

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER AND Dr.
ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.2420/AHD/2016

निर्धारण वर्ष/Assessment Year: 2012-13

Shri Jayrajbhai A.Jodhani, A/4, Chitrakut Society, Hirabaug, Varachha Road, Surat. [PAN: ADDPJ 9272 H]	Vs	The Deputy Commissioner of Income Tax, Circle-3(3), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent
निर्धारितीकीओर से /Assessee by	Shri Manish J.Shah – AR	
राजस्वकीओर से /Revenue by	Mrs. Anupama Singla - Sr.DR	
सुनवाई की तारीख/ Date of hearing:	17.02.2021	
उद्घोषणा की तारीख/Pronouncement on:	19.02.2021	

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMEBER:

1. This appeal by Assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-3, Surat, hereinafter referred as “Ld. CIT (A)”, dated 25.07.2016 for assessment year (AY) 2012-13. The assessee has raised the following grounds of appeal:

“1. The learned C.I.T.(Appeals) erred in law and on facts in directing the Assessing Officer to substitute the value determined by DVO on reference u/s.50(2) as deemed value of consideration received on sale of land u/s.50C without appreciating the fact that there is only negligible difference In value determined by DVO and value declared by assessee.

1.1 On facts and circumstances of the case, the learned C.I.T.(Appeals) ought to have directed the Assessing Officer to accept the value declared by assessee as full value of consideration received for computing capital gain on sale of lands.

2. Without prejudice to above, in respect of land situated at Saniya Hemand, R.S. No.56, 57/1 & 57/2, the learned C.I.T.(Appeals) ought to have applied the stamp duty valuation on date of agreement to sale i.e. 29.03.2011 which is lesser than value determined by DVO as full value of consideration on sale of land as per the provisions of section 50C of the I.T. Act, 1961.”

2. Facts in brief as gathered from the order of Lower Authorities are that assessee while filing the Return of Income for assessment year (A.Y.) 2012-13 on 31.03.2013 declared taxable income of Rs.53,21,469/-. The case was selected for scrutiny. During the assessment, the Assessing Officer (AO) noted that assessee has sold two pieces of land and have claimed capital gain in the computation of total income. The assessee shown sale consideration less than the stamp value determined by the Stamp Valuation Authority. The AO invoked the provision of section 50C and made reference for determining the Fair Market Value (FMV) by District Valuation Officer (DVO). The AO noted that valuation report was not received from the office of the DVO till the finalization of assessment order. The AO made the following summary of sale consideration shown, rate adopted by stamp valuation authority for the purpose of collection of stamp and the difference therein for both the pieces of land:

<i>Land Details</i>	<i>Sale Deed Amount (Rs.)</i>	<i>Stamp Duty Value (Rs.)</i>	<i>Difference (Rs.)</i>
<i>Moje Vankla, R.S. No.24</i>	<i>2,40,25,000/-</i>	<i>3,72,43,800/-</i>	<i>1,36,20,133/-</i>
<i>Moje Saniya Hemad, R.S. No.56,57/1&57/2</i>	<i>65,00,000/-</i>	<i>1,18,36,500/-</i>	<i>55,47,597/-</i>
<i>TOTAL</i>	<i>3,05,25,000/-</i>	<i>4,90,80,300/-</i>	<i>1,91,67,730/-</i>

3. On the basis of difference in sale consideration shown in the sale deed and the value determined by the stamp valuation authority, the AO made addition of capital gain of Rs.1,91,67,730/-. On appeal before the Id.CIT(A), the report of DVO received . The learned CIT(A) directed the AO to adopt the rate suggested by DVO and pass rectification order under section 154 of the Act. Aggrieved, by the order of learned CIT(A), the assessee has filed present appeal before this Tribunal.
4. We have heard the submission of the learned Authorised Representative (AR) of the assessee and the Id. Senior Departmental Representative (DR) for the Revenue and perused the order of Lower Authorities carefully. The learned AR of the assessee submits that during the assessment, the assessee furnished all details and evidence required by the AO to substantiate the value of consideration agreed by the parties by mutual consent. The assessee has not received any money in addition to the sale consideration recorded on the sale deeds of both pieces of land. The stamp valuation authorities calculated the value of consideration for the purpose of collecting the additional stamp duty as per Jantri rates. However, all of a sudden on 31.03.2014 i.e. on the last date of time barring period, the AO given show cause why stamp duty value adopted

by Sub-Registrar for registration of sale deeds in respect of both the pieces of land should not be adopted. The AO has not provided full opportunity to the assessee. During the appellate stage, the assessee explained that stamp duty was paid by the purchaser in accordance with Jantri rate only for the purpose of registration, which can never be considered as a sale price. The rate of land was decided after considering several factors which is real and actual value. The Jantri rate adopted by the Sub-registrar was only for the purpose of registration of conveyance deed. The sale consideration of both pieces of land was decided by parties with mutual consent. During the pendency of appeal before the Id.CIT(A), report of DVO was received. The assessee furnished the summary of the difference in actual sale consideration, value determined on Jantri rate and the cost determined by the DVO in following manner:

<i>Land Details</i>	<i>Sale Deed Amount Rs.</i>	<i>Value as per Government Ready Rescknor Prevailing on the date of sale Agreement i.e. up to 31.03.2011</i>	<i>Amount as per DVO Value Rs.</i>	<i>Difference Amt. Rs.</i>	<i>Difference %</i>
<i>Moje Vankla, R.S.No. 24</i>	<i>24025000/-</i>	<i>2,68,98,300/-</i>	<i>26215500/-</i>	<i>21,90,500/-</i>	<i>9.11%</i>
<i>Moje Saniya Hemad, R.S.No. 56,57/1 & 57/2</i>	<i>6500000/-</i>	<i>78,91,000/-</i>	<i>8759000/-</i>	<i>13,91,000/-</i>	<i>15.88%</i>

5. On the basis of aforesaid summery, the assessee explained that the variation in the sale consideration and the value determined

by DVO is not at much variance and is acceptable. The learned CIT(A) disregarded the contention of the assessee and directed AO to pass rectification order under section 154 by adopting the rate suggested by DVO.

6. The learned AR for the assessee submits that the assessee sold two pieces of land i.e. land in Moje Vankla which may referred as 'plot no.1' and another land Moje Saniya Hemand which may be referred as 'plot no.2'. For plot No.1, the ld. AR of the assessee submits that there was a difference of 9.11% between sale consideration shown on the sale deed and report of DVO. For plot no.2, the learned AR for the assessee explained that there was difference of 15.88%, between the sale consideration shown on the sale deed and the value determined by DVO. The learned AR for the assessee for plot no.1 submits that sale price for the land was mutually decided by the seller and purchaser after considering so many factors and negotiations. The Jantri value is only for the purpose of payment of stamp duty. The high pressure gas pipeline of Indian Oil Corporation Ltd (IOCL) is passing through the said plot of which affects the area of land. Another gas pipeline of Reliance Gas Transportation (RGT) is also passing through. Basic amenities are far away from the land, thus the price agreed by the parties was reasonable one. The learned AR for the assessee further submits that legislature

has made amendment in section 50C(1) w.e.f 01.04.2019 vide Finance Act 2018, by inserting third Proviso and enhanced the tolerance range with regard to variation between the sale consideration vis-à-vis stamp duty valuation from 5% to 10%. The variance of cost of plot no.1 was within the tolerance range. The learned AR for the assessee submits that Mumbai Tribunal in Maria Cheryl vs. ITO, reported in (2021) 123 taxmann.com 252 (Mumbai) held that third Proviso inserted in section 50C(1) is curative in nature and even though stated to be prospective, must be held to relate back to statutory provision inserted w.e.f. 01.04.2003. The learned AR for assessee also furnished the copy of aforesaid decision. The learned AR for the assessee by inviting our attention submits that that in assessee's case, the difference of DVO's rate and sale consideration received was only 9.11%, therefore, the variation is within the tolerance range.

7. For plot no.2 that Moje Saniya Hamad, the learned AR of the assessee submits that there is a difference of 15.88% between the actual sale consideration received by the assessee and the value adopted by the DVO. The learned AR of the assessee submits that assessee entered into agreement to sale with purchaser vide agreement dated 29.03.2011 and received part consideration by Cheque no.616316 and 616317 drawn on Varcha Cooperative Bank for Rs.15 lakhs each dated

29.03.2011. The details of cheques are duly mentioned in the agreement to sale, copy of agreement to sale between the seller and the purchaser is on record at page no 42 to 48 of the paper book. The learned AR further invited our attention on Clause 5 of the said agreement wherein various factors regarding fixing the value of sale consideration is recorded. The learned AR for the assessee submits that there was a 5 feet deep hole in the ground and a drainage next to the land. Further, there was Slum cluster next to the plot and water of waste drainage was flooded in the said land. During the monsoon season part of the land remains water logged. All those factors are duly mentioned in clause 5 of the agreement to sale. Thus, the market value of the land was less than the market value of surrounded land and was fixed keeping in view of such circumstances. The learned AR for the assessee submits that though there is no much variation in the sale consideration received by the assessee as well as value determined by the DVO, however, as a matter of percentage of difference the difference is 15.88%, which may be considered with in the tolerance range.

8. The learned AR for the assessee in his alternative submission submits that on similar set of facts, while considering the various factors in determining the sale consideration and land and due to lack of amenities, the Ahmedabad Tribunal in

Vishnubhai V Navadia Vs DCIT in ITA No.1941/AHD/2014 dated 26.04.2017 granted 50% of relaxation in the deemed value of consideration. Thus, keeping in view of the decision of Tribunal the assessee may be granted a reasonable relaxation.

9. On the other hand, the learned DR for the revenue supported the order of Lower Authorities. The learned DR for the revenue submits that DVO at the time of making his report considered all the aspect of the land. The Ld. CIT(A) granted sufficient relief to the assessee in accepting the report of DVO, the order of the ld.CIT(A) may be upheld for variation of both the pieces of land.
10. We have considered rival submission of parties and have gone through the orders of Lower Authorities carefully. The AO mad addition solely on the basis of difference between the rate adopted by stamp valuation authority solely on the basis of sale consideration shown by the assessee and the value determined by the stamp valuation authority. No adverse evidence was brought on record to prove that the assessee received any further consideration in addition to the consideration shown on the sale deeds. The ld.CIT(A) held that at the time of passing the assessment order, the valuation report was not received. The same was received subsequent to the passing of the assessment order, the AO has not passed the order under section 154 adopting the value estimated by valuation officer. The value

determined by the valuation officer is less than the value adopted by stamp duty authority, therefore, the AO was directed to pass the order under section 154 of the Act for rectifying the mistake. The contention of assessee before the ld.CIT(A) that report of valuation officer was below the value assed by the stamp duty authority and is near to the actual sale consideration and the actual sale consideration should be accepted as value of consideration. The contention of assessee was not accepted by the ld.CIT(A).

11. Before us, the learned AR of the assessee vehemently submitted that with regard to plot no.1 there is variation of 9.11% only and vehemently relied upon the decision of Mumbai Tribunal in Maria Fernandes Cheryl Vs. ITO (supra), wherein the coordinate bench held that amendment in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 percent to 10 percent, are curative in nature, and, therefore, these provisions, even though stated to be prospective, must be held to relate back to date when related statutory provision of section 50C, i.e. 1-4-2003. Considering the decision of Co-ordinate Bench, we find that the difference between sale consideration and the value adopted by DVO is merely 9.11%, as it does not exceed 10%, fiction of section 50C

of the Act will not come into play, therefore, capital gain will have to be computed with reference to actual sale consideration only. Hence, we direct the A.O. to delete the addition qua plot no.1.

12. So far as addition with regard to plot no.2 is concerned, the ld.AR of the assessee vehemently submitted there was a 5 feet deep hole in the ground and a drainage next to the land, Slum cluster next to the plot, water of waste drainage was flooded in the said land and during the monsoon season part of the land remains water logged. All those factors are duly mentioned in clause 5 of the agreement to sale and that the market value of the land was less than the market value of surrounded land and was fixed keeping in view of such circumstances and relied upon the decision of Co-ordinate Bench in ITA No.1941/AHD/2014 (supra). We have noted that the assessee before the ld.CIT(A) categorically pleaded that rate of land was determined on the basis of actual position of considering the various factors as illustrated in clause 5 of agreement to sale dated 29.03.2011. We have noted that the valuation of DVO has not considered those factors as illustrated in para 5 of agreement to sale deed.

13. We have noted that co-ordinate Bench in Shri Vinubhai V.Navadia Vs. DCIT, (supra) while considering the various factors effecting the sale consideration granted 50% reduction in the deemed value of consideration in the basis of DVO Report.

Considering the decision of the Tribunal, we noted that the assessee has brought on record that in second plot, there was a 5 feet deep hole in the ground and a drainage next to the land, Slum cluster next to the plot, water of waste drainage was flooded in the said land and during the monsoon season part of the land remains water logged and the market value of was fixed keeping in view of such circumstances. The Ld. CIT(A) has not examined those facts and simply accepted the report of the DVO. The report of the DVO is also based on certain estimation. Thus, keeping in all facts and circumstances of the preset case and the evidence available on record the assessee is allowed 6% of reduction in difference of sale consideration and value determined by the DVO. Therefore, we direct the AO to allow the deduction of 6% of difference on the actual sale consideration and the value determined by the DVO and compute the capital gain accordingly.

14. In the result, appeal of the assessee is allowed.

Order pronounced on 19 February 2021 by placing the result in the notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
(लेखा सदस्य/ACCOUNTANT MEMBER)

Sd/-
(PAWAN SINGH)
(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 19 Feb 2021 /#SGR

Copy of order sent to:- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat