IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER & SHRI WASEEM AHMED, ACCOUNTANT MEMBER)

ITA. No: 303 & 324/AHD/2017
(Assessment Year: 2013-14)

Vithalbhai Kalidas Patel HUF 18, Mehsana Society, Opp. Laxmi Hospital Nava Vadaj Road, Ahmedabad-3800013 **PAN No. AAAHP 6899Q &** **Narayanbhai Kalidas Patel HUF 19, Mehsana Society, Opp. Laxmi Hospital Nava Vadaj Road, Ahmedabad-3800013** **PAN No. AAAHP6900N**	**V/S**	**The DCIT, Circle-1(2), Ahmedabad**
(Appellant)		**(Respondent)**

Appellant by : Shri S. N. Divatia & Mehul Talera, AR
Respondent by : Shri Vinod Tanwani, Sr. D.R.

(आदेश)/ORDER

Date of hearing : 09 -10-2019
Date of Pronouncement : 14 -10-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These appeals filed by the Assessee are directed against the order of the Ld. CIT(A)-10, Ahmedabad dated 28.11.2016 pertaining to A.Y. 2013-14 and following grounds have been taken:

> *1.1 The order passed u/s.250 on 28-11-2016 for A.Y.2013-14 by CIT(A)-10, Abad upholding the disallowance of claim of cost of improvement by way of payment of conversion charges of RS.2,67,73,562/- of land into NA made by AO is wholly illegal, unlawful and against the principles of natural justice.*
>
> *1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowance.*
>
> *2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the disallowance of claim of cost of improvement by way of payment of conversion charges of RS.2, 67, 73, 562/- of land into NA.*
>
> *2.2 That in the facts and circumstances of the case as well as in law, the Ld.ClT(A) ought not to have upheld the disallowance of claim of cost of improvement by way of payment of conversion charges of RS.2,67,73,562/- of land into NA.*
>
> *3.1 The Ld.CIT(A) has erred in holding that the payment of conversion charges of RS.2,67,73,562/- of land into NA by the purchaser on behalf of the appellant was advance and not part of the sale price.*
>
> *It is, therefore, prayed that disallowance of claim of cost improvement by way of payment of conversion charges of RS.2,67,73,562/- of land upheld by the CIT(A) may kindly be deleted.*

2. Facts of the case are that the assessee is HUF and has income (LTCG) under the head Capital Gain and interest income/dividend income under the head income from other sources. During the previous year relevant to the assessment year, the assessee along with others has sold a piece of non-agricultural land at Sola, Ahmedabad to M/s Nirvana Procon Pvt. Ltd. for Rs. 10,71,00,000/-, in which the assessee has 50% share. The land has been sold on 05.09.2012 and while computing long term capital gain appellant claimed for

his one half share of Rs. 2,69,73,562/- towards cost of improvement by way of conversion fees of agricultural into NA land and submitted revised computation of income. But said claim was not accepted by the ld. A.O.

3. Thereafter assessee preferred first statutory appeal before the ld. CIT(A) who rejected the contention of the assessee for the reason that the advances received by the appellant for sale of land could not be treated as cost of improvement.

4. We have heard both the parties and gone through the impugned order. In this case, assessee (HUF) owned a piece of land in which the was having 50% of the share and he made an agreement for sale of land to one M/s Nirvana Procon Pvt. Ltd. assessee and Nirvana Procon Pvt. Ltd. will make efforts to conversion the said land from agricultural to non-agricultural and expenses to be paid to the Government for conversion of said land to be borne by M/s Nirvana Procon Pvt. Ltd.

5. Now question before us is whether any payment made towards the conversion of land from agricultural to non-agricultural will be considered a cost of improvement or not.

6. In support of its contention, ld. A.R. cited a judgment of Hon'ble Jurisdictional High Court in the matter of Mathurdas Mangaldas Parekh vs. CIT, (126 ITR 669) (Gujarat) wherein similar facts and circumstances, matter was decided in favour of assessee and relevant paras of the said judgment is reproduced:

In this case at the instance of the assessee the following three questions have been referred to us for our opinion by the Tribunal :

"1. Whether, on the facts and in the circumstances of the case, the tribunal was right in holding that the land acquired by the Municipal Corporation and the land sold by the assessee to Natraj Co-op. Housing Society Ltd., and Anilkumar Kashibhai Patel and others was non-agricultural in character ?

2. Whether the Tribunal was right in holding that betterment charges of Rs. 60,390 paid by the assessee to the Ahmedabad Municipal Corporation could not be considered to cost of improvement within the meaning of section 48(ii) of the I.T. Act, 1961 ?

3. Whether the Tribunal erred is not allowing deduction of betterment charges of Rs. 60,390 as claimed by the assessee ?"

At the commencement of the hearing of this reference, Mr. K. C. Patel, the learned counsel for the assessee, stated that the assessee was not pressing questions Nos. 1 and 3 and the only question No. 2. The facts leading to this reference are as follows :
We are concerned with the assessment years 1967-68 and 1968-69, the previous years being the calendar years 1966 and 1967, respectively. The assessee owned a plot of land bearing survey No. 118 of Kocharab and final Plot No. 314 of the Ahmedabad Town Planning Scheme No. 20 admeasuring 5 acres 27 gunthas, i.e., 27,467 sq. yds. Out of the said land the Municipal Corporation of Ahmedabad acquired 5,507 sq. yds. of land on July 28, 1966, and the assessee received Rs. 38,549 by way of compensation. By an agreement for sale dated April 5, 1966, the assessee agreed to sell 21,960 sq. yds. of land out of the said land to one Venus Land Development Corporation, a partnership firm. Thereafter, in pursuance of the said agreement, by a sale deed dated November 8, 1966, the assessee sold 8,574 sq. yds. of land for Rs. 2,91,516 to Natraj Co-operative Housing Society Ltd., and partners of M/s. Venus Land Development Corporation joined as confirming parties to the sale deed. In pursuance of the aforesaid agreement for sale, the assessee further sold 9,920 sq. yds. of land to Anilkumar Kashibhai Patel and others for Rs. 3,37,484 on January 24, 1967. The ITO sought to tax capital gains arising out of the acquisition of the land by the Ahmedabad Municipal Corporation and sale in favour of Anilkumar Kashibhai Patel and others was concerned, the ITO sought to tax capital gains arising out of the said

sale in the assessment year 1968-69. The assessee, however, contended that he was not liable to pay tax on the capital gains inasmuch as the aforesaid land sold by him was agricultural land. As regards the computation of capital gains the assessee contended land. As regards the computation of capital gains the assessee contended that the value of the land as on January 1, 1954, was Rs. 15 per sq. yd. instead of Rs. 10 per sq. yd. as held by the ITO. He further claimed that the betterment levy paid by him to the Ahmedabad Municipal Corporation be added to the value of the land as on January 1, 1954, or the cost of the land for the purpose of computation of capital gains. This contention was based on the provisions of s. 48(ii) of the I.T. Act, 1961.

The ITO rejected the assessee's contention regarding betterment levy paid by him to the Ahmedabad Municipal Corporation. The AAC, in appeal, held that the said levy has to be added to the value of the land as on January 1, 1954, for the purpose of computation of capital gains. Against this part of the decision of the AAC, the revenue preferred an appeal to the Income-tax Appellate Tribunal and the appeal against other parts of the order passed by the AAC was preferred by the assessee. Both regards the betterment charges of Rs. 60,390 the Tribunal rejected the assessee's contention that payment of such charges could be considered as expenditure connected with transfer under s. 48(ii) of the Act. The Tribunal further held that such charge also does not fall within the meaning of "cost of improvement" defined under s. 55(1)(b) of the Act. It, therefore, rejected the assessee's contention that in any case the assessee's case was covered by s. 48(ii) of the Act, so far as the levy s concerned.

