

IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
BEFORE SHRI AMARJIT SINGH, JM & SHRI O.P.MEENA, AM

आयकर अपील सं/ I.T.A. No. 748/Ahd/2011

(निर्धारण वर्ष / Assessment Years: 2007-08)

Shri Babubhai Pritamsingh Jamadar Dandia Bazar, Bharuch (Gujarat). PAN: ACAPJ5829N	बनाम/ Vs.	The ACIT, Central Circle-2, Baroda.
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आयकर अपील सं/ I.T.A. No. 749/Ahd/2011

(निर्धारण वर्ष / Assessment Years: 2007-08)

Shri Vijesh Pritamsingh Jamadar Dandia Bazar, Bharuch (Gujarat). PAN:ACHPJ7661F	बनाम/ Vs.	The ACIT, Central Circle-2, Baroda.
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आयकर अपील सं/ I.T.A. No. 750/Ahd/2011

(निर्धारण वर्ष / Assessment Years: 2007-08)

Shri Mehmoodbhai Pritamsingh Jamadar Dandia Bazar, Bharuch (Gujara). PAN/GIR No. : ACAPJ5828D	बनाम/ Vs.	The ACIT, Central Circle-2, Baroda.
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आयकर अपील सं/ I.T.A. No. 55/Ahd/2014

(निर्धारण वर्ष / Assessment Years: 2007-08)

Shri Vijesh Pritamsingh Jamadar Dandia Bazar, Bharuch (Gujarat). PAN:ACHPJ7661F	बनाम/ Vs.	The ITO Ward-4 Bharuch
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आयकर अपील सं/ I.T.A. No. 56/Ahd/2014

(निर्धारण वर्ष / Assessment Years: 2007-08)

Shri Babubhai Pritamsingh Jamadar Dandia Bazar, Bharuch (Gujarat). PAN: ACAPJ5829N	बनाम/ Vs.	The ITO Ward-4 Bharuch.
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आयकर अपील सं/ I.T.A. No. 400/Ahd/2014

(निर्धारण वर्ष / Assessment Years: 2007-08)

Shri Mehmood P. Jamadar Dandia Bazar, Bharuch (Gujara).	बनाम/ Vs.	The ITO Ward-4 Bharuch.
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACAPJ5828D

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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Assessee by:	Shri B. T. Thakkar
Revenue by:	Shri Mayank Pandey (Sr. DR)



सुनवाई की तारीख / Date of Hearing: 03/10/2019
घोषणा की तारीख /Date of Pronouncement: 27/11/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee have filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) –IV Ahmedabad [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2007-08.

ITA. NO. 748/Ahd/2011

2. The assessee has filed the present appeal against the order dated 20.12.2010 passed by the Commissioner of Income Tax (Appeals) –IV Ahmedabad [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2007-08.

3. The assessee has raised the following grounds:-

“That the Ld. CIT(A) has grievously erred in law and facts in holding that the assessee has made unexplained investment in immovable property within the meaning of section 69B of the Act.

2. That on facts and evidence on record, if and in law, it ought to have been held that provisions of section 69B are not applicable and that there is no unexplained investment made by assessee.

3. That on facts and in law, the Ld. CIT(A) has grievously erred in confirming the addition of Rs.49,28,966/- out of addition of Rs.65,16,197/- made by the AO, towards alleged unexplained investment u/s 69B of the Act.

4. The appellant craves leave to add, alter, amend any ground of appeal.

4. The brief facts of the case are that the assessee filed his return of income 13.08.2008 declaring total income to the tune of Rs.1,10,160/- and agricultural income of Rs.2,69,284/-. The case was selected for scrutiny and notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee derived his income from share of profit from various firms and income from other sources. During the course of survey at the office premises of Jamadar groups, certain loose papers/documents were found and impounded. According to Annexure A/16, it was noticed that the



certain property was purchased from one Majmudar family by executing three sale deeds in the names of three brothers (i) Vijesh P. Jamadar (ii) Babubhai P. Jamadar & (iii) Mehmood P. Jamadar on the same date i.e. 27.07.2006 for the F.Y.2006-07. The property consists of the land admeasuring 1587.23 sq. meters. As per these three sale deeds, total consideration of Rs.11,90,000/- was paid and registration charges etc. of Rs.2,97,700/- were incurred. The documents Annexure A/16 was a Valuation report given by one Shri P. S. Prajapati, Government Approved Valuer. As per this Valuation Report, the value of the above said property i.e. Survey No. 464 and others have been shown at Rs.2,07,38,590/- as on 28.12.2006. The sale deed was executed on 28.07.2006 shown the total consideration of Rs.11,90,000/- only. The total consideration of Rs.11,90,000/- was shown less to Rs.2,07,38,590/- within a span of 6 months. The value has been assessed by Government Approved Valuer to the tune of Rs.2,07,38,590/-. The property was situated at locality of Station Road which was the commercial area. Further at page no. 72 of Annexure A/17 impounded during the survey at his office, the contents of the paper/jottings on the paper are reproduced as under:-

Annexure A/17- PageNo.72
City Bus Service

S. No.	Sq. Mt.	
463	170.94	855000
464	1176.47	
464-A	61.50	1747000
465	47.90	
466	52.59	178.32
467	67.76	892000
	1857.23	17038.59 sq. mt.

Gururajabhai Parshottambhai Majmudar 46 *1232.97*

Parbhaben 66 *3100000*

The paper was related to the investment in the property purchased from Majmudar group. The figure of measurement was mentioned in the three sale deeds as referred to above. The names of all the members of Majmudar



family from whom the land has been purchased have been mentioned. The overall amount of consideration worked out on this paper was to the tune of Rs.1,01,35,000/-(892000+3541000+3100000+1747000/-) The figure of Rs.17,47,000/- was mentioned against survey no.464A admeasuring 61.50 sq. meters. Thus, the rate per sq. meter was also ascertainable. The combined readings of page no.59 of Annexure A/16 and page no.72 of Annexure A/17 alongwith the fact of furnishing no satisfactory explanation in this regard, leads to an inference that, the actual consideration/investment in the above referred property was amounting to Rs.2,07,38,590/- out of which, Rs.11,90,000/- have been incorporated in the sale deeds and books of accounts. Thus, the non-incorporated sale consideration/investment in the above said property was worked out at Rs.1,95,48,590/- i.e. difference between the sum of Rs.2,07,38,590-11,90,000/-. Notices were given and after the finding no proper reply, the investment to the tune of Rs.65,16,197/- was raised against all the 3 purchasers u/s 69B of the Act. Accordingly, penalty u/s 271(1)(c) of the Act was initiated. The total income of the assessee was assessed to the tune of Rs.66,26,360/-. Feeling aggrieved, the assessee has filed an appeal before the CIT(A) who partly allowed the claim of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE Nos. 1 to 3

5. Issue nos. 1 to 3 are inter-connected, therefore, are being taken up together for adjudication. In fact, under these issues the assessee has challenged the confirmation of the addition of Rs.49,28,966/- on account of assessee. The Ld. Representative of the assessee has argued that the valuation is after the period of 6 months and the assessee purchased the land being tenant of the property from 100 years, therefore, the value was less, hence, the registry transaction is liable to be considered in accordance with law. It is also argued that the Valuation Report was prepared on



account of study of the visa purpose which is not liable to be considered in accordance with law. It is also specifically argued that the AO did not refer the matter before the DVO, therefore, the DVO report which was made for fee value is not liable to be considered. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. With due regards to the contention raised by the parties and perusing the record, we find that the AO raised the addition on the basis of the DVO report which was got prepared by the assessee. Vijesh Pritamsingh Jamadar along with other share-holder purchased the land on 27.07.2006 in sum of Rs.11,90,000/- (they paid the registration charges a sum of Rs.2,97,700/-). Valuation Report was prepared on 28.12.2006 by Shri P.S. Prajapati Government Approved Valuer and accordingly the value of the land was assessed in sum of Rs.2,07,38,500/-. During the survey of Jamadar Grou certain loose papers/documents were found and impounded. According to A/16 during the course of survey, it was observed that the certain property was purchased from one Majmudar family by executing three sale-deeds. At page no. 59 of Annexure A/16, it was noticed that there was a Valuation Report of survey no. 464 in which the value of the property has been shown in sum of Rs.2,07,38,590/- as on 28.12.2006. The page no. 72 of the Annexure no. A/17 speaks that the payment in sum of Rs.1,01,35,000/- was given to the seller i.e. Majmudar family. The contents of the page 72 of the Document A-17 speaks about the payment which been discussed above while discussing the brief facts of the case. Accordingly, the value of the property was found in sum of Rs.1,01,35,000/-. However, as per the DVO report, the AO took the gap figure of Rs.1,95,48,590/-. (Rs.2,07,38,590/- - 11,90,000/-). The said figure was divided among three brother's i. e. purchasers. Undoubtedly, the AO took into consideration of the land in sum of Rs.2,07,38,590/-which was based upon the P. S. Prajapati Government Approval Valuer. The CIT(A) allowed the deduction of Rs.3,000 per sq.



