

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “D” BENCH

**(BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 259/AHD/2017
(Assessment Year: 2007-08)**

Income Tax (Exemption), Vadodara	Officer Ward,	V/S	Matrushri Gangaba Trust, “Kamdhenu Estate” Opp. City Ban, Race Course- Gotri Road, Vadodara- 390005
(Appellant)			(Respondent)

PAN: AAATM3712B

**Appellant by : Shri Lalit P Jain, Sr. D.R.
Respondent by : Shri S. N. Divatia, A.R.**

(आदेश)/ORDER

Date of hearing : 02 -08-2018

Date of Pronouncement : 30 -10-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Revenue is directed against the order of the Ld. CIT(A)-2, Vadodara dated 09.11.2016 pertaining to A.Y. 2007-08 and that whether on facts and in the circumstances of the case that ld. CIT(A) justified in deleting

the LTCG of Rs. 1,83,76,000/- holding that it has been wrongly assessed in the hands of the assessee.

2. In this case, assessee filed its return of income on 28.07.2007 declaring total income at Rs. 6,79,020/-. Thereafter notice u/s. 148 was issued on 19.03.2014 in response to which assessee submitted return of income. Although the assessee is a Trust but it is not registered u/s. 12A. After considering the submission of the assessee, the Assessing officer assessed Long Term Capital Gains from the sale of immovable property at Rs. 1,83,76,000/- u/s. 50C and this issue has been discussed by the Assessing Officer in Para-4 of the assessment order.
3. Thereafter assessee preferred first statutory appeal before the Id. CIT(A) who partly allowed the appeal of the assessee.
4. Now Department is before us.
5. In this case, assessee is a private trust and derives income from interest. As per the AIR Information, it has come to the knowledge of the Assessing Officer that a sale deed has been effected in respect of immovable property and the declared consideration was Rs. 2.00 crores. The sale is executed in favour of Tanman Fivnest Pvt. Ltd. by the assessee along with another co-owner Smt. Gangaben Raojibhai Patel with M/s. Johnson Electric Co. Pvt. Ltd. as a confirming party. Thereafter Assessing Officer computed the income from the sale of land under the head Capital Gain and determined the total income at Rs. 2,23,76,000/- and reduce an amount of Rs. 40,00,000/- from such amount considering such amount having been offered as value of consideration in the

A.Y. 2007-08. The word “or assessable” inserted in Section 50C by Finance Act, 2009 with effect from 01/04/2009 is applicable from 2009-10 only and hence provisions of Section 50C cannot be applied in the year under consideration. Therefore, Capital Gain cannot be assessed u/. 50C in the case of assessee.

6. Now property under consideration stood transferred on 15/07/2006 on handing over of the possession to Jhonson Electric Co. Pvt. Ltd. in compliance to Agreement for Sale dated 06.04.1993. Accordingly, subsequent transfer of the said property by Jhonson Electric Co. Pvt. Ltd. to Tanman Finvest Pvt. Ltd. vide Deed of Conveyance dated 08.05.2007 would result capital gain in the hands of Jhonson Electric Co. Pvt. Ltd. only. It is worthwhile to mention here that the Long Term Capital Gain on the basis of Deed of Conveyance dated 08.05.2007 has been assessed in the case of Jhonson Electric Co. Pvt. Ltd. vide an order u/s. 143(3) r.w.s. 147 dated 03.11.2010. Since Long Term Capital Gains on the basis of sale consideration disclosed in Conveyance Deed determined u/s. 50C has already been assessed in the case of Jhonson Electric Co. Pvt. Ltd. which had purchased the property from the assessee. Therefore, ld. CIT(A) has rightly hold that property cannot again be assessed in the hands of assessee. In our considered opinion, ld. CIT(A) has passed detailed and reasoned order and same does not require any kind of interference at out end.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on	30 - 10- 2018
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Sd/-

Sd/-

(PRAMOD KUMAR)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 30/10/2018

(MAHAVIR PRASAD)
JUDICIAL MEMBER