

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'C'**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
MS.MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.813/Ahd/2018

निर्धारण वर्ष/Asstt. Year: 2012-13

Gujarat Smelting & Refining Co. Ltd. C/o. Vinit Moondra, CA 201, Sarap, Opp: Navjivan Press Ashram Road, Ahmedabad. PAN : AAACG 7566 L	Vs.	ITO,Ward-2(1)(1) Ahmedabad.
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Assessee by	:	Shri Vinit Moonda, CA
Revenue by	:	Shri Laxman Singh Gurjar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 29/01/2020

घोषणा की तारीख/Date of Pronouncement: 31/01/2020

आदेश/ORDER

PER Ms.MADHUMITA ROY, JUDICIAL MEMBER:

Present appeal at the instance of the assessee is directed against order dated 28.02.2018 passed by the Id.Commissioner of Income-tax (Appeals)-2, Ahmedabad arising out of order dated 31.8.2017 passed by the Id.Assessing Officer-2(1)(1), Ahmedabad under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2012-13.

2. The brief facts leading to the case is this that the assessee has initially filed his return of income on 30.9.2012 declaring loss at Rs.7,49,752/- which was finalized on 26.2.2015 upon determination of income of the assessee at Rs.2,32,42,814/- Subsequently, it come to

the knowledge of the Revenue that the assessee has sold non-agriculture land by and under a sale deed no.167 dated 24.10.2012 for a consideration of Rs.1,37,69,309/-; and further land by and under a sale deed 168 for a consideration of Rs.1,05,22,886/-. The total consideration received for sale of the above land was Rs.2,42,92,195/- which was offered in the return of income as long term capital gain. However, the assessee has borne stamp duty at Rs.18,20,000/- at the prevailing rate of 4.9% of the value of the property as per *jantri* rate, meaning thereby the total value was assessed at Rs.3,71,42,817/-. Thus, by and under an order dated 26.02.2015 under section 263, the Id.Pr.CIT held that the assessment was erroneous and prejudicial to the interest of the Revenue and issued certain directions upon the Id.AO including making necessary inquiry with Sub-registrar and then draw a conclusion keeping in view the provisions of section 50C of the Act. Consequently, the balance amount between the sale value and the assessed amount on the basis of the *jantri* rate aggregating to the tune of Rs.1,28,40,205/- was added to the total income of the assessee under section 50C of the Act, which was in turn confirmed by the Id.CIT(A), hence, instant appeal before us.

3. At the time of hearing of the instant appeal, the Id.advocate appearing for the assessee submitted before us that though the assessee made an objection for not referring the matter to the Id.DVO in terms of action 50C of the Act during the 263-proceedings the same was not done. Instead of that, the Id.AO made an inquiry from sub-Registrar, Halol, Panchmahal to obtain stamp duty valuation. He therefore, made same objection again before the Id.CIT(A) however, which was not taken into consideration by the Id.CIT(A) on the pretext that the said ground was not taken by the assessee before the Id.AO which is not in terms of provisions laid down in section 50C of the Act. The Id.AR further relied upon the judgment passed by the ITAT, Ahmedabad Bench in the case of Amarshiv Construction Vs DCIT in ITA

No.3061/Ahd/2015. Hence he prays that the issue be remitted to the file of the Id.AO for further investigation by referring the matter to the DVO for obtaining stamp duty value of the concerned property prevailing at the material point of time. On the other hand, the Id.DR relied upon the orders passed by the Id.authorities below.

4. Heard parties. We have also carefully considered relevant documents available on record. We find force in the submissions made by the Id.AR. Since it is the paramount object embedded in the section 50C of the Act that in the event the assessee objects to the valuation made by the Id.AO, then the same should be referred to the DVO for obtaining the stamp valuation and to make assessment thereon. However, inspite of repeated requests made by the assessee during 263-proceedings as well as before the Id.first appellate authority, the same was not taken into consideration in right prospective, which is bad in the eyes of law, and addition thereon is not liable to be sustained. In this view of the matter, we think it just and proper to set aside the issue to the file of Id.AO with a direction upon him to refer the matter to the DVO and obtain value of stamp duty of the properties in question and to make assessment thereon after giving due opportunity of being heard to the assessee after taking into consideration the evidences available on record and also other evidences, which assessee may wish to refer at the time of hearing. With the above observations, we allow the ground of appeal of the assessee for statistical purpose.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 31st January, 2020 at Ahmedabad.

Sd/-
(PRADIPKUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad;

Dated 31/01/2020

Sd/-
(Ms.MADHUMITA ROY)
JUDICIAL MEMBER