IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 697/SRT/2023 (AY 2013-14)

(*Hybrid hearing)*

Kamuben Natavarbhai Patel 103-B, Rander Road, Ambeheta B.O. Dabhari, Surat-395005 [**PAN : AOOPP 8863 Q**]	Vs	Income Tax Officer, Ward-2(3)(6), Surat, Anavil Business Centre, Adajan-Hazira Roadm Adajan, Surat-395007
अपीलार्थी/Appellant		**प्रत्यर्थी** /Respondent

निर्धारिती की ओर से /Assessee by	Shri Manish J Shah, AR
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	13.03.2024
उद्घोषणा की तारीख/Date of pronouncement	22.03.2024

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as NFAC/Ld. CIT(A)"] dated 06.10.2023 for assessment year (AY) 2013-14, which in turn arises out assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 26.02.2016. The assessee has raised the following grounds of appeal:

> *"1. The Learned C.I.T.(Appeals) has erred in law and on facts of the case in sustaining addition of long term capital gain u/s 50C of Rs.55,64,300/-.*
> *2. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise."*

2. Brief facts of the case are that assessee is an individual, filed her return of income for assessment year on 14.03.2014 declaring income

of Rs.2,07,410/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that assessee has sold immovable property / land situated at Survey No. 91/2, Block No.103 of Moje Village Olpad, Surat for a consideration of Rs.1.94 crores. The Assessing Officer, in order to verify the jantry rate issued notice under section 133(6) to Sub-Registrar, Olpad. The Sub-Registrar concerned filed reply dated 23.06.2015, and furnished copy of sale deed of the impugned land. On perusal of such sale deed, the Assessing Officer found that the value of sale transaction by Stamp Valuation Authority for the purpose registration valued at Rs.2.50 crores. On the basis of such difference in the sale consideration shown by the assessee and the value determined by Stamp Valuation Authority, the Assessing Officer was of the view that provision of Section 50C of the Act are applicable in the present case. The Assessing Officer issued show cause notice dated 26.10.2015 as to why the value adopted by Stamp Valuation Authority should not be considered for the purpose of calculating capital gains on the sale of such asset and Rs.55,64,300/- (*2,50,39,800 – 1,94,75,500/-*) should not be added to the income of assessee. The assessee filed her reply dated 04.01.2016. The contents of reply are recorded in para-4.4 of assessment order. From the reply of assessee, the Assessing Officer noted that the assessee received sale consideration of Rs.2.50 crores is baseless and without any documentary evidence. The assessee submitted that they have executed sale document (agreement to sale) on 01.08.2011 before

Notary Public, *wherein* sale consideration is shown at Rs.1.94 crores. The sale deed was registered on 26.04.2012 on actual sale consideration on same amount, *i.e.*, Rs.1.94 crores. The assessee further submitted that ready Reckoner Jantry rate at the time of sale deed is not applicable on the transaction as assessee has sold the property on 01.08.2011. The assessee in her without prejudiced submitted prayer to make reference to District Valuation Officer for deciding actual fair market value of property / asset. The reply of assessee was not accepted by Assessing Officer by taking view that provision of Section 50C is deeming provision for the purpose of computing capital gains. The transaction of particular land should be matched with the jantry price fixed for the area and the sale consideration would be the rate at which the property / asset is expected to be sold and jantry rate is a blanket guideline for determination of capital gains. The Sub-Registrar has valued the land for the purpose of registration and charged the required stamp duty. The Assessing Officer, thereby rejecting the contention of assessee and made the addition on difference amount of Rs.55,64,300/- in the assessment order passed on 26.02.2016 under section 143(3) of the Act.

3. Aggrieved by the addition in the assessment order, the assessee filed appeal before Ld.CIT(A). The case of assessee migrated to NFAC/Ld.CIT(A). Before NFAC/Ld.CIT(A) the assessee made almost similar written submission. In addition to assessee specifically

contended that at the time of execution of agreement, the assessee received part payment of sale consideration through banking channel and sold the land at more than the jantry rate applicable on 01.08.2011. Thus, the rate applicable on 01.08.11 and not the date of registration of sale deed should be considered as per jantry rate / circle rate on 01.08.2011. The value of asset as on 01.08.2011 was Rs 67,60,750/-, however, the sale consideration agreed by the assessee at Rs.1.94 crores, which is much more than jantry rate prevailing at the relevant time, hence, provision of Section 50C is clearly applicable in the present case of assessee. The assessee further submitted that she requested for making reference to DVO to decide the fair market value, however, the Assessing Office has not referred the same and arbitrarily made addition in the assessment order. To support such submission, assessee relied on eight case laws of various orders of Co-ordinate Benches of Tribunal, Hon'ble High Court and Hon'ble Apex Court. The assessee again her submission, furnished on ITBA portal on 26.09.2023 besides repeating her earlier submission, submitted that First and Second proviso of Section 50C is applicable on the transaction of assessee, which is specified that where the date of agreement fixing the amount of consideration and the date of registration for transfer of capital assets are not same, the value adopted or asset by the Stamp Valuation Authority on the date of agreement may be taken for the purpose if the value of consideration provided on part payment of sale consideration is received by way of

account payee cheque or draft or by way of cheque, electronic clearance system or banking channel. The assessee also furnished the details of part payment of consideration of Rs.9,00,000/- received before execution of agreement to sale *i.e.*, on 16.06.2011 and that agreement to sale was executed on 01.08.2011. As per jantry rate applicable on 01.08.2011, the value of asset was only Rs.64,82,526/-. All such details are recorded by NFAC/Ld.CIT(A) pages-8 and 9 of his order.

4. The NFAC/Ld.CIT(A) after considering the submission of assessee and referring certain case law dismissed the appeal of assessee by holding that in view of the above judgments, "*the facts of the present case were duly considered the assessee's submission, the request of the assessee is not acceptable*". Further, aggrieved, the assessee has filed present appeal before the Tribunal.

5. We have heard the submissions of Ld. Authorized Representative (AR) for the assessee and Ld. Senior Departmental Representative (Sr-DR) for the Revenue and perused the materials available on record. The Ld. AR for the assessee submits that assessee has sold her asset / residential house in the financial year 2011-12 by executing agreement to sale before Notary Public agreement on 01.08.2011. Before execution of agreement, the assessee has received part payment of Rs.9,00,000/- by way of cheques, which were cleared in her bank account on 21.06.2011 and 23.06.2011 respectively. On the clearance of such cheques, the assessee executed agreement to sale

on 01.08.2011 and sale consideration as per agreement to sale is at Rs.1.94 crores. The value of asset as per prevailing jantry rate was only Rs.64,82,526/-. The Assessee sold her asset on much more value than the prevailing jantry rate. The sale deed of the land / asset was registered on 26.04.2012, at the same sale consideration as agreed in agreement to sale. The Ld. AR for the assessee submits that Assessing Officer made addition of Rs.55,64,300/- by disregarding the submission of assessee. First and Second proviso of Section 50C of the Act is clearly applicable on the facts of present case. The assessee also made request for reference to DVO though the Assessing Officer disregarded such prayer of assessee and made addition. Before Ld.CIT(A) the assessee in her submission relied on various case law. The Ld.CIT(A) despite referring all such case law, which are in favour of assessee, dismissal the appeal of assessee in cryptic manner. The Ld. AR for the assessee submits that he has filed evidence in the form of copy of bank statement showing clearance of three cheques of Rs.3,00,000/- each, which is mentioned in the agreement to sale, copy of which is also placed on record. The Ld. AR for the assessee further submits that part payment of Rs.9,00,000/- by way of issuing three cheques are not in dispute. The Ld. AR for the assessee submits that First and Second proviso to Section 50C is clearly applicable on the facts of the present case and there is no ambiguity in the language employed in such Section. Thus, the Assessing Officer may be directed to accept the value of sale consideration as agreed by

assessee in the agreement to sale. There is no evidence with Assessing Officer that assessee has received any amount than the agreed sale consideration. To support his submission, Ld. AR for the assessee relied upon the order of Co-ordinate Bench of Ahmedabad Benches in the case of ITO vs. Shri Ashok Vadilal Patel in ITA No.777/AHD/2018 dated 23.06.2021.

6. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that if the contention of Ld. AR for the assessee is relied that NFAC/Ld.CIT(A) relied and referred all the decisions which are in favour of assessee, then, it is a fit case to move application for rectification under section 154 of the Act, instead of filing appeal before this Tribunal. The Ld. Sr-DR for the Revenue submits that assessee has not filed any evidence to substantiate the fact that assessee received any payment by way of cheque amount.
7. In short rejoinder, Ld.AR for the assessee that though he has already sent copy of pass-book and he will again send the copy of such pass-book of assessee, and from the entry therein it is clearly discernible that assessee has received part sale consideration in the month of June, 2011.
8. We have considered the rival submission of both the parties and have gone through the orders of authorities below carefully. We have also deliberated the case law relied by Ld. AR for the assessee. We find that there is no much dispute on the facts, which we have already

recorded in para-2 and 3 of this order. The short dispute for our adjudication is whether the assessee is eligible for the benefit of First and Second proviso to Section 50C. The first proviso to Section 50C specify that in case where the date of agreement fixing the amount of consideration and the date of registration of the transfer of capital asset is not the same, the value adopted or assessed by the stamp valuation authority or the date of agreement may be taken for the purpose of computing full values of consideration for such transfer. Further second proviso to section 50C specify that the benefit of first proviso shall apply only in case where the amount of consideration, or part thereof has been received by way of account payee cheque or by banking channel.

9. We find that part payment of the consideration is received by the assessee prior to the execution of agreement to sale in the month of June 2011, which we have verified from the bank statement of the assessee. We further find that as per jantri rate applicable as on 01.08.2011 (sale agreement date) i.e., Rs.64,82,526/-, the assesse has shown / received sale of Rs. 1.94 Crore, which is much more than the agreed price. Thus, in view of the aforesaid factual discussion, we find that the assessee is entitled for the benefit of first and second proviso to section 50C. Hence, the addition made by assessing officer by invoking the provision of section 50C is not sustainable and the same is deleted. In the result, the ground No. 1 of the appeal raised by the assessee is allowed.

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

Order pronounced in open court on 22/03/2024.

Sd/-	**Sd/-**
(Dr ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: 22/03/2024
Dkp. Out Sourcing Senior P.S

Copy to:
1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Assistant Registrar/Sr.P.S. ITAT, Surat