mtr on account of increase of the value of the land and on account of this fact that the appellant was tenant of the land. Accordingly the CIT(A) has decided the value of the said property of Rs.1,59,76,900/- instead of valuation of the property shown by DVO in his report in sum of Rs.2,07,38,590/- on 28.12.2006. Thus, the unaccounted money was assessed in sum of Rs.1,47,86,900/- divided among three brothers in sum of Rs.49,28,966/- and accordingly the addition was confirmed. The CIT(A) granted the relief on the basis of this fact that the assessee was the tenant upon the property in question and the DVO valued the land after the expiry of six months of the transaction. We can say that the CIT(A) has granted the relief on estimation basis considering the fact that the assessee was the tenant upon the land purchased and the DVO report was prepared after the expiry of six months of the transaction. We found that three para-meter in the order to assess the value of the land. The assessee assessed the value of the land on the basis of the registration sale-deed dated 28.07.2006 in which the value of the land has been shown a sum of Rs.1190000/-. Thereafter, the AO assessed the value of the land on the basis of the report of the DVO prepared after the six months of the transactions. The CIT(A) has granted the relief on estimation basis considering the fact that the assessee was the tenant upon the land purchased and the value of property was assessed after the expiry of 6 months of the transaction. It is to be seen which para-meter can be applied justifiably in the interest of justice. It is pertinent to mention about the page no. 72 Annexure A/17 in which the amount has been paid in sum of Rs.1,01,35,000/-. The contents revealed by the Annexure A/17 page no. 72 speaks about the overall consideration in sum of Rs.10135000/-(8,92,000 +3541000 +31000000/- +47,47,000/-). The figure of Rs.1747000/- was mentioned against survey no. 467A measuring 61.50 sq.mt, thus, rate per sq. mt. was ascertainable. It seems that the amount was paid by assessee as well as his brothers to purchase the property in sum of



Rs.1,01,35,000/- in view of the seized documents page-72 of Annexure-A/16 & A/17. We observed that the documents seized during survey should be relied upon to know about the transaction because the assessee nowhere explained these documents. Partly relying upon the documents seized during survey and the DVO report caused uncertainty. It seems that the assessee purchased the mentioned property in sum of Rs.1,01,35,000/- because this amount came into notice with the papers seized from the office of the assessee. No rebuttal was found. Moreover, we noticed that an amount was written according to the Khasra number etc. and proper payment has been shown. Nothing came into noticed about this fact that the assessee being tenant purchased the property in sum of Rs.11,90,000/-. The figure which is not supported by documents is not liable to be considered.. We found that on the basis of the Valuation Report coupled with the Annexure A/17 and page no. 72, the assessment of actual value of the land Nowhere seems justifiable. No addition can be based with the surmises and conjecture. We consider the value of the land on the basis of the Annexure A/17 and Annexure A/16 and assessed the value of the land in sum of Rs.1,01,35,000/-. The share of the assessee comes to the tune of Rs.33,78,337/-. We are inclined to considered this facts that the tenancy of the assessee and the DVO report is not liable to be considered because the assessment of the value of the land is below the assessment of the CIT(A). After taking into consideration above mentioned facts and circumstances, we determined the value of the land in sum of Rs.1,01,35,000/- divided by three and accordingly the amount in sum of Rs.33,78,337/- has been held to be justifiable for addition as income of the assessee. Accordingly, these issues are decided in favour of the assessee against the revenue.

In the result, the appeal filed by the assessee is hereby by partly allowed.

ITA. Nos.749/M/2011 & 750/M/2011



6. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.748/Ahd/2011, therefore, there is no need to repeat the same. The matter of controversy is also the same. The finding given above while deciding the appeal bearing ITA. No.748/Ahd/2011 is quite applicable to the facts of the present case as mutatis mutandis. Accordingly, these appeals are hereby ordered to be partly allowed on similar lines.

ITA. Nos. 55, 56 & 400/Ahd/2014

6. Since we upheld the addition to the extent of 33,78,337/- against each for purchasers, therefore, in the said circumstances, we are of the view that the matter of controversy in penalty case is liable to be considered in accordance with the finding of the mentioned above. Accordingly, set aside the finding of the CIT(A) on the issues and direct the AO to decide the issue of penalty afresh in accordance with the law by giving an opportunity of being heard to the assessee. Accordingly, these appeals are hereby allowed.

7. In the result, appeals filed by the assessee are hereby partly allowed on merits and the penalty appeals are hereby allowed.

Order pronounced in the open court on this 27/11/2019

Sd/-

Sd/-

(O. P. MEENA)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

सुरत/ Surat, Dated: 27/11/2019/Vijay Pal Singh, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat