

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.2444/Ahd/2016

निर्धारण वर्ष/ Asstt. Year: 2012-2013

Shri Chandulal Parbatbhai Patel Prop. M/s.Shree Sharda Timber Mart Lati Bazar Zone-2 Gita Mandir Ahmedabad. PAN : AAWPP 0054 D	Vs.	DCIT, Cent.Cir.5(3) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri M.J. Shah
Revenue by :	Shri Lalit P.Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/10/2018

घोषणा की तारीख /Date of Pronouncement: 23/10/2018

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present appeal is directed at the instance of the assessee against order of the Id.CIT(A)-5, Ahmedabad dated 1.9.2016 passed for the Asstt.Year 2012-13.

2. Sole grievance of the assessee in this appeal is against action of the AO in substituting value of the property determined by the stamp valuation authority as deemed value of sale consideration received on sale immovable property *qua* land situated at 1089/90.

3. Brief facts relevant for adjudication is that the assessee has e-filed his original return of income on 26.7.2012 declaring total income at Rs.11,42,526/-. Thereafter on receipt of information received pertained to the sale of certain immovable properties under section 50C of the Act, the case of the assessee was reopened under section 147 and issued and served notice under section 148 of the Act upon the assessee. Accordingly, assessee revised its return declaring a revised income at Rs.34,86,504/- and paid additional tax thereto. It is noticed by the AO that assessee along with other co-owners sold land situated at Village Godhavi for a consideration of Rs.1,70,54,300/-. A notice was issued to the assessee to furnish details of transaction with respect to the immovable properties entered into by the assessee during the under consideration and to work out capital gain thereon. Dispute in this present case relates to sale of land at survey no.1089/20 sold on 29.7.2011 in which the assessee has 25% share as co-owner. Assessee submitted that he has already offered short term capital gain and paid additional tax thereon, which was calculated on the basis of value estimated by the Departmental Valuation Officer in the case of co-owner who was also co-owner of the same piece of land. However, the Id.AO did not accept this submission of the assessee on the ground that value determined by the stamp valuation authority is more reliable and binding than the value determined by the DVO. He accordingly made addition of Rs.55,56,456/-. This addition was challenged before the Id.First Appellate Authority. Though, the Id.CIT(A) in principle agreed that since the property in question was already referred and valued by the DVO, the right course for the AO was to adopt value adopted by the DVO, but confirmed the addition on different footing. Assessee is now before the Tribunal.

4. Before us, the Id.counsel for the assessee reiterated submissions made by the Revenue authorities below, and further submitted that as per the

mandate provided under section 50C, where the assessee disputes value adopted or assessed by the AO, then the AO must refer valuation of the property to the valuation officer in accordance with the provisions of Section 55A of the Act. In the present case, the same of piece of land has already valued by the DVO in the case of other co-owner by a reference by the AO and the AO has accepted the same, and therefore, the AO cannot apply different values for same piece of land. The assessee has already objected to such valuation before the both Revenue authorities and made a specific request that value adopted in the case of co-owner be adopted in the case of the assessee as well. On the other hand, the Id.DR supported the orders of the Revenue authorities.

5. With the assistance of Id.representatives, we have gone through the record carefully. The grievance of the assessee is that the Id.AO has erred in adopting value of the land transferred by the assessee equivalent to the value on which stamp duty was paid. It emerges out from the record that the assessee was having 25% share in the land bearing survey no.1089/90. He has sold this land with other co-owners. The Id.AO while computing the capital gain under section 48 of the Act adopted full value of the sale consideration equivalent to the amount on which stamp duty was paid. The case of the assessee was that in the case of co-owner, reference was given to DVO under section 50C(2) who had determined fair market value of the property. The Id.counsel for the assessee contended that the assessee made a prayer before the Id.CIT(A) that the same value be adopted in the case of the assessee. We find force in this contention of the assessee, because section (2) of section 50C contemplates that in case assessee raises an objection of the value on which stamp duty was paid, then in order to find fair market value of the asset, reference would be made to the DVO , since in the case of co-owner such reference was made on the same piece of land. The same value

determined by the AO in the case of co-owner ought to be adopted in the case of the assessee. We allow the appeal of the assessee and remit the issue to the file of the AO with direction to the Id.AO to compute the capital gain assessable in the hands of the assessee on transfer of the above land by adopting full sale consideration equivalent to the amount determined by the DVO in the case of co-owner. With this direction, we allow this ground of appeal.

6. In the result appeal of the Assessee is allowed.

Order pronounced in the Court on 23rd October, 2018 at Ahmedabad.

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

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**