

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD %SMC+BENCH

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 1737/Ahd/2015  
Assessment Year 2011-12**

Smt. Ritaben Pinakbhai Patel, 39, Arpan Society, Naranpura, Ahmedabad-380013 PAN: ALFPP6680B (Appellant)	Vs	The ITO, Wd-2(2)(4), Ahmedabad (Respondent)
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**ITA No. 118/Ahd/2016  
Assessment Year 2011-12**

Amrutbhai Atmarambhai Patel (HUF), B/3, Arjun Bungalow, Opp. Radhe Shyam Party Plot, Nava Vadaj, Ahmedabad PAN: AAGHA4763E (Appellant)	Vs	The ITO, Wd-7(3), Ahmedabad (Respondent)
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**Revenue by: Shri Keyur Patel, Sr. D.R.  
Assessee by: Shri Sanjay Shah, A.R.**

Date of hearing : 24-07-2018  
Date of pronouncement : 19-09-2018

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two appeals filed by different assessees for A.Y. 2011-12, arise from order of the CIT(A)-10, Ahmedabad, in proceedings under section 143(3) of the Income Tax Act, 1961; in short ~~the~~ Act. The identical facts and issues are involved in these two appeals therefore for the sake of convenience we are adjudicating the appeal ITA No. 1737/Ahd/2015 and its findings will be applicable to the other appeal ITA No. 118/Ahd/2016.

2. The assessee has raised following grounds of appeal:-

**ITA No. 1737/Ahd/2015**

*“1.0 The learned A.O. erred in invoking provisions of section 50C(1) without following the mandate of referring the valuation of property to valuation officer as laid down u/s 50C(2). The learned CIT(A) erred in upholding such valuation. It is submitted that it be so held now and the order passed by learned A.O. by invoking section 50C as confirmed by CIT(A) be declared null and void and be quashed.*

*1.1 The learned CIT(A) erred in law and on facts in confirming the computation of long term capital gain as made by the learned AO by taking the valuation as done by stamp valuation authority at Rs.3,40,00,000/- as against the sale consideration of Rs.51,00,004/- as per registered sale deed for sale of ancestral agricultural land at Vadaj, Ahmedabad jointly executed by the appellant with 13 others ignoring the fact that the said sale consideration was arrived at pursuant to the settlement carried out after protracted civil litigation. It is submitted that it be so held now and sale consideration as mentioned in the registered sale deed be considered for the purpose of computation of capital gain and not by applying the provisions of section 50C of the Act in a routine manner as has been done by learned AO and confirmed by learned CIT (A).*

*1.2 The learned CIT(A) failed to appreciate that provision of section 50C would not apply to the sale of property in question as the Banakhat was already executed prior to section 50C coming into force and the appellant was only executing sale deed pursuant to such Banakhat.*

*1.3 The learned CIT(A) failed to appreciate that passing away of more than 20 years from the date of Banakhat itself was a factor which can justify fetching a consideration much lower than Jantri Value (Circle Rates).*

*1.4 Under the circumstances, it is prayed that the capital gain as computed by the appellant be accepted and that computed by the learned AO to the extent confirmed by CIT(A) be rejected.*

*2.0 The learned AO as well as learned CIT(A) erred in not granting the basic exemption of Rs. 1,90,000/- available to the woman-assessee while computing the tax liability on the total income. It is submitted that it be so held now and the tax liability be computed after granting the basic exemption available as per the provisions of the Act.*

*3.0 The learned CIT(A) erred in confirming the levy of interest u/s 234B of the Act for a sum of Rs.1,41,108/- charged by the learned AO on the ground that such levy is consequential. It is submitted that in the facts and circumstances of the case, interest u/s 234B is not chargeable upon the assessee and the same should be directed to be deleted.”*

3. In this case, return of income declaring income of Rs. nil was filed on 30<sup>th</sup> June, 2011. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act. During the year under consideration, the assessee has derived income from long term capital gains and income from other sources. On verification of the details, the assessing officer noticed that assessee has sold immoveable property along with 13 other co-owners situated at Vadaj admeasuring 4856 sq. mt. for an amount of Rs. 51,00,004/- on which stamp duty of Rs. 16,60,000/- was paid. However, the assessee has not disclosed capital gain as prescribed in the provision of section 50C according to sale consideration determined on the basis of stamp duty value of the property. Accordingly the assessing officer has determined the stamp value of the property at Rs.3,40,00000/- and worked out capital gain at Rs. 19,90,196/- in respect of assessee's shares of 387 sq. yard. The assessee was also show caused to explain why the same should not be added to the total income of the assessee. The assessee explained that sold property was ancestral property of his grand-father along with his two brothers which was acquired prior to 1970. It was stated that (agreement to sell) the banakhat was executed on 5<sup>th</sup> July, 1979 and they have received only Rs. 33977/- as against the total sale consideration of Rs. 2,26,516/- . It was also stated that the possession of the property was given to the buyers mentioned in the Banakhat and the buyers have immediately transferred their Banakhat right to Satnam Co-operative Housing Society Ltd. on 25<sup>th</sup> Jan, 1980. It is explained that the buyers have not fulfilled the conditions of the banakhat as they have not paid the remaining amount of consideration of Rs. 1,92,535/-, therefore, the family members have filed a civil suit in the civil court. The litigation was prolonged, thereafter, both the parties have made out of the court settlement and executed the sale deed in favour of the proposed buyers as per the banakhat by making a payment of Rs. 51 lacs. by the buyers. Thereafter, the sale deed was executed on 26<sup>th</sup> April, 2010 for Rs. 51 lacs after paying the stamp duty of Rs. 16,60,000/- as per jantri rate. The assessee has cited these extraordinary circumstances and contended that capital gain be

charged on the actual income not on notional income. The assessing officer has not accepted the explanation of the assessee and stated that it is very clear from the provision of section 50C that once the document is registered with the stamp duty authority the value adopted/assessed by him for the purpose of payment of stamp duty in respect of such transfer has to be considered as sale consideration u/s. 50C of the act. Consequently, the assessing officer has determined the long term capital gain to the amount of Rs. 22,65,496/- as per the share of the assessee in the sold property.

4. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

*"5. I have perused the facts of the case as enumerated by the A.O. and as submitted by the appellant. After careful consideration of facts, submissions and contentions of both the A.O. and the appellant, ground wise adjudication is as follows:-*

*5.1. The first effective ground of appeal is regarding addition of Rs.22,65,496/- on account of Long Term Capital Gains on sale of land.*

*In this case the appellant had sold a land measuring 5808 square yards along with fifteen (15) other co-owners. The land was sold for sale consideration of Rs.51,00,004/-. The share of the appellant in the total land was 387 sq. yds. The appellant had declared NIL capital gains on the sale of land. The appellant and other co-owners paid Rs.16,60,000/- as Stamp Duty on the sale of land. The AO observed that based on Stamp Duty paid by the appellant and other co-owners the sale consideration should work out to be Rs.3,40,00,000/-. Out of this, share of the appellant would work to Rs.22,65,496/-. After taking into consideration cost of land after indexation, the AO worked out the Long Term Capital Gains at Rs. 19,90,196/-.*

*The AO based the above as per provisions of sec.50C of the Act which reads as follows: -*

*"50C (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."*

*The AO asked the appellant as to why the Long Term Capital Gains on sale of land should not be taken at Rs. 19,90,196/-. The AO did not find the explanation given by the appellant satisfactory. Hence, the AO added Rs.22,65,496/- as Long Term Capital Gains to the income of the appellant.*

*During appeal proceedings, the appellant submitted that the land which was sold had been the subject matter of prolonged litigation since 21-10-04. The appellant along with other co-owners executed a 'Banakhat' on 05-09- 1979 to sell the land to four*

persons. These four buyers transferred their 'Banakhat' rights to Sanatan Co-operative Housing Society on 25-01-80. Since the buyers and the Sanatan Co-op Society did not fulfil conditions of 'Banakhat' the appellant along with other co-owners filed a Civil Suit on 21-10-04. The litigation went on for several years and on 29-04-10 the litigant parties reached an out of court settlement/compromise. As per this settlement, the appellant and other co-owners got Rs.51,00,000/- as sale consideration. The appellant submitted that due to protracted court battle, they could not get jantri value prevailing on the date of sale consideration. The appellant contended that the stamp valuation authority would collect the Stamp Duty on the basis of jantri value declared by the State Government which is based on the sale instances registered as per normal circumstances whereas their case has been an extra ordinary one. As a result, due to prolonged litigation, the land did not fetch normal market value.

After considering rival submissions I hold that the AO was justified in taking the sale consideration at Rs.3,40,00,000/- which has been worked out based on the Stamp Duty of Rs.16,60,000/- paid by the appellant and her co-owners. A plain reading of section 50C as reproduced above shows that this section provides that wherever the consideration received as a result of transfer of a land or building is less than the value adopted or assessed by any authority of State Government (read "Stamp Valuation Authority") for the purpose of payment of Stamp Duty, the value so assessed shall be taken to be the full value of consideration received for the purpose of section 48. As detailed above, the AO has taken the sale consideration based on valuation by the Stamp Valuation Authority. The appellant, apart from submitting that the land in question has been subject matter of prolonged litigation, has not brought out any other material on record to show as to why the sale consideration of Rs.51,00,004/- is justified. It is observed that the appellant and other co-owners received Rs.51,00,004/- as sale consideration while the jantri value based on stamp duty valuation as worked out by the AO is Rs.3,40,00,000/-. The difference is too big to be explained only by reference to litigation.

In view of discussion above, I hold that the AO was justified in taking the sale consideration based on stamp duty valuation and working out the long term capital gains at Rs.19,90,196/-. The AO in the body of the assessment order while working out capital gains mentioned the sale consideration at Rs.22,65,496/- and after deducting indexed cost of acquisition, worked out the Long Term Capital Gains at Rs. 19,90,196/-. However, while computing the total income at the end of the assessment order, the AO took the Long Term Capital Gain at Rs.22,65,496/-. This appears to be an inadvertent error. Accordingly, the AO is directed to check this working. Subject to verification by the AO, the addition of Rs.19,90,196/- instead of Rs.22,65,496/- as worked out by the AO on account of Long Term Capital Gains is confirmed. Subject to verification by the AO, the appellant gets part relief. This ground of appeal is partly allowed."

5. During the course of appellate proceedings before us, the Id. counsel has furnished paper book containing details and submissions filed before the assessing officer and the Id. CIT(A). The Id. counsel has referred to pages 101 to 110 of the paper book pertaining to ITA No. 1454/Ahd/2011 Sudhirbhai Govindbhai Oza vs. ITO dtd. 25-06-2015. He contended that Id. CIT(A) has failed to consider that provision of section 50C is not applicable in the case of the assessee as banakat was already executed prior to existence of section 50C of the act. On the other hand, Id. departmental representative has referred page

no. 147 of the assessee's paper books indicating that name of the assessee was included as a party to the agreement only included on 9<sup>th</sup> Jan, 2003. He has also referred to page no. 156 of the assessee's paper book pointing out that it is mentioned in the agreement as under:-

*“ we the vendors’ received total sale price of Rs. 51,00004/- and the vendors hereby admits receipt thereof and vendors have sold said property as shown in the schedule hereunder to you the purchasers along with rights, title and interest etc. We the vendors have the sold the said land in the interest and benefit of our family and for the maintenance and education of minor members of our family in respect of benefit of family and more income is being received by doing agriculture from the said land most of the surrounding lands are being sold non-agricultural purpose.”*

The Id. departmental representative has also referred the following two decisions of ITAT(2014) 51 taxman.com 415 (Hyderabad-Trib) Smt. Bhavya Anant Udeshi vs. ITO dated 4<sup>th</sup> April, 2014 and (2010) 4 ITR(T) 271(Chennai) Smt. Meera Soma Sekaran vs. ITO dated 10<sup>th</sup> Jan, 2010. On the other hand, Id. counsel has placed reliance on the decision of (2010) 91 taxman. com 199 (Allahabad-Trib) Hari Mohan Das Tandaon (HUF) vs. Pr. CIT dated 8<sup>th</sup> Jan, 2018. The Id. departmental representative has also contended that the transfer of the land was not completed as per banakhat of 1979 and it is also clear that assessee's name was not entered in the banakhat as on 1979.

6. We have heard both the sides and perused the material on record carefully. It is noticed that the aforesaid property was sold as per registered sale deed on 26<sup>th</sup> April, 2010 for Rs. 51 lacs and the total sale consideration was worked out at Rs. 3,40,00,000/- under the provision of section 50C of the act according to value determined as per stamp duty paid. The assessee's share was determined at Rs. 22,65,496/- on which the capital gain was worked out at Rs. 19,90,196/-. It is undisputed fact that sale consideration of the property was determined on the basis of out of court settlement by both the parties for amount of Rs. 51,00004/- and the sale deed was executed on 26<sup>th</sup> April, 2010. We observe from the perusal of material on record that aforesaid referred Banakhat was not finally executed as the sale consideration was finalized on 29-04-2010

on out of court settlement which was not based on terms and conditions of the banakhat. Inter alia the aforesaid land has not been finally sold at the price agreed upon in the banakhat. The name of the assessee was included as a party to the agreement only on 9<sup>th</sup> Jan, 2003. Considering the above facts and circumstances we observe that assessee cannot take the shield of the impugned banakhat after prolong period of 31 years to say that the provision of section 50C are not applicable when the sale deed was not actually executed as per the terms and conditions prescribed in the Banakhat. However after considering the submission of the assessee dated 19/12/2014 made before the Ld.CIT(A) referring to provision of section 50C(2) of the act regarding the stamp valuation exceeding the fair market value of the sold property, we are of the view that it will be appropriate in the interest of justice to refer this case to the Valuation officer for the valuation of assets according to the provision of section 50(2) of the act. Therefore after considering the material on record , we restore this issue to the file of the assessing officer on the limited point to make reference to the valuation officer as desired by the assessee and decide the issue a fresh after providing adequate opportunity to the assessee. Accordingly, the appeal the assessee is partly allowed for statistical purpose.

7. Regarding not granting of basic exemption of Rs. 1,90,000/- to the woman assessee. After hearing both the sides on this issue, we direct the assessing officer to verify and allow the basic exemption available in the case of the woman assessee as per law. Therefore, this ground of appeal is allowed for statistical purposes.

8. Regarding ground no. 3 of interest u/s. 234B of the act, we do not find any merit in this ground of appeal of the assessee and levy of interest u/s. 234B is mandatory as per provision of law. Therefore, this ground of appeal of the assessee is dismissed.

9. In the result, the ground no 1 of appeal is partly allowed for statistical purpose, ground no. 2 is allowed for statistical purposes and ground no.3 is dismissed.

Order pronounced in the open court on 19-09-2018

**Sd/**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 19/09/2018**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

आदेश का प्रतिलिपि अप्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपील अाधिकरण,  
अहमदाबाद