

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**  
**& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1782/Ahd/2017  
(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>ITO</b> Ward-3(3)(9), Ahmedabad	<b>बनाम/</b> Vs.	<b>Smt. Rajani Manhar</b> <b>Bhagat</b> 23, Cantonment, Shahibaug, Ahmedabad - 382415
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABVPB6670M		
(Appellant)	..	(Respondent)

राजस्व की ओर से/Revenue by :	Shri L. P. Jain, Sr. D.R.
अपीलार्थी ओर से /Assessee by :	Shri S. N. Soparkar, Sr. Adv. With Shri Nishit Shah, A.R.

सुनवाई की तारीख / Date of Hearing	18/06/2019
घोषणा की तारीख /Date of Pronouncement	26/06/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-3, Ahmedabad ('CIT(A)' in short), dated 22.05.2017 arising in the assessment order dated 18.03.2016 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The substantive ground of appeal raised by the Revenue reads as under:

*“1) The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,09,13,053/- made by the AO u/s 50C of the IT Act allowing assessee’s claim to have payment of Rs.1,75,00,000/- to trespasser without appreciating the fact that these facts have not been mentioned in the sale deed/document registered before the sub registrar without disputing the stamp duty for valuation of the land of Rs.2,60,05,348/-.”*

3. Briefly stated, the assessee, an individual, sold immovable property located at Paldi, Ahmedabad for a consideration of Rs.51 Lakhs vide sale deed registration with registered authority on 19.10.2011. It was found by the AO that stamp duty of Rs.12,74,440/- was collected on the aforesaid sale. The market value of the property was determined by the registering authority at Rs.2,60,05,348/-. The AO also noticed that no income by way of capital gains was declared by the assessee in the return of income filed under s.139 of the Act. In the light of alleged under valuation of the property by Rs.2,09,05,348/- and non-declaration of capital gains, the case of the assessee was reopened by invoking Section 147 of the Act. In the course of re-assessment, the assessee filed revised computation of total income declaring the amount of Rs.3,42,036/- as long term capital gains on the aforesaid transaction of sale of land. It was claimed by the assessee that land was acquired prior to 01.04.1981 and the fair market value of the property stands at Rs.6,06,110/- and consequently having regard to the sale consideration of Rs.51 Lakhs and indexed cost of acquisition on income of Rs.3,42,036/- only has accrued. The fair market value of cost of acquisition was subsequently revised but however we are not concerned with this aspect of acquisition cost. The AO essentially disputed the sale consideration of Rs.51 Lakhs having regard to the value adopted by the registering authority for the purposes of payment of stamp duties in respect of such sale in tune with Section 50C of the Act. It was

contended before the AO by the assessee that she has received a consideration of Rs.51 Lakhs only and no more and there is no question of under valuation of property. It was submitted that the property was occupied unauthorizedly by 17 families who had also taken electrical connection and were illegal occupier of the property. The assessee was not in a position to get the vacant possession. The assessee sold the property as it is together with encroachment and therefore the value was bound to be lower. It was essentially contended that the impugned plot as well as the adjoining plot of the neighbourer were illegally occupied and therefore the assessee has not given vacant possession of the property to the purchaser. The purchaser has negotiated with the illegal occupiers and incurred additional costs of Rs.1,75,00,000/- to get the property vacated. The AO has in fact made inquiries with purchasers who duly confirmed the cost incurred of Rs.1,75,00,000/- to the illegal occupiers. The AO however was not convinced with the plea of the assessee for adoption of Rs.51Lakhs as the sale consideration for the purposes of Section 50C of the Act. It was observed by the AO that the assessee has not disputed the valuation adopted by the stamp duty authority and therefore Section 50C of the Act is clearly applicable. It was further observed with reference to the sale agreement that the assessee had handed over the vacant possession of the land to the purchaser without any dispute. It was further noted that expenditure incurred by the purchaser during FY 2013-14 is of no consequence for the purposes of applicability of Section 50C of the Act. The AO accordingly substituted the sale consideration of Rs.51 Lakhs by the value adopted by the registering authority at Rs.2,60,05,348/- in the hands of the assessee.

