

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

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

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 59/Ahd/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Ashwinkumar R. Shah 7, Impala House, 36, Vishwas Colony, Alkapuri, Vadodara- 390 007	बनाम/ Vs.	ITO Ward- 2(2), Baroda
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AJP PS2 584 P		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Sunil Talati, AR
प्रत्यर्थीकीओरसे / Respondent by:	Shri Lalit P. Jain, Sr. DR

सुनवाईकीतारीख/Date of Hearing	24/07/2019
घोषणाकीतारीख /Date of Pronouncement	16/09/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the Assessee for A.Y. 2011-12, arise from order of the CIT(A)-5, Vadodara dated 08.09.2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The ground of appeal from 1 to 3 are pertained to the issue of wrongly invoking the provision of Sec. 50C of the Act and the Ground No. 4 to 5 in the appeal of the assessee are pertained to the issue of rejecting the deduction claimed by the assessee u/s. 54B of the Act.

3. At the outset, we adjudicate the first issue contested in Ground No. 1 to 3 against the decision of Ld. CIT(A) in confirming the addition made by the AO of Rs. 51,06,500/- invoking the provision of Sec. 50C of the Act. The Ground No. 1 to 3 are interconnected to the common issue, therefore, for the sake of convenience all these grounds of appeal are adjudicated together.

During the course of assessment the AO noticed that as per A.I.R. details the assessee has sold immovable property during F.Y. 2010-11 for sale consideration of Rs. 2,23,06,500/- on 10.06.2010. However, in the computation of income filed along with return of income the assessee has shown the sale consideration of Rs. 1,72,00,000/-. Therefore, assessee was asked to show-cause by difference of Rs. 51,60,500/- should not be added u/s. 50C of the Act. The assessee explained that because of location of the property in the undeveloped area the value adopted by the stamp valuation authority was not precise but it was estimated value. The AO has not accepted the explanation of the assessee and stated that stamp valuation authority has rightly determined the market value of the land of Rs. 2,23,06,500/- and provision of Sec. 50C were applicable. Accordingly, the AO has made an addition of Rs. 51,06,500/- and added to the total income of the assessee u/s. 50C of the Act.

4. The aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has upheld the decision of AO invoking the provision of Sec. 50C of the Act.

5. We have heard the rival contention on this issue and perused the material on record. The assessee has placed copy of report of Valuation Officer of the Income Tax department dated 07.08.2015 demonstrating that reference to the DVO was made referred to the by the AO. It is noticed that the AO has not considered anywhere in the assessment order about the reference made to the department of Valuation Officer for determining the value of the impugned

property sold by the assessee. Therefore, considering the aforesaid material fact we restore this issue to the file of the Ld. CIT(A) for adjudicating the issue a fresh after taking into consideration the report dated 07.08.2015 of the DVO.

6. The other ground of appeal 4 to 5 of the assessee are interconnected to the common issue of rejecting the deduction claimed by the assessee u/s. 54B of the Act.

During the course of assessment the AO noticed that assessee has claimed exemption u/s. 54B of the Act to the amount of Rs. 1,38,11,530/- as purchasing various pieces of agriculture land. The AO has observed that in respect of four pieces of land at village Sodhi the sale deed were executed after lapse of two years from the date of sale of original asset, therefore, claim of deduction u/s. 54B to the extent of Rs. 43,25,100/- was disallowed.

During the course of appellate proceeding the assessee has submitted additional evidences before the Ld. CIT(A) stating that though the sale agreement has been entered into after expiry of two years but the assessee has actually got possession of the land and also has entered into Banakhat with parties on 30.03.2011. The assessee has also produced additional evidences in the form of Banakhat with the sellers of four pieces agriculture land at village Sodhi and rectified sale deed dated 16.03.2015. The Ld. CIT(A) has not admitted the additional evidences on the ground that assessee has failed to establish that he was prevented by sufficient cause to produce such evidence before the AO. The assessee has submitted before the Ld. CIT(A) that all the four Banakhats were misplaced during the course of assessment proceeding, however, the Ld. CIT(A) has not accepted the additional evidences simply stating that the said additional evidences were never produced before the AO and same were beyond the scope of Rule 46A of the Act. We consider that the decision of Ld. CIT(A) is not justified as he has failed to disprove the fact

pleaded by the assessee that aforesaid document could not be produced before the AO as the same was misplaced. Therefore, we restore this issue also to the file of the Ld. CIT(A) for deciding this issue a fresh after taking into consideration the additional evidences filed by the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on	16/09/2019
---	-------------------

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 16/09/2019

TANMAY

TRUE COPY

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.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।