

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT**  
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER  
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A. No.29/AHD/2017/SRT  
निर्धारण वर्ष/Assessment Year : 2013-14

Shri Prakashchandra Goyal(L/h of Late Shri Kapil Prakashchandra Goyal), A-1002, Meghdhanush Apartment Sarelawadi, Ghoddod Road, Surat	<b>Vs.</b>	The Income Tax Officer, Ward-1(3)(4), Surat.
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Vinod Goyal - CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar - Sr.DR

सुनवाई की तारीख/ Date of hearing:	01.11.2018
उद्घोषणा की तारीख/Pronouncement on	14.11.2018

**आदेश /ORDER**

**PER O. P. MEENA, ACCOUTANT MEMBER:**

1. This appeal filed by the Assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-2, Surat(in short “the CIT (A)”) dated 17.11.2016 pertaining to Assessment Year 2013-14 which in turn has arisen from the order passed by the Income Tax Officer, Ward-1(3)(4), Surat(in short “the AO”) dated 14.03.2016 under section 143(3) of Income Tax Act,1961 (in short ‘the Act’).

## 2. Ground raised by the assessee as under :

### "1. ADDITION OF Rs.3,68,289/-U/S 50-C OF THE ACT

- (i) *The Learned CIT (A) has erred in law and on facts in confirming the addition made by the assessing officer of Rs.3,68,289/ -u/s 50-C of the Act on transfer of right in leasehold property by not appreciating the law that the section 50-C applies only for transfer of land, building or both not for transfer of leasehold rights*
- (ii) *The Learned CIT (A) has erred in not appreciating the judgment of the Jurisdictional Tribunal in the case of ITO v. Shri Yassin Moosa Godil (ITA No 2519/Ahd/2009 dtd. 13-04-2012) as quoted by the appellant during the appellate proceedings."*

3. Succinct facts are that the AO has made addition of Rs.3,68,289/- on transfer of right in leasehold property u/s.50C of the Act. The assessee has contended that he has shown short capital loss of Rs.72,000/- on the transfer of leaseholder rights in a shop owned by a state government body namely Rajmata Viajyaraje Sindhia Krishi Upaj Mandi Samiti, Jodhpur and the provisions of section 50C are not applicable in this case. As it was a transfer of leasehold rights in the property which was leased for 99 years. However, the AO has made the addition of the same.

4. Being aggrieved, the assessee filed an appeal before the Id.CIT(A). However, the CIT(A) was of the view that lease of an immovable property is defined in section of TP Act to be a capital assets within the meaning of section 2(14)(a) of the Act the nature

of the lease hold rights granted to the assessee under the lease deed will have to be examined. The CIT(A), therefore placing reliance in the case of Traders and Minors Ltd., 27 ITR 341 (Patna) and Shri Hari Om Gupta ITA No.3222/Lkw/2013 dated 11.04.2014 held that lease hold right is also a capital asset and therefore lease hold right for 99 years for a land is also a capital asset to it the provision section 50C are applicable, hence, the addition of Rs.3,68,289/- made by the AO was upheld.

**5.** Being aggrieved, the assessee filed appeal before us. The ld.Counsel for the assessee submitted that the provision of section 50C of the Act on transfer of right in lease hold property are not applicable as that section 50C applies only for transfer of land, building or both not for transfer of lease hold rights. The ld.Counsel relied in the case of CIT vs. Mother India Refrigeration Industries Pvt. Ltd. [1985] 155 ITR 711 (SC) and submitted that the provision of section 50C are applicable on transfer of land or building or both but it is not applicable in case of transfer of any tenancy or lease hold rights in the property. Section 50C is a deeming provision by a virtue of which a legal fiction has been created. It is a settled law that legal fiction cannot be extended beyond the purpose for which it is enacted. Legal fiction is only

for a definite purpose and limited to the purpose for which they are created and should not be extended beyond the legitimate field. The Id.Counsel further placed reliance in the case of CIT vs. Green Field Hotels and Estate (P.) Ltd., 245 Taxmann 125 (Bombay) wherein it was held that section 50C will not be applicable while computing capital gains on transfer of lease holding rights in land and building. The Id.Counsel further placed reliance on the decision of Ahmedabad Bench of Tribunal in the case of Smt. Devindraben I.Barot vs ITO [2016] 70 TAXMANN.COM 235 (Ahmedabad Tribunal) wherein catch note reads “AO held that it was assessee who sold property and computed capital gains as per section 50C whether on facts assessee had transferred only rights in impugned land which could not be equated to land or building or both and therefore provisions of section 50C could not be applied... held yes.”

**6.** *Per contra*, the Id.Senior Departmental Representative (Sr.DR) supported the orders of the Lower Authorities.

**7.** We have heard the rival submissions and find that the assessee has shown short term capital loss at Rs.72,000/- on transfer of right in leasehold property in a shop owned by a state

government body namely Rajmata Viajyaraje Sindhia Krishi Upaj Mandi Samiti, Jodhpur. However, the stamp value adopted by the stamp valuation authority in the case was at Rs.14,72,000/-, therefore, AO has worked out short term capital gain at Rs.3,68,289/- by allowing purchase cost as per value of property shown in the balance sheet. The assessee has contended that since he has transferred his lease holding right in the shop, therefore, provisions of section 50C are not applicable. The perusal of section 50C manifest that it applies only to the land or building or both. Section 50C can come into play only in a situation where the consideration received or accrue as a result of transfer by a appellant of a capital asset being land or building or both is less than the value adopted or assessed or assessable for the purpose of payment of stamp duty in respect of such transfer. It is settled legal position that deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of this section. Therefore, it is essential for application of section 50C that transfer may not be of a capital asset being land or building or both. The assessee has transferred is lease holding rights in land and building. The ld.Counsel further relied in the case of Atul Puranik Vs ITO [2011] 132 ITD 499 (Bombay) wherein it was held that section 50C applies

only to a capital asset being land or building or both it cannot be made applicable to lease holding rights in a land as the assessee transferred leasing right for 60 years in the plot and not land itself, the provisions of section 50C cannot be invoked. Further, the decision of Hon'ble Bombay High Court in the case of Green Field Hotels & Estate (P) Ltd.,(supra), Smt Devindraben I.Barot also applicable to present case.

8. In the light of these facts, we hold that provisions of section 50C are deeming provisions and same were applicable only in this situation where a capital asset being a land or building or both is transferred. Therefore, we hold that the Lower Authorities were not justified in taxing short term capital gain at Rs.3,68,289/- in respect of transfer of leasehold rights, hence, same is therefore deleted.

9. In the result, appeal of the assessee is allowed.

10. The order pronounced in the open court on 14.11.2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

सुरत/ Surat, दिनांक Dated: 14<sup>th</sup> November, 2018/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

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Assistant Registrar, Surat