

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

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER And
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2986/Ahd/2014
(निर्धारण वर्ष / Assessment Year : 2009-10)

Rakesh Babulal Shah C/o. Devendra Textile Navabazar Baroda – 390 006	बनाम/ Vs.	The Income Tax Officer Ward-5(4) Baroda 390 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGYPS 4233 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri J.P. Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Apoorva Bharadwaj,Sr.DR

सुनवाई की तारीख / Date of Hearing	12/07/2019
घोषणा की तारीख/Date of Pronouncement	29/07/2019

आदेश / O R D E R

PER SHRI RAJPAL YADAV, JUDICIAL MEMBER :

The Assessee is in appeal before the Tribunal against the order of Ld.Commissioner of Income Tax(Appeals)-V, Baroda ['CIT(A)' in short] dated 20/08/2014 passed for Assessment Year (AY) 2009-10.

2. Grounds of appeal taken by the assessee are not in consonance with Rule No.8 of the ITAT Rules, 1963, they are descriptive and

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argumentative in nature. In brief, grievance of the assessee relates to determination of capital gain assessable in his hands on account of sale of property.

3. The brief facts of the case are that the assessee has filed his return of income on 29/03/2011 declaring total income at Rs.2,74,356/-. The case of the assessee was selected for scrutiny assessment and a notice u/s.143(2) of the Act was issued and served upon the assessee. The assessee had acquired a land and building at Darjipura, Dist.Baroda in AY 2005-06 for an alleged consideration of Rs.16,66.259/-. He entered into an agreement for sale of this property on 12/10/2008 with S/Shri Bhavik B.Trivedi, Milind V. Varavadekar and Smt.Madhuben J. Trivedi. The sale consideration was fixed at Rs.22 lakhs. This was by way of a notarized agreement. The property was ultimately sold on 21/11/2008 vide Registration No.30154 in favour of M/s.V.Trans (India) Limited for a consideration of Rs.45 lakhs. According to the assessee, he has computed the capital gain by taking sale consideration at Rs.22 lakhs. He determined the Index cost of acquisition at Rs.19,51,232/-. He determined the capital gain assessable in his hands at Rs.2,48,768/-. When assessee was confronted that it is a short term capital gain assessable in his hands and not long term capital gain, then he admitted his fault and filed a revised computation. Anyway, that is not the issue in dispute before the Tribunal.

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4. The Ld.AO has observed that information was called for from stamp duty valuation authority u/s.133(6) of the Act, who responded that for the purpose of stamp duty value of the property is determined at Rs.76,45,700/-. The Assessing Officer confronted the assessee to show, as to why capital gain in his hands be not determined u/s.50C of the Act by deeming the full consideration equivalent to the amount on which stamp duty was paid. The stand of the assessee, on the other hand, was that he has received only Rs.22 lakhs and the balance Rs.23 lakhs out of total sale consideration of Rs.45 lakhs was received by three confirming parties in whose favour he has executed an agreement to sell on 12/10/2008. The Ld. AO did not accept this contention of the assessee. He took the full sale consideration at Rs.76,45,700/- and after debiting Indexation cost, determined the capital gain assessable in the hands of assessee at Rs.59,79,441/-.

5. Appeal to the CIT(A), did not bring any relief to the assessee.

6. Before us, ld.counsel for the assessee submitted that assessee has filed an application for permission to lead additional evidence. He submitted while determining the capital gain assessable in the hands of confirming parties, this property was referred to the District Valuation Officer (DVO) for determination of fair market value, who has determined that value at Rs.52,56,245/- and in view of this development

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it is incorrect at the end of revenue to take the sale consideration under the deeming fiction at Rs.76,45,700/- in the hands of the assessee for the purpose of computing the capital gain. He prayed that issue be remitted to the file of Assessing Officer for conducting an enquiry under sub-section(2) of section 50C of the Act.

7. On the other hand, Ld.DR relied upon the orders of the revenue authorities.

8. We have duly considered rival contentions and gone through the record carefully. Section 48 of the Income Tax Act provides mode of computation of capital gain. It contemplates that income arising under the head “capital gain” shall be computed by deducting from the full value of the consideration received or accruing, as a result of the transfer of the capital assets the following amount:

- (a) That, expenditure incurred wholly and exclusively in connection with such transfer;
- (b) That, the cost of acquisition of the asset and the cost of any improvement thereto.

9. Section 50C of the Act further provides that where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value

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adopted or assessed by any authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall for the purposes of section 48 of the Act, be deemed to be the full value of the consideration. In other words, full consideration mentioned in section 48 is to be replaced by the consideration on which value of the property was adopted for the purpose of payment of stamp duty.

10. Sub-section (2) of section 50C further contemplates that in case assessee alleges that stamp duty valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer, then the Assessing Officer may refer the valuation of the capital asset to the Valuation Officer.

11. In the present case, following two factors have been pointed out to us.

- (i) That in the hands of confirming party exercise u/s.50C(2) has been carried out and the DVO has determined the value of the property at Rs.52,62,245/-. In this situation, full consideration required to be deemed u/s.50C for the purposes of section 48 of the Act cannot exceed this amount.
- (ii) Second factor is that assessee has entered into an agreement for sale on 12th of October 2008 in favour of three confirming

parties. No doubt, it is only a notarization agreement, but for the purpose of evidentiary value in a suit for specific performance, admissibility of such an agreement is saved in the proviso to section 49 of the Indian Registration Act.

12. It is pertinent to observe that when this agreement was executed in respect of the immovable property, a *right in persona* is created in favour of the transferee/vendee (confirming party). When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because vendee in whose favour *right in persona* is created has legitimate right to enforce such specific performance of the agreement, if the vendor for some reason is not executing the sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. It is encumbrance on the property and on relinquishment of such right confirming parties were getting Rs.23 lakhs which has also been made subject to tax in their hands. In this situation, we are of the view that the issue needs to be remitted back to the Assessing Officer for determining the fair market value of the property sold by the assessee on the date of sale. He will keep two factors in mind, (a) the fair market value determined by the DVO while considering the case of confirming parties, and (b) encumbrance created on the property by virtue of agreement dated 10/12/2008 in favour of

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three buyers S/Shri Bhavik B.Trivedi, Milind V. Varavadekar and Smt.Madhuben J. Trivedi. After assessing the effect of these factors, he will determine the fair market value of the property which can be considered as deemed full consideration u/s.50C for the purposes of computing capital gain u/s.48 of the Act.

13. With the above observation, the issue is remitted back to the file of Assessing Officer for fresh adjudication.

14. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the Court on 29th July-2019 at Ahmedabad.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 29/ 07 /2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-V, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad