty valuation applicable on that date, ought to be adopted for the purpose of computing capital gain. It was also contended that vendees were in hurry, and therefore, they have agreed for payment of stamp duty at Rs.6,47,14,285/-. Since stamp duty was required to be paid by the vendees, therefore, the assessees have never bothered about the payment of stamp duty at this figure by the vendees. The ld.AO did not find merit in the contention of the assessee. He observed that according to the section 50C, full consideration is to be deemed equivalent to the amount on which stamp duty was paid by the parties for sale of capital asset. Accordingly, he adopted full consideration at Rs.6,47,14,285/-. He divided this consideration amongst all four appellants, and thereafter reduced the amount by which the assessees have already computed the capital gain. The balance difference at Rs.1,34,28,571/- has been added back into the hands of each appellant. The ld.AO accordingly, computed the capital gain and determined the income of the assessee Smt.Mahinabanu Nainabanu Sipai at Rs.1,36,77,370/- against Rs.2,48,799/-disclosed by her. Appeal to the CIT(A) did not bring any relief to the assessee.

6. While impugning orders of the Revenue authorities, the ld.counsel for the assessee reiterated his submissions as were raised before the AO. He submitted that proviso appended to section 50C has been held to be applicable with retrospective effect by the ITAT, Ahmedabad Bench in the case of Dharamshibhai Sonani Vs. ACIT, 161 ITD 627 (Ahd). According to this provision, if parties have entered into an agreement, then the

date of transfer of such capital asset is to be construed from the date on which such agreement was entered, and the value applicable on that date for the purpose of payment of stamp duty would be taken as full sale consideration. However, during the course of hearing, we have confronted the ld.counsel for the assessee that the agreement for sale executed on 1st Feb., was for an agriculture land. The character of the end-product i.e. the land sought to be sold was changed. It was converted into a non-agriculture land. Hence, the potentiality of this land has enhanced, and therefore, the date on which it is to be construed that the agreement was executed on the date on which the land was converted into a non-agriculture land, because it is altogether a different product. The ld.counsel for the assessee *qua* this query contended that even if that date be taken into consideration, then the circle rate for adoption of stamp duty value on that date has been revised on 18.4.2011 applicable w.e.f. 1.4.2011. Copy of the notification issued by the Revenue Department of the State of Gujarat is available on page no.82 to 87. He took us through page no.82, and submitted that residential land has been valued at Rs.250/- per square yard. Assesees sold land admeasuring 24,888 sq.meters and if that rate is being applied, then it is less than Rs.1,10,00,000/- and the AO should have not made any addition.

7. On the other hand, the ld.DR relied upon the orders of the Revenue authorities. He submitted that a perusal of section 50C would indicate that full sale consideration would be deemed equivalent to the amount of the value adopted or assessed or assessable by the authorities of the State Government for the purpose of stamp duty valuation. In the present case, the value

adopted was Rs.6,47,14,285/-, and this value deserves to be deemed as full consideration for the purpose of computing capital gain.

8. We have duly considered rival submissions and gone through the record carefully. Sections 48 and 50C have direct bearing on the controversy in hand, therefore, we deem it appropriate to take note of the relevant part of these sections, which read as under:

> *"48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—*
>
> *(i) expenditure incurred wholly and exclusively in connection with such transfer;*
>
> *(ii) the cost of acquisition of the asset and the cost of any improvement thereto:*
>
> *…. …… …."*

> *"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :*
>
> *Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account 59[or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:

…. …… ….”

9. A perusal of section 48 of the Act would indicate that it provides mode of computation of capital gain. It contemplates income arise under the head "capital gain" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the following amounts viz. (a) expenditure incurred wholly and exclusively in connection with such transfer, and (b) cost of acquisition of the assets and cost of any improvement thereto. A perusal of the section 50C would show that where consideration received or accruing as a result of transfer by an assessee of a capital asset, being the land or building, or both is less than the value adopted or assessed by any authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of section 48 be deemed to be full value of the consideration. In other words, full consideration employed in section 48 is to be replaced by the consideration on which value of the property so adopted, assessed or assessable for the purpose of payment of stamp duty. Both the authorities are not disputing with regard to the above position of law. The first fold of dispute is, which date is to be construed as the date of transfer. According to the assessee, the date of agreement i.e. 1.2.2010 is to be construed as the date of transfer, because on that date, the agreement to sell was

executed, and this agreement was registered with Sub-registrar. The part consideration was also paid. As far as genuineness of this agreement is concern, it is not in doubt. Why this agreement could be taken as date of transfer is because, the time limit for filing suit for specific performance is three years from the date of agreement. In case vendee refused to get the sale deed registered, then the assessees can only sue for specific performance to persuade the vendee to purchase the land. In that situation, the assessee would not be getting anything more than the amount agreed in the agreement. Similarly, there could be a time gap between the date of agreement vis-à-vis ultimate registration of sale deed. There could be an appreciation and/or depreciation in the value of the property. In other words, at the time of execution of agreement in respect of immovable property, the *right in persona* is created in favour of the transferee/vendee. When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else, because vendee in whose favour the *right in persona* is created has legitimate right to enforce the specific performance of the agreement, if the vendor for some reasons is not executing the sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. Recognizing this reasoning, the Legislature has appended a proviso to section 50C whereby it has been provided that in case some agreement fixing the amount of consideration has been executed, and the date of registration for the transfer of the capital asset are not the same, then the value of the property for the purpose of stamp duty is to be adopted on the date on which this agreement was executed. The ITAT in the case of Dharamshibhia Sonani Vs. ACIT(supra) has

held that this proviso is applicable with retrospective effect. We do not hesitate for accepting this proposition. But in the present case, the nature of the land has undergone a change. Had the land not converted into non-agriculture land, then the deed would not have been executed, because the vendees are not farmer, and the Gujarat Land Revenue Code puts an embargo upon the right to purchase an agriculture land. Thus, when the land was converted into non-agriculture land, a different product is being formed and undertaken to sell, and the date on which the land was converted into non-agriculture land, is to be construed as the actual date of agreement to sale of the capital asset. In the present case, that date is 8.4.2011. On this date, the rates for valuation of the land for the purpose of payment of stamp duty got revised. Thus, these rates have been revised on 18.4.2011 applicable w.e.f. 1.4.2011. Thus, the valuation of the non-agriculture land is to be determined on the basis of the rate applicable as on 1.4.2011. On this date, the stamp duty valuation authorities have determined the rate at Rs.250/- per sq.meter. For the land falling within the periphery of village i.e. within *Abadi Deh (आबादी देह)* of residential boundary of the village has been fixed at Rs.300/-. Agriculture land converted into non-agriculture land has been fixed at Rs.250/- per sq.meter. Therefore, the capital asset (non-agriculture land) sold by the appellants was required to be valued at the rate of Rs.250/- per sq.metr. The value declared by the assessee at Rs.1.10 crores is far more than the value required to be adopted on the basis of the rates notified by the stamp duty valuation authority, and therefore, no addition ought to have been made. There is one more angle to the controversy i.e. vendees have paid stamp duty on the value of

the land determined at Rs.6,47,14,285/-. Can this rate be adopted for the purpose of computing long term capital gain in the hands of the assessee? A perusal of section 50C would indicate that it employed two expressions viz. "value so adopted or assessed or assessable". In the present case, stamp duty valuation authority has not adopted the value. It is the party who agreed to pay stamp duty at an enhanced value of Rs.6,47,14,285/-. The payments of higher stamp duty at the end of the vendee was not effecting any rights of the assessee. They were not under any financial obligation. The stamp duty valuation authority would not object payment of higher stamp duty at the end of the vendees. Had they disclosed a lower value, probably they would have adopted a higher value according to the rates notified by them. The stamp duty payment at the end of the vendee is roughly 6% to 8% of the value so mutually agreed by them. But that mutual agreement would not authorise the AO to deem it full sale consideration. The full sale consideration is to be deemed at the value which is assessable by the stamp duty valuation authorities, and if the rates notified by the stamp duty valuation authority are taken into consideration, then such value would come far less than the value disclosed by all the appellants, while computing the capital gain. The area sold by the appellant was 24,888 sq.yards. If it is multiplied by Rs.250/- then it comes out to roughly Rs.62.22 lakhs. If it is multiplied by Rs.300/-, then it comes to Rs.74,66,400/-. The sale consideration disclosed jointly by all the appellants is Rs.1,10,00,000/-, which is far more than the value ought to be adopted for the purpose of stamp duty. Therefore, we are of the view that no addition deserves to be made in the hands of the appellants on account of long term

capital gain. Accordingly, all four appeals of the appellants are allowed, and additions are deleted.

10. In the result, appeals of the assessees are allowed.

Order pronounced in the Court on 18th November, 2019.

Sd/-	Sd/-
(AMARJIT SINGH)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER