

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

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

**ITA. No: 1957/AHD/2016
(Assessment Year: 2007-08)**

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| Income-tax Officer, Ward-1(2)(4), Vadodara | V/S | Smt. Urmilaben Patel L/h of late Smt. Gangaben R Patel, “Kamdhenu Estate” Opp. City Bank, Race Course, Gotri Road, Vadodara |
| (Appellant) | | (Respondent) |

PAN: ACQPP6487Q

**Appellant by : Shri L.P. Jain, Sr. D.R.
Respondent by : Shri Mukund Bakshi , A.R.**

(आदेश)/ORDER

Date of hearing : 03 -07-2019
Date of Pronouncement : 01 -10-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-4, Vadodara dated 16.03.2016 pertaining to A.Y. 2007-08 and following grounds have been taken:

01. The Id. CIT [Appeals] has erred in holding that the Assessing Officer has committed an error which cannot be rectified and reassessment order needs to be quashed, when in respect of various opportunities given to the assessee, the legal heir of the assessee has co-operated with department in finalisation of the reassessment and also furnished all the details / information as called for as when the reassessment order was passed on the legal heir of the assessee.

02. The Id. CIT [Appeals] has erred in holding that the reassessment was based on change of opinion and the notice issued by the Assessing Officer was after four years, when the reopening of the assessment was made on the basis of the information gathered at the time of assessment proceedings for the A.Y.201 1-2012 in the case of Shri Matrushi Gangaba Trust, the other co-seller of the property, which amounted to failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the assessee and, therefore, hit by the first proviso to section 147 of the Income-tax -Act, 1961.

03. The Id. CIT [Appeals] has erred in holding that the provisions of section 50C are not applicable, when the stamp duty value of as assessed by the Stamp Duty Valuation Authority was available with the Assessing Officer for the same property as per the sale deed dated 08/05/2007.

2. Facts of the case are that assessee is an individual only source of income is capital gain. As the assessee has filed return of income for the assessment year 2007-08 on 31.07.2007 declaring total income at Rs. 1,60,545/- and the assessment order u/s. 143(3) r.w.s. 147 of the Act was finalized on 23.01.2015 and determining total income of Rs. 1,85,36,550/-. Making an addition of Rs. 1,83,76,000/-.
3. In this case, a notice u/s. 148 was issued on 25.03.2014 for A.Y. 2007-08 in the name of Late Gangaben R Patel. However, Late Gangaben R Patel died on 14.01.2010 and fact of the same was available on record of the department as the return for A.Y. 2010-11 was filed by her legal heir and legal representative Urmilaben P Patel on 22.07.2010. and this fact was further clarified by the

- assessee in its submission during reassessment proceedings and proof of the same was filed before the Assessing Officer and assessee requested since Late Smt. Gangaben R Patel died much before the date of issuance of notice u/s. 148. Therefore, reassessment proceedings are legal and void. Assessing Officer was not agree with the contention of the assessee and made addition of Rs. 1,83,76,000/-.
4. Thereafter assessee filed an appeal before the ld. CIT(A) who granted relief to the assessee.
5. We have gone through the relevant record and impugned order and heard both the parties. In this case, the registration of Sale Deed is approved in the A.Y. 2011-12 whereas the capital gain is taxed in the year under consideration while the Sale Deed itself is executed in the A.Y. 2008-09. The ld. A.O. is holding that the transaction has completed in the year under consideration and, therefore, who could not have adopted the market value on its assessable basis. And entire amount has already been assessed in the hands of M/s. Jhonson Electric Co. Ltd. in the assessment year 2008-09 and ld. A.R. has filed order of the Co-ordinate Bench wherein following order was passed and matter was decided against the Revenue:

6. Now property under consideration stood transferred on 15/07/2006 on handing over of the possession to Jhonson Electric Co. Pvt. Ltd. in compliance to Agreement for Sale dated 06.04.1993. Accordingly, subsequent transfer of the said property by Jhonson Electric Co. Pvt. Ltd. to Tanman Finvest Pvt. Ltd. vide Deed of Conveyance dated 08.05.2007 would result capital gain in the hands of Jhonson Electric Co. Pvt. Ltd. only. It is worthwhile to mention here that the Long Term Capital Gain on the basis of Deed of Conveyance dated 08.05.2007 has

been assessed in the case of Jhonson Electric Co. Pvt. Ltd. vide an order u/s. 143(3) r.w.s. 147 dated 03.11.2010. Since Long Term Capital Gains on the basis of sale consideration disclosed in Conveyance Deed determined u/s. 50C has already been assessed in the case of Jhonson Electric Co. Pvt. Ltd. which had purchased the property from the assessee. Therefore, Id. CIT(A) has rightly hold that property cannot again be assessed in the hands of assessee. In our considered opinion, Id. CIT(A) has passed detailed and reasoned order and same does not require any kind of interference at out end.

7. *In the result, appeal filed by the Revenue is dismissed.*

6. And in our considered opinion once the same amount has already been assessed in the hands of M/s. Jhonson Electric Co. Ltd. in the assessment year 2008-09. Therefore, same amount cannot be considered again in the hands of assessee.

7. In our considered opinion, Id. CIT(A) has passed reasoned and detailed order and same does not require any kind of interference at our end. Therefore, appeal of the Revenue is dismissed.

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

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| Order pronounced in Open Court on | 01- 10- 2019 |
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Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 01/10/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER