

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

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER,
AND SHRI S. S. GODARA, JUDICIAL MEMBER.

ITA No. 102/Ahd/2016
(Assessment Year: 2011-12)

Shri Yogeshkumar D. Patel
Pitruchhaya, Sardar Nagar,
Girdharnagar Chokadi, Savli,
Dist. Baroda - 391770

Appellant

Vs.

Income Tax Officer,
Intl. Taxation, Vadodara

Respondent

PAN: ACZPP3883B

आवेदक की ओर से/By Assessee : Arti N. Shah, A.R.
राजस्व की ओर से/By Revenue : Shri Prasoon Kabra, Sr. D.R.
सुनवाई की तारीख/Date of Hearing : 01.01.2018
घोषणा की तारीख/Date of
Pronouncement : 17.01.2018

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This assessee's appeal for assessment year 2011-12 arises against the CIT(A)-13, Ahmedabad's order dated 19.11.2015 in case no. CIT(A)-13/Ahd/35/2014-15, upholding Assessing Officer's making long term capital gains addition of Rs.2,93,50,955/- after invoking Section 50C, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. We start with basic facts pertaining to the abovestated long term capital gains issue. There is no dispute that the assessee and his three family members were co-owners in possession of the capital asset in question in the nature of agricultural land situated in R.S. No. 586, 587, Moje: Gothda, Taluka Savli, Dist. Vadodara. They entered into a banakhat dated 30.03.2007 with M/s. Bajaj Healthcare Limited for selling the same in lieu of sale consideration amounting to Rs.32lacs in all. The said banakhat in pages 57 to 61 of the paper book reveals that the above vendee had also paid advance money of Rs.3.08lacs through cheque dated 01.02.2007 and 26.02.2007 amounting to Rs.1.08lacs and Rs.2lacs; respectively. The assessee/vendor thereafter executed the relevant sale deed in the relevant previous year on 21.04.2010 after converting the above land from agricultural to non-agricultural since the vendee in question was not an agriculturist. The stamp authorities determined fair market value of the above capital asset to be Rs.3,10,84,830/- for registration purposes. The Assessing Officer rejected assessee's contention inter alia pleading to have transferred possession as well as asset itself to the vendee concerned well before getting the sale deed registered. The Assessing Officer went into a detailed discussion in assessment order dated 21.03.2014 to conclude that the assessee/vendor had sold the land as non-agricultural only attracting long term capital gains tax as per provisions of the Act. All these resulted in the impugned addition of Rs.2,93,50,955/- as per Section 50C of the Act. The CIT(A) confirms Assessing Officer's action.

3. Learned counsel representing assessee raises two substantive arguments. Her first plea is that both the lower authorities have erred in law as well as on facts in rejecting assessee's vehement contention that the capital asset in question was transferred well before he had executed the relevant sale deed in the impugned assessment year. Her second plea is that both the lower authorities have not appreciated the fact that the assessee owned only 1/4th share of the relevant capital

asset whereas Assessing Officer and the CIT(A) have assessed the entire capital gains in his hands. The Revenue strongly supports both the lower authorities' actions making the impugned long term capital gains addition. We proceed in this backdrop of facts to first of all notice from the banakhat dated 30.03.2007 in question that the vendor side herein had received part payment (supra) through banking channel. There can hardly be any dispute that Section 50C(1) first and second proviso inserted by the Finance Act (2016) w.e.f. 01.04.2007 envisage that in case the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the Stamp Valuation Authority on the date of agreement may be taken for the purpose of computing full value of consideration for such transfer. The legislature thereafter stipulates in second proviso that the above first proviso would apply only in case where the amount of consideration or part thereof has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through bank accounts on or before dated of agreement for transfer. We reiterate that the assessee had received part of the sale consideration on 26.02.2007 well before entering into the relevant banakhat dated 30.03.2007. We further find that this tribunal's co-ordinate bench's decision in Dharamshibhai Sonani vs. ACIT (2016) 75 taxmann.com 141 (Ahmedabad-Trib) holds both the above proviso to be curative ones having retrospective effect w.e.f. 01.04.2003. We therefore accept assessee's former plea for statistical purposes and direct the Assessing Officer to decide the issue afresh after ascertaining the value of above capital asset as on the date of agreement as per law after affording adequate opportunity of hearing. It is made clear that the assessee would be having all options open to contest the relevant assessable value by seeking necessary reference u/s.50C(2) of the Act to the DVO.

4. We now advert to assessee's latter plea that he sold only 1/4th share whereas both the lower authorities have assessed entire consequential capital gains in his hands. We find that the neither the Assessing Officer nor the CIT(A) have

examined this latter plea. We therefore restore the instant latter issue back to the Assessing Officer to be decided as per law.

5. This assessee's appeal is accepted for statistical purposes.

[Pronounced in the open Court on this the 17th day of January, 2018.]

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad: Dated 17/01/2018

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 ।