IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.36/Rjt/2023
(Assessment Year: 2013-14)

Karamshi Karsan Bhavani, 12, Gokul Dham Society, Near Jogni Mata Temple, Behind True Venue, Anand Labhvel Road, Anand-388001	Vs.	Income Tax Officer, Ward-1, Bhuj – Kutch (Present Income Tax Officer, Ward-3), Gandhidham
[PAN No.AXNPB2143F]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Paras F. Jain, A.R.
Respondent by:	Shri Ashish Kumar Pandey, Sr. DR

Date of Hearing	17.08.2023
Date of Pronouncement	19.09.2023

O R D E R

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi in DIN/Order No. ITBA/NFAC/S250/2022-23/1048439185(1) vide order dated 04.01.2023 passed for Assessment Year 2013-14.

2. The assessee has taken the following grounds of appeals:-

"1. The learned CIT(appeals) has erred in law and on facts in upholding addition of Rs.30,53,684/-as long term capital gain without properly appreciating the facts of the assessee.

2. He has erred in law and on facts in not accepting the contention of the assessee that the plots under consideration being family plots used for building construction for family members are not liable to capital gain.

3. He has erred in law and on facts in not accepting the facts that this being the case of family arrangement not liable to capital gain.

4. He has erred in law and on facts in not accepting the contention of the assessee that the sale deed in name of family members having been executed for loan purposes only should not be treated as sale deed liable to capital gain.

5. He has erred in law and on facts in not accepting the contention of the assessee to consider the transactions of sale deed as gift read with rectification deed duly registered with sub-registrar affirming & clarifying gifts in favor of family members not liable to capital gain and has also erred in treating the same as afterthought.

6. He has erred in law and on facts in applying the provisions of Section 50C to the family plots under consideration which were gifted.

7. On the facts no addition on account of capital gain ought to have been made and the return income ought to have been accepted.

8. On the facts no interest u/s. 234-B ought to have been levied.

9. The appellant craves leave, to add / to alter and /or modify any ground of appeal."

3. The brief facts of the case are that the assessee during the year under consideration has earned remuneration and interest income as well as Long-Term Capital Loss (in short "LTCL") of Rs. 12,206/- and agricultural

income of Rs. 7,25,000/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee had declared gross receipts of Rs. 1,02,000/-from sale of plots of land held jointly owned in the ratio of 1/6th held by the assessee. Accordingly, after deduction of indexed cost of Rs. 1.14 lakhs, net Short-Term Capital Loss was declared by the assessee at Rs. 12,206/-. From verification of submissions of the assessee, the Assessing Officer observed that the sale deed of these plot was registered on 29.09.2012 with registrar of property for a total consideration of Rs. 51,000/-. However, Stamp Duty valuation was much more and accordingly, the Assessing Officer issued a show cause notice for making addition of Rs. 30,53,684/- to the income of the assessee owing to difference of value under Section 50C of the Act. During the course of assessment, the assessee submitted that the assessee along with other joint holders have transferred the land to their daughter-in-law on 20th September, 2012, but by mistake the amount was mentioned at Rs. 51,000/- for administrative and Stamp Duty purposes. However, the said land was transferred by the assessee to his daughter-in-law without any consideration whatsoever. Therefore, to rectify the mistake, new gift deed has been made on 15th February, 2016, where it has been clearly mentioned that the land was transferred without any consideration. Therefore, it was submitted that the amount given of Rs. 51,000/- was for administrative purposes and Stamp Duty purposes only and there was never any intention to sell the aforesaid land by the assessee to his daughter-in-law for valuable consideration. In the instant facts, the land was transferred by the assessee to his daughter-in-law without any consideration, which fact has not been disputed by the Department. It was further submitted that the gift given to relative is not considered as a

"transfer" as per Section 47(iii) of the Act. Further, the said transfer is not taxable in the hands of the daughter-in-law in view of the provisions of Section 56(2)(vii) of the Act. However, the Assessing Officer did not agree with the contention of the assessee and added a sum of Rs. 30,53,684/- as Long-Term Capital Gains (in short "LTCG") in the hands of the assessee by invoking the provisions of Section 50C of the Act.

4. In appeal, Ld. CIT(A) confirmed the additions with the following observations:

> *"6. In view of the above provisions, the assessing officer has made the addition of Rs. 30,53,684/-, in the form of long term capital gains, considering the difference in the registered sale deed price and the stamp duty valuation price of the property sold by the appellant. The submissions and statement of facts of the appellant, as available on record, have been considered carefully. Following important facts emerge from the careful perusal of order of the AO and related facts:-*
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> *1. Sale deed(s) were registered by the appellant on 29/9/2012*
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> *2. ITR of the appellant was filed on 28/3/2015*
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> *3. There is no mention of gift to daughter-in-law in the ITR or the computation of income attached with ITR,*
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> *4. In fact, capital Loss has been computed in ITR from sale of plots*
>
> *5. Claim of gift to daughter-in-law is an afterthought, hence it cannot be accepted as credible and reliable,*
>
> *6. Gift deed is a self-serving document, hence liable to be rejected,*

7. The appellant has computed capital gains without application of provisions of section 50C of the Income tax Act, 1961

8. The appellant is liable to full application of provisions of section 50C of the Act

7. Considering the facts and circumstances of the case, the addition made by the AO is appropriate, as per provisions of the Income tax Act, 1961 and the same is confirmed. The grounds of appeal of the appellant are considered and dismissed."

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) confirming the additions made by the Assessing Officer by invoking the provisions of Section 50C of the Act. The Counsel for the assessee submitted that in the instant facts, the land had been transferred by the assessee, along with other joint holders to his daughter-in-law. This fact has not been disputed by the Department at any stage the hearing. If, in the instant facts, the land had been transferred by way of "gift deed", there could have not have been any charge of tax on such transfer, since the transferee was a close relative of the assessee, as defined under the Act. Further, the amount which was mentioned in the sale deed, was only towards administrative purposes and stamp duty charges. The intention from the very start was to only gift the above property by the assessee to his daughter-in-law. Therefore, this mistake was also rectified subsequently when a fresh gift deed was entered into between the assessee (along with other joint holders) with his daughter-in-law. Accordingly, it was submitted that the aforesaid transaction is covered by the provisions of Section 47(iii) read with 56(2)(vii) of the Act. Therefore, it was submitted that the

provisions of Section 50C of the Act could not have been invoked, looking into the facts of the instant case.

6. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(Appeals) in their respective orders. The Ld. DR submitted that clearly in this case, the gift deed was entered into after the assessment proceedings had commenced and therefore, the aforesaid gift deed was an afterthought. This is a clear case where provisions of Section 50C are liable to be attracted and therefore, the Assessing Officer had correctly imposed long-term capital gains on the assessee by invoking the provisions of Section 50C of the Act.

7. We have heard the rival contentions and perused the material on record. We observe that this issue has been directly dealt with by the ITAT Delhi in the case of **Smt. Balwant Kaur Mangat vs. ITO in ITA No. 5717/Del/2015 vide order dated 08.08.2017** wherein the ITAT made the following observations:-

> "*5.3 Apropos ground no. 3 relating to computing the long term capital gain and added back the same as Long Term Capital Gain is concerned, I find that assessee has contended that the impugned property had been transferred to her daughter as a gift and therefore charging Long Term Capital Gains applying provisions of Section 50C is bad in law. In its written submission on behalf of the assessee, the Ld. AR of the assessee has contended that the intention of the assessee was to transfer the property as a gift to her daughter and not to earn any capital gain and avoid taxes thereon. The intention was to provide the full ownership right to the daughter and the gift has been effectuated by way of registered deed. On the advice of the deed writer the transaction was shown as the sale for a consideration of Rs. 2,50,000/-, whereas no consideration was received by the appellant from her daughter. However, the bank account of assesse does not show any receipt from her daughter. It is contended that the AO has failed to look the said transaction in substance and has not appreciated the intention of the parties. I am of the*

view that the order passed by AO is not speaking while rejecting the contentions of the assessee. The assessee has placed reliance on the cases of Rashtriya Ispat Nigam Limited vs. Diwan Chand Ram Saran (2012) 4 SCR 1 and Addl. CIT vs. Mrs. Avtar Mohan Singh (1982) 136 ITR 645 (Del). It is also contended that the said transaction has been treated as a gift in hands of the assessee's daughters Ms. Milanjeet Kaur. It is also contended that this transaction was a gift and therefore by virtue of section 47(iii), it was no liable for capital gain taxation. ***I find that the transaction is clearly through sale deed 15 This fact is not controverted. The submission that it was a gift is not borne out from the deed of transfer. In the deed, consideration has been shown to have been received.*** *The mode of receipt of consideration not mentioned. Since the consideration has not received through cheque, there is no question of it being reflected in the bank account of the daughter. It is also true that for the purpose of stamp duty valuation, the property has been valued in Rs. 35,11,704/-.* ***The provisions of section 50C are clearly applicable in this case as it is a case of transfer of property through sale deed at a price lower than the value adopted for stamp duty valuation****. The case of Rashtriya Ispat Nigam Ltd. (Supra) does not apply to the facts of the case as it was in a different context that the intention is material.* ***In the facts of this case, the registered sale deed is the best evidence to ascertain the actual nature of transaction. Had the assessee intended to transfer the asset through a gift she could have very well drawn at gift deed. When allegedly no money has been received from the transferee there was no need to mention so in the sale deed. Therefore, the contention regarding it being a gift is not tenable****. The case of Mrs. Avtar Mohan Singh (Sura) also does not help the case of assessee because section 47(iii) comes to play only in cases of transfer through gift or will or an irrevocable trust. Transfer in the present case is not through these modes. I further note that the transaction has been held to be gift in the hands of the daughter, the transferee, and therefore it should be held so in the case of the assessee also is not tenable because in case of the daughter the consideration as per stamp duty valuation is not taxable as per proviso to 16 section 56(2)(vii). However, the provisions of capital gains taxation and the income from other sources are independent of each other.* ***The income in the hands of the daughter having been held to be exempt, does not absolve the assesee from the capital gain liability. In view of the above****, the contention of assessee was rightly been rejected by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and reject the issue in dispute raised by the assessee. 6. In the result, Assessee's appeal is dismissed."*

8. In the case of **Shri Jay Atulbhai Mody v, ITO in ITA number 240/Rjt/2017**, the ITAT held that property transferred to Mother through

Sale Deed is a sale and not Gift, taxable as capital gain. The ITAT made the following observations, while passing the order:

> *"12.4 On merit of the case, we note that the property was transferred by the assessee to his mother by way of sale deed no. 3852 dated 13-04-2006 wherein the consideration on the transfer of the property in dispute was duly recorded.* ***There was nothing mention in the sale deed justifying the stand of the assessee i.e. the transfer was in the nature of the gift or without consideration. Accordingly, we hold that there was a valid transfer of the property in the given facts and circumstances within the meaning of the provisions of section 45 of the Act****. In holding so we draw support and guidance from the judgment of Hon'ble Punjab and Haryana High Court in case of Paramjit Singh vs. ITO reported in 195 Taxman 273 wherein it was held as under:*
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> > *4. We have thoughtfully considered the submissions made by the learned counsel and are of the view that they do not warrant acceptance. There is well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1872 Act') incorporate the aforesaid principle. According to section 91 of the Act when terms of a contracts, grants or other dispositions of property has been reduced to the form of a documents then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to section 92 of the 1872 Act once the document is tendered in evidence and proved as per the requirements of section 91 then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. According to illustration 'b' to section 92 if there is absolute agreement in writing between the parties where one has to pay the other a principal sum by specified date then the oral agreement that the money was not to be paid till the specified date cannot be proved. Therefore, it follows that no oral agreement contradicting/varying the terms of a document could be offered. Once the aforesaid principal is clear then ostensible sale consideration disclosed in the sale deed dated 24-9-2002 (A.7) has to be accepted and it cannot be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal does not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserves to be added to the gross income of the assessee-appellant.*

12.5 ***From the above, there remain no ambiguity that the impugned property transferred by the assessee to his mother for consideration of Rs. 5 Lakh is liable to be brought under the ambit of capital gain****. However, the question arise for determination of sales consideration. As the AO has taken consideration as per section 50C of the Act whereas the AR before us has challenged the value adopted by the AO and subsequently sustained by the learned CIT(A). In the interest of justice and fair play, we set aside the issue to the file of the AO to refer the matter ITA No. 240/Rjt/2017 A.Y. 2007-08 to the DVO to determine the value of the property in pursuance to the provisions of section 50C of the Act. Hence the ground of appeal of the assessee is partly allowed.*"

9. In view of the above Tribunal decisions directly on this issue, we find no infirmity in the order of the Ld. CIT(A) so as to call for any interference.

10. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on	**19/09/2023**

Sd/-	**Sd/-**
(WASEEM AHMED)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 19/09/2023

TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/Copy of the 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, राजोकट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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