

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD “D” BENCH, AHMEDABAD**

**[Coram: Justice P P Bhatt, President and Pramod Kumar Vice President]**

ITA No.: 3493/Ahd/2016  
Assessment year: 2012-13

**Babulal S Solanki** .....**Appellant**  
*Prajapati Vas, Near Nagarpalika Office*  
*Gota, Ahmedabad 382 481 [PAN: APKPS8932C]*

**Vs.**

**Income Tax Officer**  
**Ward 7(1)(1), Ahmedabad** .....**Respondent**

**Appearances by**  
**Ankit Talsania, for the appellant**  
**Subhash Bains, for the respondent**

Date of concluding the hearing : December 6, 2018  
Date of pronouncement : March 04, 2019

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 7<sup>th</sup> October 2016 passed by the Commissioner of Income Tax, in exercise of his powers under section 263 r.w.s. 143(3) of the Income Tax Act, 1961, for the assessment year 2012-13.

2. Grievance of the assessee, in substance, is that, on the facts and in the circumstances of the case, learned Commissioner was not justified in exercising revisionary powers under section 263 and thereby remitting the matter to the file of the Assessing Officer to “verify the claim and genuineness of the details/documents submitted by the assessee during the course of proceedings under section 263 of the Act”.

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The scrutiny assessment under section 143(3) was completed on 24<sup>th</sup> March 2015. Subsequently

on verification of assessment records, the Commissioner formed the opinion that the “assessment was finalized without conducting proper investigation and enquiry, and prima facie, the assessment was erroneous and prejudicial to the interest of the revenue” for the following reason:

On verification of case records and documents, it is observed that the land bearing survey number 193 and 194, TP scheme No. 32 situated at Gota, Ahmedabad, was jointly sold by the assessee with 4 co-owners. Further, on verification of the sale deed, it is found that while calculating assessee’s share of taxable capital gain, instead of jantri value of Rs 7,13,67,350 on which stamp duty was collected, the sale consideration of Rs 4,50,000 was taken and, therefore, income of Rs 52,73,470 remain untaxed which resulted in under assessment of income under the head capital gain.

4. It was in this backdrop that the revision proceedings under section 263 were initiated. When assessee was put to notice on this aspect, it was explained by the assessee that the Assessing Officer had specifically looked into the matter of application of Section 50C, and it was after due verification of records and evidences called for that the assessment order in question was passed. In more specific terms, learned Commissioner’s attention was drawn to the letter dated 9<sup>th</sup> December 2013 passed by the Assessing Officer, and assessee’s reply thereto, and the claim of the assessee was allowed after duly considering stand on the assessee on the impact of stamp duty valuation rate, on this transaction, under section 50C. Learned Commissioner, however, was not satisfied. He was of the view that the letter issued by the Assessing Officer was a general letter and that there is no specific mention in the assessment order as to why sale consideration is accepted and the stamp duty value is not adopted as sale consideration under section 50C. Learned Commissioner thus treated the order as erroneous and prejudicial to the interests of the revenue. On merits, learned Commissioner had no comments to make. He, however, directed the Assessing Officer to examine the matter afresh as per law and after giving a reasonable opportunity of hearing to the assessee. The assessee is aggrieved and is in appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

6. We find that the Assessing Officer, vide letter dated 9<sup>th</sup> December 2013, did state, in rather general terms, that where the stamp duty valuation (i.e. jantri value) is different from sale consideration, the assessee has to state whether the stamp duty valuation was adopted as sale consideration. There was neither a specific reference to the facts of this case or the application of Section 50. In reply to this letter, the assessee stated that “the land sold is agricultural land as clearly mentioned in the sale deed”, that “index copy dated 3<sup>rd</sup> June 2011 (i.e. after the date of sale deed) clearly shows the said land as an agricultural land” and that “jantri value of said agricultural land is Rs 4,900 per sq mtr which was clearly mentioned as per letter of Superintendent of Stamps, Gandhinagar, Gujarat”. It was further clarified that “the value of Rs 11,750 per square meter on which stamp duty is paid by the purchaser is for non agricultural land”. The assessee thus explained that the sale consideration is less than the stamp duty valuation for the land sold, and then he pointed out the computation of conversion premium paid by the assessee was on the basis of valuation of agricultural land. This plea, however, proceeds on the assumption that the provisions of Section 50C come into play on a fair stamp duty valuation of the land or building or both, rather than the actual valuation adopted by the stamp valuation authority. Section 50 C comes into play, for substitution of actual sale consideration by the value adopted for stamp duty valuation purposes, “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...by any authority”. What is thus clear is that, on the face of it, the actual stamp duty valuation adopted by the assessing authority rather than what would be the right, even if that be different from actual, stamp duty valuation which ought to have been adopted by the stamp duty valuation authority. If the registration does not take place in the year of transfer and no stamp duty is actually assessed as such, then, of course, value assessable could come into play but that’s not the case here. The reply of the assessee was thus less than acceptable in law and on the basis of this explanation. The correctness of claim, on this basis of this claim by the assessee, cannot be established. Of course, there can be other aspects on which the jantri value may, or may not, be applicable but that is a different issue. The claim made by the assessee was thus clearly something which should have provoked further examination or at least being dealt by

way of a speaking order, but the Assessing Officer chose to remain silent on the same. As observed by Hon'ble Delhi High Court, in the case of **Gee Vee Enterprises Vs ACIT (99 ITR 375)**, “**The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.**” Of course, if the explanation given by the assessee was of the nature as could possibly satisfy any reasonable person, even if other view was possible, the situation would have been different. The explanation given by the assessee in this case, however, was simply not a legally possible view of the matter. Even in the oft quoted case of **Malabar Industrial Co Ltd Vs CIT (243 ITR 83)**, Hon'ble Supreme Court has observed that “**when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law**” (*Emphasis supplied by us now*). The view canvassed by the assessee, in our considered view, was unsustainable in law. Therefore, even if the matter was examined by the Assessing Officer and it was a conscious call of the Assessing Officer to accept the plea of the assessee, such a situation would not take the matter outside the ambit of Section 263 as the view adopted by the Assessing Officer was clearly unsustainable in law. Having said that, we must add that there can be other legal reasons for grant of relief on merits, and that area is not yet explored by, or before, us. In any case, all that the learned Commissioner has directed is

examination of the claim on merits and, for the above reason, we see no infirmity in that direction. In view of these discussions, as also bearing in mind entirety of the case, we uphold the impugned revision order and decline to interfere in the matter. As we do so, we make it clear that our expression of view on merits of the case is only a prima facie impression, and it must not, therefore, influence the decision of the Assessing Officer on merits. Uninfluenced with these observations, the Assessing Officer will take a call on merits of the matter.

7. In the result, the appeal is dismissed. Pronounced in the open court today on the 4<sup>th</sup> day of March, 2019.

Sd/-

**Justice P P Bhatt**  
(President)

**Ahmedabad, dated the 4<sup>th</sup> day of March, 2019**

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

Sd/-

**Pramod Kumar**  
(Vice President)

*By order*

*True Copy*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*