

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASSEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1554/Ahd/2016

With C.O. No. 110/Ahd/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT Cir. 1(1)(1), A' Wing, Room No. 309, 3 rd Floor, Pratyakhsh Kar Bhavan, Ambawadi, Ahmedabad- 380015	बनाम/ Vs.	Smt Bijalben Vipulbhai Haria 2, Indraprastha Bunglow, Opp Management Enclave, Vastrapur, Ahmedbad- 380015
Smt Bijalben Vipulbhai Haria 2, Indraprastha Bunglow, Opp Management Enclave, Vastrapur, Ahmedbad-380015		DCIT Cir. 1(1)(1), A' Wing, Room No. 309, 3 rd Floor, Pratyakhsh Kar Bhavan, Ambawadi, Ahmedabad- 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAC PH7 513 E		
(Appellant/Respondent)	..	(Respondent/Cross Objector)

अपीलार्थी ओर से /Appellant by :	Shri L. P. Jain, Sr. DR,
प्रत्यर्थी की ओर से / Respondent by :	Shri Dhiren Shah, AR

सुनवाई की तारीख / Date of Hearing	13/06/2019
घोषणा की तारीख /Date of Pronouncement	05/09/2019

आदेश/ORDER

PER MAHAVIR PRASAD - JM:

This appeal has been preferred by the Revenue against the order of Ld. CIT(A)-VI/DCIT, Cir-1/146/2013-14 dated 29.03.2016 arising out of assessment order dated 26.03.2013. In the Revenue's appeal assessee has also filed Cross Objection captioned above.

2. Facts of the case are that during the course of assessment proceeding Ld. AO received AIR information that assessee had sold three pieces of land during the previous year pertinent to A.Y. 2010-11 to M/s. Aquest Estate Pvt. Ltd. The details of the same are as under:-

<i>Sl. No.</i>	<i>Land detail</i>	<i>Total Sales consideration</i>
<i>a.</i>	<i>Survey No. 324/2</i>	<i>1,00,76,070</i>
<i>b.</i>	<i>Survey No. 324/1</i>	<i>32,80,950</i>
<i>c.</i>	<i>Survey No. 323</i>	<i>1,32,57,660</i>

But Ld. AO was not agree with the contention and made disallowance u/s. 50C to the tune of Rs. 2,56,94,896/- against the said order thereafter assessee preferred first statutory appeal before the Ld. CIT(A) who allowed the appeal of the assessee.

3. Now Revenue has come before us by way of second statutory appeal.

4. We have gone through the relevant record and heard both the parties. The question before us is whether CIT(A) was justified in deleting the addition of Rs. 2,56,94,896/- made on account of 50C of the Act or not. Assessee purchased following properties in the name of M/s. Kirtikumar Kantilal Shah (HUF) during the period from F.Y. 1995-96 to 1999-00 for a total consideration of Rs. 12,76,493/-. The details of the purchase are as under:-

<i>Sl. No.</i>	<i>Survey No.</i>	<i>Year of</i>	<i>Particulars</i>	<i>Amount Paid</i>
<i>1.</i>	<i>324/1</i>	<i>1995-96</i>	<i>Purchase of land</i>	<i>48,500</i>
		<i>1996-97</i>	<i>Maintenance Expenses</i>	<i>10,870</i>
		<i>1997-98</i>	<i>Interest and</i>	<i>10,237</i>

			<i>service charges</i>	
		<i>1998-99</i>	<i>Interest</i>	<i>12,530</i>
		<i>1999-00</i>	<i>Interest</i>	<i>19,726</i>

And later of these properties above said properties were mortgaged with the Madhupura Mercantile Co. Op. Bank Ltd. against loan taken for their business purpose. Thereafter, she entered into a Banakhat (Agreement to Sell) with M/s. Radhe Infrastructure (india) Ltd. on 02 .05.2005 for sale of the lands at a consideration of Rs. 38,57,200/- and received an amount of Rs. 20,00,000/- towards the same of advance. However, as per the possession of agreement amount of Rs. 20,00,000/- was paid on 30.04.2006 as per the agreement to sale dated 02.05.2005. The assessee was required get the title of the properties cleared and makes the same marketable. The final conveyance deed was to be carried out after conversion of the lands to non-agriculture land. However, the buyer was to bear all costs of such conversion. The second party in the Banakhat was to be confirming party when the land is finally sold at his instance. The assessee in the meanwhile was to get the charge of Madhupura Mercantile Co. Op. Bank Ltd. removed from the property and obtained a NOC from the bank in this regard. According to the assessee, the land was finally converted to non-agricultural use in the year under consideration and sold to ultimate buyer, Aquest Estate Pvt. Ltd. The conveyance deed was made by the assessee and Radhe Infrastructure (India) Ltd. was the confirming party. The total sales consideration was shared between the assessee and the confirming party in the following manner:-

<i>Sl. No.</i>	<i>Land details</i>	<i>Date of regd. Sale document</i>	<i>Total sale consideration</i>	<i>Owner (Smt Bijal Haria)</i>	<i>Confirming party (Radhe Infrastructure (I) Ltd.)</i>
<i>i</i>	<i>Land at survey no. 324/2</i>	<i>25.08.2009</i>	<i>1,00,76,070</i>	<i>19,21,400</i>	<i>1,13,36,260</i>

ii	Land at survey No. 324/1	25.08.2009	32,80,950	4,75,500	28,05,450
iii	Land at survey No. 323	25.08.2009	1,32,57,660	14,60,300	89,15,770
			2,66,14,680	38,57,200	2,27,57,480

And finally land was converted into non-agriculture land on 06.08.2009, just prior to its sale by executing the sale document on 25.08.2009. From the facts, it is clear that the said land which was an agriculture land on till 05.08.2009. The said land which was an agriculture land in 2006, could not be sold by the agriculturist to a non-agriculturist, in Gujarat as per the Bombay Tenancy and Agricultural Lands Act, 1948. The assessee sold the land in question for total consideration of Rs. 2,66,14,680/-. Out of which it is shown that the assessee received Rs. 38,57,200/- and balance is shown as received by the builder Aquest Estate Pvt. Ltd. as confirming party. The Radhe Infrastructure Pvt. Ltd. and project received Rs. 2,27,57,480/- as confirming party to the conveyance deed executed by the assessee in favour of Aquest Estate Pvt. Ltd. and the same has been offered by the said company in the return of income filed for A.Y. 2010-11. When Aquest Estate Pvt. Ltd. has offered in its return of income that cannot be taxed in the hands of the assessee. In support of its contention assessee cited a judgment of Co-ordinate Bench in the matter of Smt. Sapnaben Dipakhai Patel vs. ITO [2016] 73 taxmann.com 288 (Ahmedabad – Trib.) wherein in similar circumstances matter was decided in favour of assessee with following observation:-

“Section 45, read with section 2(47), of the Income-tax Act, 1961 – Capital gains – Chargeable as (Unregistered sale deed) – Assessment year 2010-11 – Assessee purchased certain agricultural land between 18-12-2007 to 4-3-2008 – On 4-4-2008, assessee entered into an agreement with SDS to sell said land for certain consideration – Subsequently, by another agreement dated 2-3-2009 entered into among assessee, SDS and

one GPPL said land was agreed to be sold to GPPL for a much higher sum – By another agreement of same date assessee was paid sale consideration as per agreement dated 4-4-2008 – Possession of land was handed over by assessee to GPPL – Deed of sale was registered on 27-1-2010 disclosing higher amount of sale consideration – Assessing Officer held that capital gains on transfer of land was to be assessed in year 2010-11 on basis of sale deed registered on 27-1-2010 for higher sale consideration – Whether since SDS had a right to get agreement dated 4-4-2008 enforced by way of suit for specific performance and assessee could be persuaded to execute sale deed in favour of SDS by virtue of this agreement, she could be charged for capital gain on amount mentioned in that agreement only – Held, yea – Whether, transfer within meaning of section 2(47)(v) was complete on execution of agreement dated 2-3-2009, when possession of land was handed over to GPPL and capital gains on sale property could not be charged in relevant assessment year on basis of sale deed registered on 21-1-2010 – Held, Yes [Para 32] [In favour of assessee]”

5. Since M/s. Radhe Infrastructure and Projects (India) Ltd. has declared income in its return, therefore, same cannot be assessed in the hands of the assessee. Thus, in parity with Co-ordinate Bench judgment and facts and circumstances of the case we do not interfere in the order passed by the Ld. CIT(A) as he has passed detailed and reasoned order.

6. In the result, appeal filed by the Revenue is dismissed.

7. Now we come to C.O. No. 110/Ahd/2016 filed by the assessee. Since C.O. supportive to the order of the Ld. CIT(A), therefore, same is dismissed as infructuous.

8. In the result, C.O. of the assessee is dismissed.

This Order pronounced in Open Court on	05/09/2019
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 05/09/2019

TANMAY

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आदेश की प्रतिलिपि अग्रहित / 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 ।