

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.2997/AHD/2016
निर्धारणवर्ष/Assessment Year: 2013-14**

Manjulaben Babubhai Thumar, Flat No.195, 01 st Floor, Road No.6F, Udyognagar, Udhna, Surat-394 210. [PAN: AAJPT 4629 F]	V.	Income Tax Officer, Ward-1(2)(6), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Kamlesh N. Bhatt, CA
राजस्वकीओरसे /Revenue by	Ms. Anupama Singla, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	10.02.2020
उद्घोषणाकीतारीख/Pronouncement on:	12.02.2020

आदेश / O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of Commissioner of Income-Tax (Appeals)-II, Surat [in short “the CIT(A)”] dated 02-08-2016, for the assessment year 2013-14.
2. Ground No.1 is related to cost of acquisition of claim of Rs.99,44,432/- spent by the assessee in respect of capital gain and also denying the indexation of the same while computing the capital gain was not pressed before us, hence the same is treated as dismissed as not pressed.
3. Ground No. 2 raised by the assessee reads as under:-

“2. In view of the facts and circumstances of the case, the Ld. CIT(A) ought to have deleted the action of the Ld. AO to adopt the value of the land at Rs.2,01,00,000/- adopted by the Stamp Authorities treating the land as Non-agriculture though the land in question is Agriculture Land and sold as such and hence Your Appellant prays that the same be quashed and the Ld. AO be directed to adopt the value as per State Valuation Rates for the Agriculture Land which was in force at the time of transfer.”

4. Brief facts of the case are that the assessee has sold non-agriculture land at R.S. No. 177, Paiki Block No.80, Paiki Plot No.A/8, Moje Vanz Surat vide registered no. SRT/6/kRY/1375 dated 28-03-2013 for the consideration of the Rs.2,00,10,000/-. On verification of return of income and computation for the A.Y.2013-14, the AO noticed that assessee has claimed to have incurred cost of improvement at Rs.99,44,432/- and the improvement cost of Rs.1,89,54,488/- and shown net long term capital gain at Rs.1,46,674/- (20010000 - 19863326). It was noticed that the assessee has purchased the said land on 06-02-2007 from Smt Pragnaben Hemankumar for total price of Rs.2,66,760/-. The AO noticed that the cost of acquisition of plot during the AY. 2002-03, is only Rs.2,66,760/- and the assessee made expenses immediately cash to the tune of Rs.99,44,432/- for improvement of plot. This said expenses are almost 37 times of the purchased value of the assets, which is not possible under the circumstances. The assessee has not produced any evidence to substantiate its claim of expenses incurred for improvement. Therefore, the same were disallowed. Therefore, the assessee further contended that if the said improvement expenses of Rs.99,44,432/- is not accepted than the matter may be referred to DVO for valuation u/s. 55A of the Act to verify the market value and the cost of improvement expenses incurred. The assessee has also submitted the registered sale deed in which sale consideration is shown at Rs.87,00,000/-. The assessee requested to accept the cost of improvement at Rs.99,44,432/- otherwise refer the matter to DVO u/s. 55A of the Act. However, the AO did not accept the contention of the assessee for reference to DVO that as per Section 50C of the Act. The assessee has failed

to revise return of income as per decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT 284 ITR 323. Therefore, the AO computed the net long term capital gain at Rs.1,90,25,025/- by considering sale consideration on property at Rs.2,00,10,000/- and land cost of acquisition at Rs.8,38,301/- and after reducing capital gain of Rs.1,46,674/- shown by the assessee.

5. Being aggrieved, the assessee carried the matter before the Id. CIT(A). Wherein, the disallowance of cost of improvement of Rs.99,44,432/- was upheld by taking the sale consideration of Rs.2,00,10,000/- as adopted to Stamp Duty Authorities instead of Rs.87,00,000/- being the actual sale consideration. The request of the assessee to the AO to refer the property u/s. 55A of the Act to the Valuation Officer was rejected by the AO as the appellant failed to submit any evidence regarding the expenses incurred for improvement and the appellant have accepted the fair market value of the sale consideration as per the Jantri price as per section 50C in her return of income. Accordingly, the action of the AO was confirmed.

6. Being aggrieved, the appeal filed by the assessee before this Tribunal. The Id. counsel for the assessee was submitted that the appellant sold the plot of land allotted by Sachin Udyognagar Sahkari Madalai Ltd. which holds larger land but only part is approved for industrial purpose and rest is still agriculture land on which non-agriculture activity is not permitted. The reckoner rate for various types of land are different and in the area is Rs.900 per sq. mts but if the same is located within industrial zone. This land is required to be converted by paying necessary levying by Local Authorities to make it permissible for any activity. The Id. counsel referred

point no.1 of Conveyance Deed and point no.2 of Conveyance Deed to submit that the piece of land is not falling under the part of the plan of SUDA (Surat Urban Development Authority). Therefore, the assessee is not entitled to do any type of construction or non-agriculture use on the said land till SUDA accords approval for the same in respect of this plot. Therefore, the value adopted by the assessee at Rs.87,00,000/- as shown as per actual sale consideration in the registered sale deed or the same may be referred to the DVO as per Section 55A for valuation of the property. Therefore, the ld. counsel for the assessee requested to refer the matter of the case may be the said for making reference of DVO for valuation of property sold under consideration.

7. *Per contra*, the ld. Sr. DR supported the order of the lower authorities and submitted that the assessee is not made claim for valuation by falling revised return of income.

8. We have heard the rival submissions and find that the Stamp Duty Valuation Authorities has valued the property at Rs.2.01 crore, whereas the assessee's sale consideration has been made at Rs.87,00,000/-. Since, the assessee had disputed the valuation and requested the AO to make a reference to the DVO to ascertain the proper valuation of the land in acquisition was sold by the assessee on the ground that the land in question does not fall under the SUDA. Hence, it is still an agriculture land on which the assessee was not permitted to carried out any construction activity. Therefore, due to this reason this price adopted by the Stamp Duty Valuation Authorities and considered by the assessee is on higher scale. In the light of these facts, we are of the considered opinion that the sale

consideration of the properties sold under question is required to be properly estimated by the DVO. The AO required to make reference, the said land for valuation u/s. 55A of the Act. In view of this fact, the matter is set-aside the file of the AO with a direction as to make a reference u/s. 55A to the DVO to ascertain the fair market. Accordingly, this ground is set-aside for limited purpose for making reference to the DVO and deciding this ground afresh accordingly.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

10. The order pronounced in the open Court on 12-02-2020

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 12th Feb, 2020/Samanta, PS

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

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By order

Assistant Registrar, Surat