Question No. 2 which now survives for our consideration relates to the betterment charges of Rs. 60,390 paid by the assessee to the Ahmedabad Municipal Corporation under the provisions of the relevant Town Planning Act and the question is whether the amount should be considered to be the cost of improvement within the meaning of s. 48(ii) of the I.T. Act, 1961. Section 48(ii) of the Act provides that the income chargeable under the head "capital gains" shall be computed by deduction from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely, the cost of acquisition of the capital asset and the cost of any improvement thereto. Under s. 55(1)(b) of the Act, special meaning of "cost of improvement" for the purpose of ss. 48, 49 and 50 has been laid down by the Legislature and it has been provided that the "cost of any improvement" in relation to a capital asset in any other case, means all expenditure of a capital

nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in sub-s. (1) of s. 49, by the previous owner, but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession" or "Income from other sources" and the expression "improvement" shall be construed accordingly.

In Addl. CIT v. Rohit Mills Ltd. [1976] 104 ITR 132, a Division Bench of this High Court considered the question of payment of betterment charges to a local authority in connection with a scheme framed under the Town Planning Act. There the assessee made a contribution towards the betterment charges assessed on lands in his possession under a Town Planning Act. Contribution was calculated in proportion to the increased potential value estimated to accrue to the lands as a result of the town planning scheme. The Town Planning Act laid down that the contribution could be recovered by distress and sale of goods of a defaulter. The amount of contribution recovered from the assessee in installments was claimed by him under s. 37. The Division Bench held that the betterment charges were levied against the increased potential value of the lands covered by the scheme and not against the running business of the assessee. The increment in value of land contemplated by the Town Planning Act was real. The assessee gained an enduring advantage by paying the amount and the fact that the payment was under a statutory obligation and not because the assessee desired it was immaterial. Even if it were taken that the payment was made to prevent distress sale and to protect the business set up, the expenditure was on capital account and not an expenditure for producing profits in the conduct of business. The installment of contribution paid under the Town Planning Act was not deductible under s. 37.

In view of this decision in Rohit Mill's case [1976] 104 ITR 132 (Guj), it is obvious that the betterment charges paid by the assessee were levied against the increased potential value of the lands covered by the scheme and the increment in value of land contemplated by the Town Planning Act was real. The assessee gained an enduring advantage by paying this amount of Rs. 60,390. Thus, what the assessee spent by way of betterment charges was certainly for the improvement of the land. The Supreme Court has pointed out in State of Gujarat v. Shantilal Mangaldas. AIR 1969 SC 634, that the person whose property gets

improved in value pays in the shape of betterment charges for all improvements which the town planning scheme entitles. Under these circumstances, it is obvious that the expenditure in the shape of betterment charges paid under the town planning scheme for acquiring an enduring benefit are in the nature of capital expenditure and go to improve the value of the land; hence, they would fall under s. 48(ii) of the I.T. Act. Under these circumstances, the Tribunal was not right in holding that the betterment charges of Rs. 60,390 paid by the assessee to the Ahmedabad Municipal Corporation could not be considered to be cost of improvement within the meaning of s. 48(ii) of the I.T. Act, 1961. Question No. 2 is, therefore, answered in the negative, i.e., in favour of the assessee and against the revenue. There will be no order as to costs of this reference.

7. Since, apart from the above said, ld. A.R. also cited a judgment of Mumbai Tribunal in the matter of Vidhyavihar Containers Ltd. vs. DCIT (133 ITD 363) (Mum), wherein the assessee has paid Rs. 23 crore to state govt. on account of user of land from industrial to commercial which was held to be cost of improvement.

8. Respectfully following the above said Hon'ble Gujarat High Court order and in parity with the ITAT order, we allow the appeal of the assessee.

9. In the result, appeal filed by the Assessee is allowed.

10. ITA No. 324/Ahd/2017 Narayanbhai Kalidas Patel for A.Y. 2013-14. The assessee has taken following grounds of appeal.

1. The Commissioner of Income-Tax (Appeals)-10, Ahmedabad ["the CIT(A)"] erred in fact and in law in confirming the action of the Deputy Commissioner of Income Tax, Circle -1 (2), Ahmedabad ("the AO") in rejecting the additional claim made by the Appellant during the course of assessment with respect to deduction of indexed cost of improvement of Rs. 2,92,75,764 instead of Rs.2,69,73,562 while computing capital gains on transfer of land.

2. The CIT(A) erred in fact and in law in confirming the action of the AO in not allowing the benefit of indexation despite the fact that the claim was made in

accordance with the provision of section 48 of the Income Tax Act 1961 ("the Act").

3. The learned CIT(A) has erred in fact and in law in confirming the action of the AO in holding that the payment made by the purchaser towards conversion premium amounts to advance payment and therefore the benefit of indexation cannot be allowed.

4. Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.

11. Facts of the case are that the assessee is HUF and has income (LTCG) under the head Capital Gain and interest income/dividend income under the head income from other sources. During the previous year relevant to the assessment year, the assessee along with others has sold a piece of non-agricultural land at Sola, Ahmedabad to M/s Nirvana Procon Pvt. Ltd. for Rs. 10,71,00,000/-, in which the assessee has 50% share. The land has been sold on 05.09.2012 and while computing long term capital gain appellant claimed for his one half share of Rs. 2,69,73,562/- towards cost of improvement by way of conversion fees of agricultural into NA land and submitted revised computation of income. But said claim was not accepted by the ld. A.O.

12. Thereafter assessee preferred first statutory appeal before the ld. CIT(A) who rejected the contention of the assessee for the reason that the advances received by the appellant for sale of land could not be treated as cost of improvement.

13. We have heard both the parties and gone through the impugned order. In this case, assessee (HUF) owned a piece of land in which the was having 50% of the share and he made an agreement for sale of land to one M/s Nirvana Procon Pvt. Ltd. assessee and Nirvana Procon Pvt. Ltd. will make efforts to conversion the said land from agricultural to non-agricultural and expenses to

be paid to the Government for conversion of said land to be borne by M/s Nirvana Procon Pvt. Ltd.

14. Now question before us is whether any payment made towards the conversion of land from agricultural to non-agricultural will be considered a cost of improvement or not.

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rejected the assessee's contention that payment of such charges could be considered as expenditure connected with transfer under s. 48(ii) of the Act. The Tribunal further held that such charge also does not fall within the meaning of "cost of improvement" defined under s. 55(1)(b) of the Act. It, therefore, rejected the assessee's contention that in any case the assessee's case was covered by s. 48(ii) of the Act, so far as the levy s concerned.

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installments was claimed by him under s. 37. The Division Bench held that the betterment charges were levied against the increased potential value of the lands covered by the scheme and not against the running business of the assessee. The increment in value of land contemplated by the Town Planning Act was real. The assessee gained an enduring advantage by paying the amount and the fact that the payment was under a statutory obligation and not because the assessee desired it was immaterial. Even if it were taken that the payment was made to prevent distress sale and to protect the business set up, the expenditure was on capital account and not an expenditure for producing profits in the conduct of business. The installment of contribution paid under the Town Planning Act was not deductible under s. 37.

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16. Since, apart from the above said, ld. A.R. also cited a judgment of Mumbai Tribunal in the matter of Vidhyavihar Containers Ltd. vs. DCIT (133 ITD 363) (Mum), wherein the assessee has paid Rs. 23 crore to state govt. on account of

user of land from industrial to commercial which was held to be cost of improvement.

17. Respectfully following the above said Hon'ble Gujarat High Court order and in parity with the ITAT order, we allow the appeal of the assessee.

18. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in Open Court on 14 - 10- 2019

Sd/- Sd/-

(WASEEM AHMED) **(MAHAVIR PRASAD)**
ACCOUNTANT MEMBER **True Copy** **JUDICIAL MEMBER**

Ahmedabad: Dated 14/10/2019

Rajesh

Copy of the Order forwarded to:-
1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad