

आयकर अपीलिय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUTANT MEMBER

आ.अ.सं./I.T.A No.169/SRT/2017

निर्धारण वर्ष/Assessment Year:2013-14

Shri Ajit Dahyabhai Desai, Village Dindoli, Taluka Faliya, Via Udhna, Surat 394210 PAN: ABLPD 1186 C	Deputy Commissioner of Income-Tax, Circle - 3(1) Surat
अपीलार्थी Appellant	प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Mehul R. Shah, CA
राजस्व की ओर से /Revenue by	Mrs. Anupama Singla, Sr.D.R.

सुनवाई की तारीख/ Date of hearing:	03.02.2020
उद्घोषणा की तारीख/Pronouncement on	03.02.2020

आदेश /O R D E R

PER O. P. MEENA, AM:

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-3, Surat (in short “the CIT (A)”) dated 22.08.2017 pertaining to Assessment Year 2013-14, which in turn has arisen from the assessment order passed under section 143 (3) dated 16.03.2016 of Income Tax Act, 1961 (in short ‘the Act’) by the Deputy Commissioner of Income-Tax, Circle-3(1) Surat (in short “the AO”).

2. Ground No. 1 & 5 : are not pressed before us, hence, these are treated as dismissed.

3. Ground No.1 and 2 relates to confirmation of addition of Rs. 24,21,602 on account of long-term capital gain on sale of land by the assessee by accepting valuation report of DVO who is not qualified Valuer of agricultural land and not accepting the valuation report of Government Approved Valuer , who is qualified Valuer for agricultural land.

4. At the out set , the learned counsel for the assessee submitted that issue is covered by decision of Surat bench of ITAT by decision in the case of co-owners of land so sold in the case of Smt. Hemaben Bharatbhai Desai, in I.T.A.No. 3204/AHD/2016 dated 21.02.2019. (copy of order filed and placed on record) by which index cost of acquisition by taking fair market value of @ 210 was directed to be adopted.

5. Per contra, the ld. Sr. D.R. relied on the orders of lower authorities. However, she did not dispute the facts as identical as in the case of co-owners of seller of property.

6. We have heard the rival submissions and perused the relevant material on record. We find that facts of the case are identical as in the case of co-owners of agricultural land sold by Smt. Hemaben Bharatbhai Desai in I.T.A.No. 3204/AHD/2016 dated 21.02.2019 wherein the tribunal has held as under:

“4. Briefly stated facts of the case are that the assessee along with other co-owners have sold land bearing survey no.128/2 at Godadara, Dindoli, Surat for a consideration of Rs.5.11 crore. The assessee has filed a valuation report dated 06.01.2014 wherein the approved valuer has valued the Fair Market Value(FMV) of the land in question as on 01.04.1981 at Rs.290 per sq.mtr whereas sale instances obtained from Sub Registrar in the same / nearby area were found to be at huge variance. Accordingly, the AO has referred the matter to the DVO who vide his report dated 04.03.2016 has determined the FMV of the entire land as on 01.04.1981 at Rs.17,04,560/- i.e. @160 per sq.mtr instead of declared value by the assessee at Rs.30,51,400/- @290 per sq.mtr. Accordingly, the AO by taking the FMV @162 per sq.mtr made addition of Rs.7,17,188/- in the case of the assessee being his share, in long term capital gain.

5. *In appeal, the Id.CIT(A) observed that the valuation report relating to lack of comparable sale instances chosen by the DVO in respect of 4 such instances, these are from the same village having rate per sq.mtr ranging between Rs.64.062 Rs.1900.371 per sq.mtr and the DVO has derived the FMV based on sale instances after making adjustment for shape, size, situation, location, time etc., vis-à-vis land under consideration. Therefore, the CIT(A) taking a holistic view of the matter and the argument of the assessee and also two favourable sale instances having value of Rs.188.68 and Rs.190.37 held that value taken by District Valuation Officer (DVO) without taking into consideration other sale instance having lesser value i.e. approximately 1/3rd of the value claimed by the assessee. The Id.CIT(A) further observed that the value determined by the Registered valuer was based on unscientific and ad-hoc method i.e. Gold Price Index Method, Reverse Index Method and the market enquiry not done by him. Nobody can deny that all these basis severely lacks symmetry of information and hence, lacks exactness. Nevertheless, the DVO has determined the rate @ Rs.160 per sq.mtr without considering cost incurred on stamp duty, additional stamp duty, registration charges, legal charges. In view of these to be fair on both sides, the Id.CIT(A) has directed the AO to consider additional cost @ 10% as expense incurred as purchase cost towards such heads. Hence, the effective FMV as on 01.04.1981 works out to Rs.178 (Rs.162 + 10%) per sq.mtr.*

Therefore, the AO was directed to rework the index cost of acquisition by taking Rs.178 per sq.mtr FMV.

6. *Being aggrieved, the assessee has filed this appeal before us. The Id.Counsel referred the page 11 being Annexure-A2 DVO's Report indicating comparable sale instances and contended that the note attached to the report shows that the land under consideration is situated on 160 feet wide main road of Dindoli to NH-6 of front side and 140 feet main road of Karvada Road on the back side. Therefore, it was contended the land in question of the assessee was situated at more favourable position as compared to the land situated in respect of comparable sale instances. Therefore, the approved valuer of the assessee has rightly taken the FMV @ 290 per sq.mtr. The Id.Counsel further submitted that even if the CIT(A) has considered the DVO's report and same is found to be unscientific, adhoc method. Further, it is also noticed from the report that sale instances are not in respect of land at same survey no.128/2 of the assessee. Further, even the CIT(A) has considered the average rate for computation of market value by increasing 10% cost of addition cost incurred as expense. Therefore, by taking a logical view the average of the value taken by the DVO, assessee and adopted by the CIT(A) be considered to workout index cost of acquisition as on 01.04.1981.*

7. *Per contra, the Id.Senior Departmental Representative(Sr.DR) supported the order of the Lower Authorities.*

8. *We have heard the rival submissions and perused the material available on record. We find that the dispute between the assessee and the AO is the rate at 290 per sq.mtr as FMV as on 01.04.1981 whereas DVO has estimated the same @ 162 per sq.mtr. Further, the Id.CIT(A) has estimated the same @178 per sq.mtr. We find same force in the submissions of the Id.Counsel as discernable from the Annexure-A placed at Paper Book, Page 18 of the DVO's Report that sale instances considered by the DVO are not of the same survey no. Further, the DVO has himself stated in his report that impugned land was situated at more appropriate location as compared to sale instances considered by him. The CIT(A) has also pointed out that the value determined by the Registrar Valuer was based*

on unscientific, ad-hoc method and DVO has determined the rate of reduction 162 per sq.mtr cost incurred on stamp duty, additional stamp duty, registration charges, legal charges. Therefore, considering the entirety of the facts and taking a holistic view, we are inclined to accept the Id.Counsel's argument that the average value as determined by Registrar Valuer of the assessee DVO and has considered by the CIT(A) would be more reasonable and appropriate for determination of the FMV of land as on 01.04.1981. Accordingly, the average rate for FMV is worked out to Rs.210 i.e. $(162 + 290 + 178 = 630/3 = 210)$. The AO, therefore, accordingly directed to reworked out the index cost of acquisition by taking FMV at Rs.210 per sq.mtr and re-compute the taxable long term gain, accordingly this ground of the assessee is therefore partly allowed."

7. Since the facts are same, hence, following our above decision, the AO is directed to re worked out index cost of acquisition by taken FMV at Rs. 210 per sq. meter and re-compute taxable long-term capital gain , accordingly, That Ground No. 1 and 2 are partly allowed.

8. Ground No. 3 relates to confirming the addition of Rs. 12,25,000 made on account of difference in Jantri Value by applying the provisions of section 50C of the Act.

9. Facts of this ground are that sale consideration of Rs. 5.11 is shown by the assessee whereas stamp duty valuation was at Rs. 5.60 crores in registered sale deed. The AO has taken full value of stamp duty valuation and made addition of Rs. 12,25,000 being 25% share of the assessee in the property.

10. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A) however, the addition was confirmed.

11. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the issue is covered by decision of Tribunal in the case of Hemaben Deas (supra) for which the ld. Sr. D.R. also agreed.

12. We have heard the rival submissions and perused the relevant material on record. We find that the issue is covered by the decision of Tribunal in the case of Hemaben Desai wherein Tribunal has held as under:

“12. Being aggrieved, the assessee filed an appeal before this Tribunal. The ld.Counsel submitted that the difference between the valuation as per stamp duty and the sale consideration issue by the assessee is less than 10% and in such circumstances no addition can be made. For this proposition, the ld.Counsel has placed reliance on the decision of Bombay ITAT in the case of John Flower (India) Pvt. Ltd., in ITA No.7545/Mum/2014 for assessment year 2010-11.

13. *We have heard the rival submissions and perused the material and orders of the authorities below and the case law relied on. Considering the entire facts of the assessee’s case, the submissions of the assessee cannot be ignored. The sale consideration of the land considered is shown at 5.11 crore in registered sale deed, the stamp valuation authorities have determined the full value of consideration at Rs.5.60 crore. Even assuming for a movement that the sale consideration in respect of Plot in survey no.128/2 is less than the stamp valuation it is Rs.3,06,250/- which is less than 10% of the stamp duty valuation of the said plot. Therefore, in view of the ratio of the decisions relied on by the assessee, the assessee should succeed in its appeal. The Jaipur Bench in the case of Smt. Sita Bai Ketan (supra) held as under :*

4.2 *“We have heard rival contentions and perused the material available on record. We find that the Hon'ble coordinate Bench in ITA No.1543/PN/2007 in the case of Rahul Constructions Vs. DCIT (supra) has held as under :-*

“We find that the Pune Bench of the Tribunal in the case of Asstt. CIT vs. Harpreet Hotels (P) LTd. Vide ITA No. 1156-1160/Pn/2007 and relied on by the learned counsel for the assessee had dismissed the appeal filed by the Revenue where the CIT(A) had deleted the unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. Kaaddu jayghosh Appasaheb, the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. Vs. CIT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs.20,55,000/- as against the actual sale consideration of Rs.149,00,000 disclosed by the assessee. We, therefore, set aside the order of the CIT(A) and direct the AO to take Rs.19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed.”

In the instant case, the difference between the valuation adopted by the Stamp Valuation Authority and declared by the assessee is less than 10%. Therefore, respectfully following the decision of the Hon'ble Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessee is allowed.

14. *Therefore, respectfully following the said decision we direct the AO to adopt the valuation of sale consideration as declared by the assessee. The additions made by the Assessing Officer u/s.50C is deleted and as grounds raised by the assessee are allowed.*

15. Since the facts are same as in the case of co-owners, hence, respectfully following the said decision we direct the AO to adopt the valuation of sale consideration as declared by the assessee. The additions made by the Assessing Officer u/s.50C is deleted and as grounds raised by the assessee are allowed.

16. In the result, the appeal of the assessee is partly allowed.

17. The order pronounced in the open Court on 03.02.2020.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

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

Surat: Dated: February 3rd, 2020/opm

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