

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.21/SRT/2019

निर्धारण वर्ष /Assessment Year : 2013-14

Ushmben Desai, Tankali Falia, Dindoli, Surat – 394 210.	Vs.	The Income Tax Officer, Ward-2(3)(7), Surat.
[PAN: AZCPD 7711 J]		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah - CA
राजस्व की ओर से /Revenue by	Smt. Anupama Singla - Ld.Sr.DR

सुनवाई की तारीख/ Date of hearing:	01.05.2019
उद्घोषणा की तारीख/Pronouncement on:	03.05.2019

आदेश / O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of Id. Commissioner of Income Tax(Appeals)-1, Surat(in short “the CIT (A)”) dated 21.12.2018 pertaining to Assessment Year 2013-14.

2. The grounds raised by the Assessee read as under :

- “1. On facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in estimating cost of acquisition of land at as Rs. 178 per sq mtr instead of Rs.290 per sq mtr as claimed by the assessee.
2. On the facts and circumstances of the case as well as law on the subject the learned Commissioner of income Tax (Appeals) has erred in confirming the action of assessing officer making addition of Rs.3,06,250/- u/s.50C of the Act on account of difference in Jantri value

as per Stamp Duty Valuation authority and the value shown by the assessee in his return of income.

3. *It is therefore prayed that above additions made by the assessing officer may please be deleted.."*

3. Ground No.1 states that the learned CIT(A) has erred in estimating cost of acquisition of land at as Rs. 178 per sq mtr instead of Rs.290 per sq mtr as claimed by the assessee.

4. Briefly stated facts of the case are that the assessee along with other co-owners have sold land bearing survey no.128/2 at Godadara, Dindoli, Surat for a consideration of Rs.5.11 crore. The assessee has filed a valuation report dated 06.01.2014 wherein the approved valuer has valued the Fair Market Value(FMV) of the land in question as on 01.04.1981 at Rs.290 per sq.mtr whereas sale instances obtained from Sub Registrar in the same / nearby area were found to be at huge variance. Accordingly, the AO has referred the matter to the DVO who vide his report dated 04.03.2016 has determined the FMV of the entire land as on 01.04.1981 at Rs.17,04,560/- i.e. @162 per sq.mtr instead of declared value by the assessee at Rs.30,51,400/- @290 per sq.mtr. Accordingly, the AO by taking the FMV @162 per sq.mtr made addition in the case of the assessee being his share, in long term capital gain.

5. In appeal, the Id.CIT(A) observed that the valuation report relating to lack_of comparable sale instances chosen by the DVO in

respect of 4 such instances, these are from the same village having rate per sq.mtr ranging between Rs.64.062 Rs.1900.371 per sq.mtr and the DVO has derived the FMV based on sale instances after making adjustment for shape, size, situation, location, time etc., vis-à-vis land under consideration. Therefore, the CIT(A) taking a holistic view of the matter and the argument of the assessee and also two favourable sale instances having value of Rs.188.68 and Rs.190.37 held that value taken by District Valuation Officer (DVO) without taking into consideration other sale instance having lesser value i.e. approximately $1/3^{\text{rd}}$ of the value claimed by the assessee. The Id.CIT(A) further observed that the value determined by the Registered valuer was based on unscientific and ad-hoc method i.e. Gold Price Index Method, Reverse Index Method and the market enquiry not done by him. Nobody can deny that all these basis severely lacks symmetry of information and hence, lacks exactness. Nevertheless, the DVO has determined the rate @ Rs.162 per sq.mtr without considering cost incurred on stamp duty, additional stamp duty, registration charges, legal charges. In view of these to be fair on both sides, the Id.CIT(A) has directed the AO to consider additional cost @ 10% as expense incurred as purchase cost towards such heads. Hence, the effective FMV as on 01.04.1981 works out to Rs.178 (Rs.162 + 10%) per sq.mtr. Therefore, the AO was directed to rework the index cost of acquisition by taking Rs.178 per sq.mtr FMV.

6. Being aggrieved, the assessee has filed this appeal before us. The Id.Counsel referred the page 11 being Annexure-A2 DVO's Report indicating comparable sale instances and contended that the note attached to the report shows that the land under consideration is situated on 160 feet wide main road of Dindoli to NH-6 of front side and 140 feet main road of Karvada Road on the back side. Therefore, it was contended the land in question of the assessee was situated at more favourable position as compared to the land situated in respect of comparable sale instances. Therefore, the approved valuer of the assessee has rightly taken the FMV @ 290 per sq.mtr. The Id.Counsel further submitted that even if the CIT(A) has considered the DVO's report and same is found to be unscientific, adhoc method. Further, it is also noticed from the report that sale instances are not in respect of land at same survey no.128/2 of the assessee. Further, even the CIT(A) has considered the average rate for computation of market value by increasing 10% cost of addition cost incurred as expense. Therefore, by taking a logical view the average of the value taken by the DVO, assessee and adopted by the CIT(A) be considered to workout index cost of acquisition as on 01.04.1981.

7. Per contra, the Id.Senior Departmental Representative(Sr.DR) supported the order of the Lower Authorities.

8. We have heard the rival submissions and perused the material available on record. We find that the dispute between the assessee and the AO is the rate at 290 per sq.mtr as FMV as on 01.04.1981 whereas DVO has estimated the same @ 162 per sq.mtr. Further, the Id.CIT(A) has estimated the same @178 per sq.mtr. We find same force in the submissions of the Id.Counsel as discernable from the Annexure-A placed at Paper Book, Page 18 of the DVO's Report that sale instances considered by the DVO are not of the same survey no. Further, the DVO has himself stated in his report that impugned land was situated at more appropriate location as compared to sale instances considered by him. The CIT(A) has also pointed out that the value determined by the Registrar Valuer was based on unscientific, ad-hoc method and DVO has determined the rate of reduction 162 per sq.mtr cost incurred on stamp duty, additional stamp duty, registration charges, legal charges. Therefore, considering the entirety of the facts and taking a holistic view, we are inclined to accept the Id.Counsel's argument that the average value as determined by Registrar Valuer of the assessee DVO and has considered by the CIT(A) would be more reasonable and appropriate for determination of the FMV of land as on 01.04.1981. Accordingly, the average rate for FMV is worked out to Rs.210 i.e. $(162 + 290 + 178 = 630/3 = 210)$. The AO, therefore, accordingly directed to reworked out the index cost of acquisition by taking FMV at Rs.210

per sq.mtr and re-compute the taxable long term gain, accordingly this ground of the assessee is therefore partly allowed.

9. Ground No.2 relates to confirming action of the AO by sustaining the addition of Rs.3,06,250/- on account of difference in Jantri Value by applying the provisions of section 50C of the Act.

10. Facts apropos of this ground are that as against the sale consideration of Rs.5.11 crore shown in registered sale deed, the stamp valuation authorities have determined the full value of consideration at Rs.5.60 crore and accordingly the AO has made addition of Rs.3,06,250/- representing the assessee's share (1/6th share) in the difference of these two figures.

11. In appeal, the assessee contended before the Id.CIT(A) that since the difference between Jantri Value and actual sale value is nominal i.e. less than 10%, therefore in view of the various court decisions, actual value shown by the assessee should be adopted. To buttress his argument, the AR of the assessee placed reliance on the decision of Bimla Singh Vs. CIT 18 DTR 028 (Patna HC), Rahul Construction Vs. DCIT [38 DTR 0019 (Pune ITAT)]. However, the Id.CIT(A) relying in the case of K.R.Palanisamy Vs. UOI (2009) 306 ITR 61 (Mad) has upheld the constitutional validity of provision of section 50C of the Act, therefore invoking the provision of section 50C was held to be validity. With regard to case laws of Bimla Singh (supra) the Id.CIT(A) observed that the issue was relating to estimation of cost of construction of house which was spread over

a period of seven years and issue of valuation determination stamp valuation authority u/s.50C was not at all involved. Here the value determined by the Stamp Valuation Authority is definite and based on some rates approved by the competent authority. In view of distinguishing factors the ratio of above mentioned decisions is not at all applicable. Similarly, in the case of Rahul Construction the ITAT Pune directed to delete the addition representing difference less than 10%. A simple reading of relevant provision would reveal that provision of section 50C does not provide for any “tolerance of band”, hence the decision of Hon'ble ITAT Pune was not based on correct interpretation of law, hence not accepted. Accordingly, the addition of Rs.3,06,250/- was came to be sustained.

12. Being aggrieved, the assessee filed an appeal before this Tribunal. The ld.Counsel submitted that the difference between the valuation as per stamp duty and the sale consideration issue by the assessee is less than 10% and in such circumstances no addition can be made. For this proposition, the ld.Counsel has placed reliance on the decision of Bombay ITAT in the case of John Flower (India) Pvt. Ltd., in ITA No.7545/Mum/2014 for assessment year 2010-11.

13. We have heard the rival submissions and perused the material and orders of the authorities below and the case law relied on. Considering the entire facts of the assessee's case, the

submissions of the assessee cannot be ignored. The sale consideration of the land considered is shown at 5.11 crore in registered sale deed, the stamp valuation authorities have determined the full value of consideration at Rs.5.60 crore. Even assuming for a movement that the sale consideration in respect of Plot in survey no.128/2 is less than the stamp valuation it is Rs.3,06,250/- which is less than 10% of the stamp duty valuation of the said plot. Therefore, in view of the ratio of the decisions relied on by the assessee, the assessee should succeed in its appeal. The Jaipur Bench in the case of Smt. Sita Bai Ketan (supra) held as under :

4.2 *"We have heard rival contentions and perused the material available on record. We find that the Hon'ble coordinate Bench in ITA No.1543/PN/2007 in the case of Rahul Constructions Vs. DCIT (supra) has held as under :-*

"We find that the Pune Bench of the Tribunal in the case of Asstt. CIT vs. Harpreet Hotels (P) Ltd. Vide ITA No. 1156-1160/Pn/2007 and relied on by the learned counsel for the assessee had dismissed the appeal filed by the Revenue where the CIT(A) had deleted the unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. Kaaddu jayghosh Appasaheb, the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. Vs. CIT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs.20,55,000/- as against the actual sale consideration of Rs.149,00,000 disclosed by the assessee. We, therefore, set aside the order of the CIT(A) and direct the AO to take Rs.19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed."

In the instant case, the difference between the valuation adopted by the Stamp Valuation Authority and declared by the assessee is less than 10%. Therefore, respectfully following the decision of the Hon'ble Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessee is allowed.

14. Therefore, respectfully following the said decision we direct the AO to adopt the valuation of sale consideration as declared by the assessee. The additions made by the Assessing Officer u/s.50C is deleted and as grounds raised by the assessee are allowed.

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

16. The order pronounced in the open court on 03.05.2019.

Sd/-
(H.S.SIDHU)

Sd/-
(O.P.MEENA)

(न्यायिकसदस्यतथा/JUDICIAL MEMBER) (लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER)

सुरत/ Surat, दिनांक Dated: 3rd May, 2019/S.Gangadhara Rao, Sr.PS

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

By order

/ / TRUE COPY / /

Assistant Registrar, Surat