

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No. 1682/Ahd/2014
(Assessment Year: 2009-10)

The Asst. Commissioner of Income Tax,
Circle-2(2), 4th Floor, Aayakar Bhavan,
Race Course Circle, Baroda

Appellant

Vs.

Shri Prabuddha P Patel,
13, Chetan Society, Akota,
Baroda – 390020

Respondent

PAN: ACSPP2185K

राजस्व की ओर से/By Revenue : Aditya Shukla, D.R.
आवेदक की ओर से/By Assessee : None (Written Submission)
सुनवाई की तारीख/Date of Hearing : 10.11.2017
घोषणा की तारीख/Date of
Pronouncement : 29.11.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This Revenue's appeal for assessment year 2009-10 arises against the CIT(A)-II, Baroda's order dated 25.02.2014 in case no. CAB/II-335/11-12, partly reversing Assessing Officer's action making long term capital gains addition of Rs.3,08,61,800/- after invoking Section 50C of the Act thereby taking fair market

value of assessee's capital asset sold as Rs.3,29,37,500/-, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

2. Relevant facts are in a very narrow compass. There is no dispute that the assessee has sold his capital asset in question resulting in consequential long term capital gains computed of Rs.40,00,345/- at the first instance. The Assessing Officer sought to apply jantry rate thereof u/s.50C of the Act. The assessee pleaded in response that he could not fetch the above jantry price since the capital asset in question sold in the relevant previous year faced a lot of litigation upto the revenue tribunal regarding Ganotiya's rights forming a distressing factor. He produced on record the relevant evidence as well to this effect. The Assessing Officer rejected all the said explanation to compute assessee's long term capital gains addition of Rs.3.08crores after taking fair market value of the capital asset sold as Rs.3.29 crores u/s.50C of the Act in assessment order dated 22.12.2011.

3. The assessee preferred appeal. The CIT(A) appointed a DVO u/s.50C (2) of the Act. The said Valuation Officer's report/order dated 29.01.2014 determined fair market value of assessee's capital asset as Rs.1870/- per sq.mtr. coming to Rs.72,46,250/-. The assessee filed objection thereto. The CIT(A) rejects the same in his lower appellate order under challenge. He therefore direct the Assessing Officer to take assessee's fair market value as per DVO's report hereinabove. This leaves the Revenue aggrieved.

4. The assessee has not come present despite the fact that the registry has been sending him RPAD notices. Learned Departmental Representative strongly argues that the CIT(A) has erred in reducing fair market value of assessee's capital asset in line with the DVO's report hereinabove. We find no merit in Revenue's instant argument. Hon'ble jurisdictional high court's judgment in PCIT vs. Rajabhai L. Hadiya (2016) 237 TAXMAN 528 (Guj.) holds that the DVO's report in such a case of Section 50C application very well binds the Revenue. We therefore see no

merit in Revenue's instant grievance. The CIT(A)'s order under challenge is accordingly confirmed.

5. This Revenue's appeal is dismissed.

[Pronounced in the open Court on this the 29th day of November, 2017.]

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 29/11/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।