

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD SMC BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM]

I.T.A. No.3208/Ahd/2015
Assessment Year: 2011-12

Tarun Manmohan Garg,
*X-3, Samrath Bungalows,
Anand Nagar Char Rasta,
Praladnagar,
Vejalpur,
Ahmedabad – 380 051.
[PAN : AERPG 2867 G]*

.....**Appellant**

Vs.

Dy. Commissioner of Income tax,
Circle – 3(1)(2), Ahmedabad.

.....**Respondent**

Appearances by:

Aditi P. Sheth *for the appellant*
Deepak Sutharia *for the respondent*

Date of concluding the hearing: 21.08.2017
Date of pronouncing the order: 22.08.2017

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 19th August 2015, passed by the learned CIT(A)-9, Ahmedabad for the assessment year 2011-12, on the following grounds :-

“1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in adding income as per provision of section 50C of the Income Tax Act, 1961 is amounting to Rs.24,23,500/- to the total income of the appellant.

“2. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserve to be quashed.”

2. Learned representatives fairly agree that whatever we decide in ITA No.3207/Ahd/2015 in the case of Manmohan Rajaram Garg vs. DCIT for the assessment year 2011-12, which we had heard along with this appeal, will apply *mutatis mutandis* for this appeal as well, as the issue raised in this appeal is identical to that of ITA No.3207/Ahd/2015 in the case of Manmohan Rajaram Garg for the assessment year 2011-12. Vide my order of even date, I have allowed the same issue for statistical purposes in the case of Manmohan Rajaram Garg in ITA No.3207/Ahd/2015, and the same result must follow here as well. In my said order, I have, *inter alia*, observed as follows:

“2. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to order dated 31st August 2016, passed by this Tribunal, in the case of Narendra Dahyabhai Patel vs. ITO in ITA No.2087/Ahd/2013, by which the issue in appeal before me is said to be covered. Learned counsel submits that the short issue requiring our adjudication in this case is whether or not, in the absence of a specific request made by the assessee during the assessment proceedings for reference being made to the DVO under section 50C, such reference could be directed by the appellate authorities. In this connection, she invites my attention to the following observations made by the Tribunal in the case of Narendra Dahyabhai Patel vs. ITO (supra).

“2. It is a case in which the Assessing Officer has adopted stamp duty valuation of the property sold, for computation of capital gains, under section 50C of the Income Tax Act, 1961. In appeal before the learned CIT(A), the assessee’s contention was that despite his request, the matter was not referred to DVO under section 50C(2) but the appeal was turned down on the ground that assessee could not substantiate his claim of having made such a request in the course of assessment proceedings. The assessee is not satisfied and is in further appeal before me.

3. I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

4. I find that, as held by Hon’ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT [(2015) 372 ITR 83 (Cal)], even in the absence of specific request from the assessee, the Assessing Officer has to give an option to the assessee to follow the course provided by law under section 50C(2). I, therefore, uphold the grievance of the

assessee, and remit the matter to the file of the Assessing Officer for adjudication de novo after referring the matter to the DVO under section 50C(2).”

3. *Learned counsel submits that as the appeal can be disposed of on the above short ground, it is not really necessary to deal with other aspects of the matter. She thus urges me to remit the matter to the file of Assessing Officer with the direction to refer the matter to the DVO under section 50C(2).*

4. *Learned Departmental Representative does not dispute the fact that the issue is squarely covered by the aforesaid decision of the Tribunal but points out that no such request for reference to DVO was made by the assessee in the course of assessment proceedings. He thus relies upon the orders of the authorities below.*

5. *I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. I find that as noted by the Tribunal in the case of Narendra Dahyabhai Patel vs. ITO (supra) the law is now well settled that even in the absence of a specific request from the assessee, the A.O. has to give an option to the assessee to follow the course provided by law under section 50C(2). There is a direct decision to this effect by Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT [(2015) 372 ITR 83 (Cal)]. No judicial precedence to the contrary has been brought to my notice. Respectfully following the esteemed view of the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT (supra), I uphold the plea of the assessee and remit the matter to the file of Assessing Officer for adjudication denovo after referring the matter to the DVO under section 50C(2). As the matter has been remitted to the file of Assessing Officer with the above directions, it is not really necessary to deal with other aspects of the matter.”*

3. Respectfully following the views so taken by me in the case of Manmohan Rajaram Garg vs. DCIT (ITA No.3207/Ahd/2015) for assessment year 2011-12, the issue raised by the assessee in this appeal is also allowed for statistical purposes.

4. In the result, appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 22nd day of August 2017.

Sd/-
Pramod Kumar
(Accountant Member)

Dated: Ahmedabad, the 22nd day of August, 2017.

Copies to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*