4. Aggrieved by the aforesaid action of the AO, the assessee preferred appeal before the CIT(A).

5. The CIT(A) took note of the copy of electricity bills in the name of the illegal trespassers, MOU dated 04.02.2014 between the purchaser and the trespassers for vacating land, photographs of the illegal occupation of land by hutments and came to the conclusion that only real income is required to be taxed. The CIT(A) accordingly directed the AO to consider the chargeable long term capital gains at Rs.3,42,036/- as claimed by the assessee as against Rs.2,09,13,053/- computed by the AO. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

*"4. Decision: I have gone through the facts mentioned in the assessment order and the submission filed by the appellant carefully. The Assessing Officer has mentioned about his show cause, appellant's response and non' acceptance of explanation in para 5 onwards assessment order. I have perused PP 01-206/PB in wherein the appellant has clearly raised objection to the proposed addition, the appellant has tried to defend through various arguments. Firstly, it was submitted that the plot of land was having illegal encumbrances and the appellant filed MOU dated 04/02/2014/ copy of electricity bill of such illegal persons and photographs of land occupied by illegal huts. It was brought to the notice that the AO had called the information vide notice dated 22/12/2015 u/s. 133(6) from the purchaser of the land and the purchaser had filed information vide letter dated 28/01/2016 with the AO (page 62 of paperbook), the same is reproduced as under:*

*"With reference to your letter dated 22/12/2015 we would like to give details as below:*

- 1. Copy of sales deed vide document register no. 12118 dated 19/10/2011 is attached herewith.*
- 2. Copy of ledger of Smt. Rajni M Bhagat is attached herewith. ^*
- 3. We have purchase said property of juntry value Rs. 26005348/- in Rs. 5100000/- from Smt. Rajni M Bhagat. However we have paid Rs. 17500000/- to land tress passer and Rs. 1100000/- as brokerage. So total land cost to us is Rs. 25025650/-. Copy of land account, copy of land tress passer a/c with all deed are attacher herewith for your reference. Please acknowledge the same. For Pravinchandra N Maniar"*

*The Assessing Officer has not accepted the argument of the third party that Rs 1,75,00,000/- have been paid to the tress passers. This information was collected u/s 133(6) by the AO. However, the details*

*as filed before AO is at page 64 of paper book which is reproduced as under:*

<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch No.</i>	<i>Debit</i>	<i>Credit</i>
31-3-2014	To Bhavesh Prataji Thakor	Journal	67	5,00,000.00	
	To Sonal Bhaveshji & Bhaveshji Shivaji	Journal	68	5,00,000.00	
	To Daxaben Sanjaybhai Thakor	Journal	69	10,00,000.00	
	To Kalyanj Hiraji Thakor	Journal	71	7,00,000.00	
	To Kamlaben Shakraji Vaghela	Journal	72	7,00,000.00	
	To Kantaben Kaluji Thakor	Journal	73	10,00,000.00	
	To Natuji Badaji Thakor	Journal	78	7,00,000.00	
	To Suraji Galbaji Thakor	Journal	82	7,00,000.00	
	To Suresh Chaturji Thakor	Journal	83	92,00,000.00	
	To Vijay Kalyanji Thakor	Journal	84	20,00,000.00	
	To Natuji Badaji Thakor (Ex)	Journal	91	5,00,000.00	
	By Land F.P. 12 S.P. 11,12,13,14 &19		95		1,75,00,0000.00
				1,75,00,0000.00	1,75,00,0000.00

*It is also noticed that plot no. 12 has two sub-plots, one being of appellant and another being of Shashank Indulal Shah & others. I find that there are illegal encumbrances in the part of the sub-plot belonging to Shashank Indulal Shah & others as per information filed before AQ. Hence it can clearly be concluded that in all likely hood, there have been illegal occupants of the sub-plot belonging to the appellant.*

*Secondly, the appellant has raised technical infirmities of the addition so made by highlighting provisions of sub section (2) of section 50C. The submission of the appellant 11/03/2016 has been reproduced in Para 7 of assessment order. The relevant portion from page 6/7 of assessment order is reproduced as under:*

*"5. The copy of registered agreement to sale dated 18/08/2011 in respect of adjoining plot is enclosed herewith. In said document the*

*rate per square meters is Rs. 3463.10(Rs. 72,00,000/- divided by 2079.01 (Rs. 51.00.000/- divided by 1465.09 square meter). The assessee has got higher sale consideration. All the plot of survey no, 309 of TP scheme 6, Final plot no. 12 have illegal occupiers. Therefore the sale price received by the other neighbours may be considered as final sale consideration.*

6. *The reason for the lower sale consideration is as under:*

*The property which was sold by assessee unauthorizedly occupied by 17 families being the senior citizen lady and take of supporting manpower and finance the assessee was not in a position to get the vacant possession and therefore decided to sale out the property as it is and at the value which can be obtained. Subsequently, after execution of the sale deed purchaser has negotiated with those persons and convinced them to vacate the said property against arrangements of alternative accommodation of their residence.*

*As informed by the purchaser he has paid money to all the families for vacating the property. No residential property has been given to those persons. As stated in MOU the illegal occupier had obtained separate electric meter according to their needs. The copy of electricity bills and photographs of occupied land by huts are submitted vide our letter dated 07/12/2015.*

*Thus the data on record proves that the land was not vacant and the assessee has not given vacant possession of the land sold. The purchaser has taken the liability to get the land vacated. Accordingly, the purchaser has paid lesser prices than the Jantry rate."*

*It is seen that the registered valuer(DVO) has given valuation report dated 07/02/1986 which is not in dispute so far as purchase price in computation of LTCG is concerned. In fact the controversy in the grounds of appeal no. 1 to 5 is only relating to the difference between the sale consideration disclosed by the appellant and that of Jantry value on the date of transaction. The appellant has discussed the provisions of section 50C (2) and emphasized that the Assessing Officer ought to have sent the matter to District Valuation Officer in case he was to substitute the sale consideration with that of jantry value and submitted relevant case laws. The appellant has argued and relied on a few case laws as under:*

- (f) CIT Vs. Chandrnarain Chaudhari (2013) 86CCH 0034 All HC*
- (g) ITO Vs. Ms. Kumudini Venugopal (2010) 29 CCH 0327 Chen Trib*
- (h) Sunilkumar Agarwal Vs. CIT(2014) 88 CCH 0387 Kol HC*
- (i) Anilkumar Jain Vs. ITO (2013) 143 ITD 0659 Delhi ITAT*
- (j) SarwanKumarVs. ITO (2014) 150 ITD 0289 Delhi ITAT*

*I also find the ratio favourable to the appellant in following case laws:*

- (a) *Dinesh Kumar Mittal vs. ITO (1992) 193 ITR 770 (All.)*,
- (b) *CIT vs. Smt. Raj Kurnar Vimla Devi and another (2005) 279 ITR 360 (All.)*
- (c) *CIT vs. Chandani Bhochar (2010) 323 ITR 510 (P&H)*,
- (d) *N. Meenakshi 226 CTR 625 (Mad.)*,
- (e) *Mohd. Shoib vs. DCIT (2009) 29 DTR 306 (ITAT Lko)*,
- (f) *Meghraj Baid vs. ITO (2008) 114 TTJ 841 (Jodh.)*,
- (g) *Ajmal Fragrances & Fashions (P) Ltd. vs. CIT (2009) 34 SOT 57 (Mum.)*,
- (h) *(h)Nandita Khosla 11 Taxmann.com 344*,
- (i) *Shaik Mohidden vs, ITO (2009) 123 TTJ 411(Chennai)*,
- (j) *ITAT Delhi in case of ITO vs. Manju Rani Jani 24 SOT 24*,
- (k) *ITAT Lucknow in case of Jitendra Mojhan Saxena 117 TTJ 974 (Trib. Luck.) and*
- (l) *ITAT Mumbai in case of Kalpataru Industries vs. ITO-ITA No. 5540/Mum/07 dated 24-08-2009*,

*I have gone through the judgements relied by the appellant. Hon'ble Calcutta High Court decision in the case of Sunil Kumar Agrawal Vs. CIT-372 ITR 83 (Cal.), has held that reference to DVO was mandatory and the relevant portions of judgment is reproduced hereunder:*

*"7. We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assesses was relying. Presumably, the case of the assesses was that price offered by the buyer was the highest prevailing price 'in the market. If this is his case then it is difficult to accept the proposition that the assesses had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assesses because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assesses could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assesses, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer. /-*

*8. For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely not eh basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide*

*adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law."*

*In addition to above, the ratio laid down in undermentioned case laws clearly make out a case for the appellant.*

- Ajmal Fragrance & Fashions P. Ltd. Vs ACIT, Cir.13(1) - ITAT [2009] 34 SOT 57 Mum.)*
- Smt. T.V. Nagasena Vs. ITO - IATA No.296 (Bang.)*
- ITO Vs. M/s. Onkarmal Kajaria Family Trust - ITA No.1065 (Kol.)*

*It is understood that the appellant raised objections to considering the Stamp Duty Valuation as total sale consideration and the AO failed to send the matter for valuation to DVO as per provisions of section 50C(2). To my mind the AO overburdened himself with avoidable responsibility by not sending the issue for expert opinion to the DVO as per specific provisions of sub section 2 of section 500 of IT Act, 1961. The appellant has made out a strong case for herself both on facts and on legal stance. Therefore I am convinced that appellant income cannot be taxed higher than the amount which has been disclosed in Return of Income. It need to be clarified that the appellant has considered sale consideration of Rs. 51,00,000/- of the plot of land involved and declared total income of Rs. 3,42,036/- and paid taxes of Rs.78,404/- during the assesment proceedings before the AO. The appellant's letter dated 19/10/2015 addressed to ITO Ward-3(3)(9) is placed on record. Hon'ble Karnataka High Court in the case of Shankar Khandsari Sugar Mills Vs. CIT 193 ITR 669 (Kar.) has observed that "In the absence of any prejudice to the revenue, and the basis of the tax under the Act being to levy tax, as far as possible, on the real income, the approach should be liberal in applying the procedural provisions of the Act. An appeal is but a continuation of the original proceeding and what the Income-tax Officer could have done, the appellate authority also could do." Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah 231 ITR 1, (Bom.) has observed that UCIT(A) is empowered u/s.250(4) to make such further inquiry as he thinks fit and such power being quasi judicial power, it was incumbent on him to exercise the same if the facts and circumstances justify. It further held that if the first appellate authority failed to exercise his discretion judicially and arbitrarily refused to make inquiry in a case where the facts and circumstances so demand, his action would be open for correction by a higher authority. In other words, the message from the Bombay High Court is that if prima facie an information evidence is necessary to examine the claim of the*

*assessee, the CIT(A) should consider the necessary evidence in exercise of power u/s.250(4) even if the case of the assessee does not fall within the four corners of the circumstances enumerated in rule 46A(1)." In such circumstances, and as per ratio laid down at 187 ITR 688 (SC) in the case of Jute Corporation of India Ltd., I am constrained to accept the figures of income mentioned in appellant's letter dated 19/10/2015. The real income is to be taxed. The apex Court in the case of CIT vs. British Paints India Ltd. has held, "it is duty of A.O. to correctly deduce the income, no principle of estoppels, A.O. is not bound by the method followed in earlier years." In view of above facts and the ratio laid down by various Courts (Supra) and ITATs, the addition of Rs.2,09,13,053/ made u/s.50C of IT Act, 1961 is hereby deleted. However, the income to be taxed at Rs.3,42,036/-. The argument of the appellant to replace Rs.2,60,05,348/- at Page No. 10 of assessment order with Rs. 51,00,000/- is hereby rejected as inconsistency in the argument is noticed. This order is not to be issued to issue refund of the amount which has already been paid during assessment proceedings. The ground No.1 to 5 are partly allowed."*

The CIT(A) thus essentially accepted the sale consideration at Rs.51 Lakhs as claimed by the assessee.

6. Aggrieved by the substantial relief granted by the CIT(A) towards sale consideration, the Revenue preferred appeal before the Tribunal.

6.1 The learned DR for the Revenue relied upon the order of the AO and submitted in furtherance that provisions of Section 50C of the Act is plain and unambiguous. The assessee has admittedly declared lower consideration at Rs.51Lakhs as against the market value in terms of Section 50c of the Act determined by registering authority at Rs.2,60,05,349/-. The contractual agreement by way of sale deed between the assessee and the purchaser clearly suggests that the possession of the property given to the purchaser was vacant and peaceful without any reference to the alleged encroachment and other title defects. The learned DR accordingly submitted that in view of the express provision of Section 50C of the Act, the deemed value of

sale consideration is required to be replaced by the so called actual price fixed on sale of property, more so, where the assessee has not disputed the stamp duty valuation at any stage. The learned DR accordingly submitted that the action of the CIT(A) is not in consonance with the provisions of Section 50C of the Act and therefore requires to be set aside and the order of the AO requires to be restored.

6.2 The learned AR for the assessee, on the other hand, strongly relied upon the order of the CIT(A) and submitted that the assessee has clearly demonstrated the fact of encumbrance and illegal trespassing and unauthorized occupant of the land in sale. In support of the encroachment of the land in sale, the learned AR also referred to the electric bills in the name of the illegal hutment owners and the fact of payment to the trespassers aggregating to Rs.1,75,00,000/- as well as MOU dated 04.02.2014 in this regard. The sale deed of adjoining land by neighbourer was also referred wherein the photographs forming part of the agreement points out the existence of hutment. The learned AR pointed out that the purchaser demonstrated by way of MOU that the arrangement was ultimately entered into with the illegal occupants for vacating the property after its purchase for which a very large amount of Rs.1,75,00,000/- were incurred by the purchaser. Such cost is nothing but the cost of improvement to cure the defect in the title of the property to enable the seller to hand over vacant and peaceful possession to the perspective buyer. Such cost requires to be factored for the purposes of computation of capital gains as thus contended. The learned AR further pointed out that the purchaser has also incurred stamp duty of Rs.12,74,4000/- for purchase of property. The learned AR thus submitted that it was incumbent upon the AO to take note of these facts while ascertaining the deemed sale consideration. The learned AR also submitted that

the application of Section 50C of the Act is not automatic and the AO can take cognizance of such circumstances for departure in the sale consideration aggregate upon. The learned AR thus submitted that no interference with the order of the CIT(A) is called for.

7. We have carefully considered the rival submissions. The substitution of the actual sale price of the property by deemed sale consideration as per the valuation adopted by the registering authority under s.50C is in controversy. It is the case of the Revenue that the assessee is chargeable to long term capital gains of Rs.2,09,13,053/- when computed with reference to jantri value adopted by the registering authority. The assessee, on the other hand, pleads for chargeability of capital gains at Rs.3,42,036/-. Having regard to the actual sale consideration received on sale of the property. It is primarily the case of the assessee that the lower consideration received on sale of property is attributable to the encumbrances, encroachment and defect in vacant possession of the property. The assessee has demonstrated the encroachment by illegal occupiers with reference to electricity bills in the name of the illegal occupiers and substantial payment of Rs.1,75,00,000/- in aggregate to various such occupiers by the purchaser in the subsequent years. This fact of payment towards encroachment has not been disputed by the Revenue. Therefore, there is no reason to exclude such amount for the purposes of computation of capital gains. Thus, the purchase consideration together with costs towards obtaining vacant property should stand at Rs.2,26,00,000/-. The assessee however has failed to explain as to why the difference between deemed sale consideration of Rs.2,60,05,348/- adjusted purchase costs and Rs.2,26,00,000/- being rs.34,05,348/- should not be subjected to capital gain tax in the light of Section 50C of the Act. The brokerage costs incurred on sale consideration by the purchaser cannot be taken into account for the

purposes of Section 50C of the Act. The CIT(A) has thus failed to take cognizance of applicability of Section 50C of the Act to the extent of Rs.34,05,348/-. Hence, the order of the CIT(A) requires to be modified to the aforesaid extent and the chargeable capital gain requires to be increased by Rs.34,05,348/-.

8. In the result, appeal of the Revenue is partly allowed.

**This Order pronounced in Open Court on 26/06/2019**

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER  
Ahmedabad: Dated 26/06/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

*S. K. SINHA*

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।