

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2848/Ahd/2017
(Assessment Year: 2012-13)

Mistry Rajshreeben Batukbhai 13, Jai Ambica Nagar Society Nr. Vaishali Cinema, Juna Dumral Road, Nadiad, Dist: Kheda	Vs.	ITO Ward-5 Nadiad
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[PAN No. AYN PM3 578 N]

(Appellant)

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(Respondent)

Appellant by :	Ms. Adity Seth, AR
Respondent by :	Shri N. K. Goyal, Sr. D.R.

Date of Hearing	20.11.2019
Date of Pronouncement	20.01.2020

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 12.09.2017 passed by the Commissioner of Income Tax (Appeals) – 2, Vadodara under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the order dated 24.03.2015 passed by the ITO, Ward-5, Nadiad for Assessment Year 2012-13 whereby and whereunder the addition made by the AO to the tune of Rs. 21,63,000/- under section 50C of the Act has been confirmed.

2. The brief facts leading to the case is this that the assessee has transferred a plots of land bearing Nos. 577, 578 and 579/2 Paiki at Final Plot

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No. 94 at a situation of Rs. 17,00,000/- on 05.10.2011 by executing a register sale deed. The case of the assessee is this that assessee and the purchaser had entered into a mutual agreement for sale of the plot of land on 21.02.2011. Accordingly the purchaser has paid the part of the sale consideration of Rs. 10 lakhs during the F.Y. 2010-11 by two A/c Payee Cheques of 5 lakhs each; first dated 21.02.2011 and the next dated 01.03.2011. The balance amount of Rs. 7 lakhs was paid to the assessee during the F.Y. 2011-12. When the mutual agreement, though not written in between the parties, was made on 21.02.2011. The stamp valuation of the said plot of land was of Rs. 7,01,450/- meaning thereby the agreed consideration to the tune of Rs. 17,00,000/- was much more than the stamp valuation prevailing at that material point of time. However, the Ld. AO relied upon the stamp duty in respect of the said property prevailing as on the date of transfer that is 05.10.2011 at Rs. 38,63,000/- and the balance amount of the said consideration being Rs. 21,63,000/- has been added to the total income of the assessee, which was, in turn confirmed by the Ld. CIT(A) and hence assailed before us.

3. It is the further case of the assessee that in terms of Proviso of Sec. 50C of the Act the Jantri value prevailing at the date of agreement i.e. 21.02.2011 when the first cheque was deposited in favour of the assessee should have been considered by the Ld. AO. Moreso, the AO has not given any opportunity to the assessee by giving a fair treatment by referring the matter to the Departmental Valuation Officer as contemplated under section 50C of the Act. The same, since, has not been exercised by the Ld. AO the same was brought to the notice of the Ld. CIT(A) but without any result. Hence, the Ld. Advocate appearing for the assessee prays before us for remit the matter to the file of the Ld. AO for adjudication of the issue *Denovo* after

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referring the same to the Departmental Valuation Officer under section 50C(2) of the Act. On this aspect she also relies upon several pronouncements passed by the Co-ordinate Bench as well as the judgment passed by the Hon'ble High Court at Calcutta in the matter of Sunil Kumar Agarwal vs. CIT (2015) 372 IT 83 (Cal.).

4. On the other hand, the Ld. DR relied upon the order passed by the authorities below.

5. The assessee has pleaded that the Jantri value under section 50C should be considered as on the date of agreement for transfers instead of actual date of registration of sale deed. The sale deed has been registered on 05.10.2011 and stamp duty has been paid on the basis of fair market value of Rs. 38,63,000/-. The assessee has stated that sale consideration of Rs. 5 lac was received by cheque on 01.03.2011 and another Rs. 5 lac by cheque on 21.02.2011 in the bank account of her husband. However, neither before the Ld. CIT(A) nor at the time of appellant proceedings before us the assessee has produced any agreement in support of her claim therefore in absence of any written agreement as assumption basis date of actual sale cannot be determined. Therefore, we do not find any interference on this issue with the decision of Ld. CIT(A). Accordingly, Ground Nos. 1&2 of appeal of the assessee are dismissed. However, about the objection of the assessee to the fair market value of the property because of just increased in the Jantri value w.e.f. 18.11.2011, we consider that when the assessee objected to such valuation, as determined by the Ld. AO on the basis of the Jantri rate prevailing at the date of sale, it became the duty incumbent upon the Ld. AO to refer the matter to the DVO(Departmental Valuation Officer) in terms of the Provision of Sec. 50C. With utter surprise we find that the same was also not been considered

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by the Ld. CIT(A) sitting in appeal by giving an opportunity to the assessee to refer the matter to the DVO(Departmental Valuation Officer) in order to avoid the miscarriage of justice thereby failed to give the fair treatment by using the adequate machinery provided by legislature. On this aspect we get the inspiration to the ratio laid down by the Hon'ble Calcutta High Court in the matter of Sunil Kumar Agarwal(supra) is relied upon by the Ld. AR. When the said has been laid down.

We, therefore, respectfully relying upon the judgment passed by the Hon'ble High Court at Calcutta we find it fit and proper to restore the issue to the file of the AO with a direction upon him to refer the valuation of the property to the Departmental Valuation Officer and to frame a fresh assessment in the light thereof i.e. the report of the DVO in accordance with law and also upon giving an opportunity of being heard to the assessee and to pass a speaking order thereon.

6. In the result, assessee's appeal is partly allowed for statistical purpose.

This Order pronounced in Open Court on	20/01/2020
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Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 20/01/2020
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad