

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
SURAT BENCH, SURAT  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 457/AHD/2017: Assessment Year: 2010-11**

Shri Shaileshbhai V. Mangukia, 61/62, Girnar Society, Nana Varachha Road, Surat.  [PAN: AQBPM 8965 F]	Vs.	The Income Tax Officer, Ward- 3(1)(2), Surat.
<b>Appellant</b>		<b>Respondent</b>

<b>Assessee by</b>	Shri Sapnesh R. Sheth, CA
<b>Revenue by</b>	Ms. Anupama Singla, Sr. D.R.
<b>Date of hearing</b>	29.04.2019
<b>Date of pronouncement</b>	30.04.2019

**ORDER**

**PER O. P. MEENA, AM**

**1.** This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-3, Surat (in short “the CIT (A)”) dated 28.10.2016 pertaining to Assessment Year 2010-11, which in turn has arisen from the assessment order passed under section 143 (3) read with section 147 dated 10.03.2015 of Income Tax Act, 1961 (in short ‘the Act’) by the Income Tax Officer, Ward- 3(1)(2), Surat (in short “the AO”).

**2. Ground No. 1 relates to confirming the action of the AO in reopening of assessment by issuing notice under section 148 of the Act.**

**3.** Briefly stated facts of the case are that the assessee had filed his return of income declaring total income of Rs.1,58,804/-. The case was reopened by issuing notice under

section 148, dated 22. 05. 2013. The assessee has filed revised return of income, without changing income in response to notice under section 148 of the Act.

**4.** We have heard the rival submissions and find that the assessee has objected to the reopening of assessment under section 147 of the Act. These objection were disposed-of by the AO vide his order dated 30. 12. 2014. Before us, also, the learned Counsel has not advanced specific arguments against the reopening of assessment. We find that the objection taken by the assessee were duly disposed-off by the AO during the course of assessment proceedings. In view of this matter, we do not find any merits in this ground of appeal. Therefore, this ground of appeal is, treated as dismissed.

**5. Ground No. 2 to 4 are interconnected and are related to assessing the income from sale of plots as income from capital gains instead of business income and making addition of Rs.6,84,138 as short-term capital gain instead of business income by invoking provisions of section 50C of the Act. Hence, these are being considered together.**

**6.** Facts apropos is of these grounds are that the assessee has purchased 10 plots of land at Shreeji Row House for a consideration of Rs.1,53,395/- during accounting year relevant to assessment year 2008-09. These plots were shown under the head fixed asset in the balance sheet as on 31.03.2008. The same was shown as a stock in trade under the head opening stock in the return of income for assessment year 2009-10. During the assessment year 2009-10, three plots were sold for a consideration of Rs.1,05,500/- and remaining 7 plots were sold during the accounting period relevant to assessment year

2010-11. The AO made enquiries with a Stamp Duty Authorities, which revealed the fair market value of the plots at the Rs.3,39,220/-. As such, the assessing officer, added Rs. 2, 33, 720 treating the same as suppressed sales. Accordingly, in the assessment year 2010-11, the assessee has neither disclosed an income as short-term capital gain nor has he applied the provisions of section 50C in respect of sale of remaining 7 plots. The AO, by a conservative working adopted the fair market value of the remaining 7 plots at the rate of Rs.1,13,073/- as per the valuation given by the stamp valuation authority in the assessment year 2009-10, the sale value of the 7 plots as per the provision of section 50C was worked out to Rs.7,91,511/- and the cost of acquisition of the 7 plots at the rate of Rs. 15, 339 per plot was worked out to Rs.1,07,370/-. As such, an income of Rs.6,84,138/- [7,91,511- 1,07,373] was taxed in the hands of the assessee under the head short term capital gains.

**7.** Being aggrieved, the assessee filed an appeal before the Id. CIT (A). The Id. CIT (A) observed that the AO has not agreed to the arguments advanced by the AR during assessment proceedings and finally he has added an amount of Rs. 6, 84, 138 under the head short-term capital gain. The Ld. CIT(A) observed that the learned A. R. has not relied upon any case laws in support of contention. Admittedly, the plots were shown as fixed asset in the balance sheet by the appellant in the year ending on 31<sup>st</sup> March 2008. However, at the opening of the financial year 2008-09, the plots were shown as a stock in trade is by way of mere accounting entry. Such self-serving and unilateral entries by the appellant cannot be basis of evidence to treat the sale of plot as business income. Apparent to plain eye, these entries are made only with a view to escape application of

section 50 C of the Act. Hence, the action of the AO in treating the income from sale of plots as capital gains was held to be correct.

**8.** Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee contended that the assessee has shown the plot sold by him as a stock in trade in balance sheet. Therefore, the AO was not justified in treating the same as fixed assets and consequently taxing the same as short-term capital gain by invoking the provisions of section 50C of the Act. However, to a query raised by the bench, the learned Counsel could not controvert the finding given by the Tribunal in the assessee's own case for the assessment year 2009-10, in which the sale of the three plots were held to be taxable as capital gain.

**9.** *Per contra*, the Id. Sr. D.R. relied on the order of the Ld. CIT(A) and submitted that the issue is covered by the tribunal order in appellant's own case for the assessment year 2009-10.

**10.** We have heard the rival submissions and perused the relevant material on record. We find that capital gains on sale of 7 plots is offered for taxation under the head business income. The plots which were sold during the year have been shown in closing the stock in the profit and loss account and balance sheet of opening accounting year, hence the income from sale of such plots is claimed to be taxable under the head business income and not under the head capital gains. However, the AO did not accept the assessee's contention on the ground that assessee is not engaged in the business of real estate and thus, sale of plots by the assessee attracted capital gain. These plots were shown in the

financial year 2007-08, as fixed assets in the balance sheet and not as a stock in trade. The AO noted that the arguments advanced by the assessee are not found tenable. These are neither fully convincing nor fully satisfactory. The same argument has already been made before the Ld. CIT(A) for assessment year 2009-10 also. Nothing new facts has been brought on record or evidence before the AO to consider the same as business income. Therefore, keeping in view of the facts, the AO has made addition of income of Rs.6,84,138/- in the hands of the assessee under the head short-term capital gains. We find that the issue is duly covered against the assessee in assessee's own case by the decision of Tribunal in I.T.A.No. 1818/Ahd/2013 A.Y. 2009-10 dated 02.05.2016. Wherein the Tribunal in para 6 has held as follows:- *" 6. We have heard both the parties Relevant facts narrated in preceding paragraphs are not repeated for the sake of brevity. Suffice to say there is no dispute that the assessee had included all these plots as fixed assets in the balance sheet of the purchaser year and there is no explanation as to how he could take hold together a different recourse by showing the very assets as a stock in trade in the impugned assessment year. It has come on record that this assessee is already involved in cement dealer the business not having any separate infrastructure and organised venture for making investment in such land deal. There is no other land transaction or similar business being proved in any preceding or succeeding assessment years. To prove such a business activity. We uphold CIT (A) 's finding under challenge in these facts and circumstances. 1<sup>st</sup> and 2<sup>nd</sup> substantial grounds raised in the instant appeal fail."* Since the facts of present appeal are same as the remaining 7 plots were sold during the year under consideration. Therefore, respectfully following the decision of Tribunal in the assessee's

own case, we uphold the findings recorded by the Ld. CIT(A). In view of this matter, the grounds of appeal raised by the assessee are therefore dismissed.

**11.** In the result, the appeal of the assessee is dismissed.

**12.** The order pronounced in the open Court on 30.04.2019.

**Sd/-**  
**(H. S. SIDHU)**  
**(JUDICIAL MEMBER)**

**Sd/-**  
**(O.P.MEENA)**  
**(ACCOUNTANT MEMBER)**

Surat: Dated: 30<sup>th</sup> April, 2019/opm

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

**By order**

/ / TRUE COPY / /

**Assistant Registrar, Surat**