

THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER
आ.अ.सं./I.T.A No.1678/Ahd/2017,
निर्धारणवर्ष/Assessment Year: 2008-09
(Hearing in Virtual Court)

ITO Ward -1(3)(6), Room No.303, Anavil Bussiness Centre , Near Adajan BRTS, Surat -395009	Vs	Devshibhai Jethabhai Sheta (HUF), D-702, Mahadev Residency, Anand Mahal Road, Adajan, Surat [PAN: AAEHD 3710 J]
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

CO. No.01/SRT/2021 in ITA No.1678/AHD/2017 (AY 2008-09)

Devshibhai Jethabhai Sheta (HUF), D-702, Mahadev Residency, Anand Mahal Road, Adajan, Surat [PAN: AAEHD 3710 J]	Vs	ITO Ward -1(3)(6), Room No.303, Anavil Bussiness Centre , Near Adajan BRTS, Surat -395009
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से /Assessee by	ShriTinish Mody CA
राजस्व की ओर से /Revenue by	Smt. Usha Shorte Sr-DR
सुनवाई की तारीख/ Date of hearing:	15.04.2021
उद्घोषणा की तारीख/Pronouncement on:	19.04.2021

आदेश /O R D E R

PER PAWAN SINGH, JUDICAL MEMEBR:

1. This appeal by revenue and Cross Objection therein by assessee are directed against the order of Commissioner of Income-tax (Appeals)-2, hereinafter referred as "Id. Commissioner (Appeals), Surat, dated 06.04.2017 for assessment year (AY) 2008-09. The revenue has raised ground following grounds of appeal;

(1)

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hether, on the facts and circumstances of the case and in law, ld CIT(A) was justified in deleting the additions made u/s 50C amounting to Rs. 1,61,30,431/- without appreciating the facts that during that period there was only one purchase and one sale of land and the AO has rightly treated the land transaction liable for capital gain.

(2)

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n the facts and circumstances of the case and in law, learned CIT(A) ought to have upheld the order of assessing officer.

2. The assessee in its Cross Objections has raised following grounds;

(i) On the facts and in the circumstances of the case, as sellers on the subject, the reopening of the case under section 148 is bad in law and without jurisdiction which ought to have been dealt by the learned CIT(A)-II, Surat.

(ii) On the facts and in the circumstances of the case, as sellers on the support, the learned CIT(A)-II Surat, has rightly deleted the addition of ₹ 1,61,30,431/- crore made by learned assessing officer bypassing speaking order.

3. Brief facts of the case as gathered from the orders of the authorities are that the assessee is Hindu undivided family (HUF), allegedly engaged in business of contractor, filed its return of income for assessment year 2008 - 09 on 22nd September 2008, declaring total income at ₹ 4.43 lakhs. The case was selected for the scrutiny and assessment was completed under section 143(3) on 29th October 2010 in accepting a return of income. Subsequently, the case of assessee was reopened under section 147 of the Income Tax Act. The assessing officer in the reasons for re-opening recorded that in this case AIR information was received regarding sale of property for ₹ 99.50 lakhs, which was jointly owned by assessee. The

assessee was having share of 21.75% in the land situated at Bhestan, Surat, which was sold for a consideration of ₹ 99.50 lakhs. The assessing officer noted that in the balance sheet and profit and loss account for assessment year 2007-08 and 2008-09, there was no contract receipt, during these two assessment years. The assessee purchased a piece of land on 1st April 2006 and sold the same to a Firm namely 'Subham Corporation' on 18th March 2008. And that there was no other transaction in the accounts of the assessee. On the basis of aforesaid observation the assessing officer presumed that the assessee was not doing any business of contractor as claimed by it and that sale of land attracts Capital Gain. The assessing officer recorded that the value of land as per Section 50C at the rate of ₹ 5000/- per square meter. The rate of land was adopted on the basis of order of CIT(A)-IV, in Appeal No. CAS-IV/100-106/2008-09 dated 12th October 2009 in respect of land at Survey No. 227, Bhestan, Surat for AY 2006-07 in case of Shri Kaushik Sureshbhai Reshamwala. On the basis of aforesaid rate adopted by CIT(A)-IV, the assessing officer worked out short-term capital gain (STCG) of ₹ 1.61 Crore. On the basis of reasons recorded the assessing officer issued notice under section 148 dated 23.01.2015 on the assessee.

4. On receipt of the notice under section 148, the assessee filed its objections vide objection dated 30th November 2015, objecting to the reopening. In the objections the assessee stated that the said property is held by assessee

jointly along with other co-owners, having share of 21.75%. During the regular course of assessment, the assessee furnished all the details with regard to purchase and the expenses incurred for converting the land into non-agriculture (NA) purpose and the expenses incurred including development expenses and the fees of Surat Municipal Corporation (SMC). The assessee claimed that all the expenses were incurred wholly and exclusively for the development of the land. The assessee also furnished the copy of ledger accounts along with other two co-owners accounts. The assessing officer having gone through the said details and accepted the return of income. The assessee further stated that the allocation of expenses by assessing officer are absolutely baseless and without merit. The assessee sold the land as per Jantri value determined by Stamp Valuation Authority, on which the required Stamp Duty was paid by purchaser, which is correct and there is no applicability of provision of section 50C. The figure of sale consideration of ₹ 99.50 also corroborate with the AIR information received by department. The assessee also objected against the adoption of rate on the basis of decision of CIT(A)–IV, Surat in CAS –IV/100-106/2008-09 and stated that the decision has no relevance in the case of assessee as the assessee has sold the land at the rate of Jantri price. The assessee further objected that, if the Jantri rate @ ₹ 5000 per square meter is adopted, the

sale consideration would arrive at Rs. 7.84 crore and there is no evidence of such consideration. In absence of any evidence no estimation can be made.

5. The objections filed by the assessee were rejected by assessing officer in his order dated 11th January 2016. The assessing officer while rejecting the objection of assessee reiterated that allocation of expenses worked out is totally correct and that the decision of CIT(A)-IV, Surat in CAS -IV/100-106/2008-09 in case of Kaushik Sureshbhai Reshamwala is applicable on the case of assessee and the assessee is liable to pay capital gain on the basis of new Jantri rates. The assessing officer, thereafter proceeded for reassessment and passed assessment order on 29th March 2016 and added a Capital Gain of ₹ 1.61 Crore to the total income of assessee in the assessment order passed under section 143(3) read with section 147 dated 29.03.2016.
6. On appeal before learned Commissioner (Appeals) the assessee filed detailed written submission, as recorded in para-5 of the impugned order. The learned Commissioner (Appeals) after considering the contention of assessee and the assessment order held that the case was reopened on the basis of finding of CIT(A) in another case namely Kaushik Sureshbhai Reshamwala for assessment year 2006 - 07 with regard to Survey No. 227, Bhestan Surat, wherein he had estimated the rate of land @ Rs. 5000/- per square meter. On perusal of that said appellate order the learned CIT(A)-

IV, Surat in CAS-IV/100-106/2008-09 in Kaushik Sureshbhai Reshamwala, he find that in the said case a survey was conducted under section 133A on various entities regarding cash payment and cheque payment pertaining to the sale of land and that on the basis of such material, the learned CIT(A)-IV, Surat, had adopting the fair market value @ Rs. 5000/- per square meter. However, the assessing officer (in this case) has not given any finding nor conducted any inquiries that the land sold by assessee can be equated on the same rates. No physical inspection has been done; no finding on location of the land, size of the plot has been given. If this land is adjoining to the assessee's land, which could be one of the bases for comparing the rates, has also not been carried out by the assessing officer. The composition of two pieces of land being located in the same area which may be spreading in several kilometer is an absolutely absurd and fallacies comparison. It was further held that by no stretch of imagination, without making any sport physical verification, two piece of land can be compared to work out the fair market value. The assessing officer has simply borrowed the finding of CIT(A)-IV, Surat, without seeing its relevance or reference and applied the fair market value on the assessee's land. It was further observed by learned Commissioner (Appeals) that even the finding of CIT(A)-IV, which was basis for addition has been set aside /deleted by Tribunal in order dated 23rd April 2010. Thus, no addition can be made

under section 50C in absence of any cogent evidence and accepted the appeal of assessee. Aggrieved by the order of learned Commissioner (Appeals), the revenue has filed present appeal before this Tribunal.

7. We have heard the submission of learned authorised representative (ARs) of the assessee and the learned departmental representative (DR) for the revenue and have gone through the orders of authorities below. The ld. AR for the assessee submits that he support the order of ld. Commissioner (Appeals). The ld. AR for the assessee further submits that the assessment was reopened on the basis of third party information without verification of facts. The assessment was reopened on the basis of order of CIT(A)-IV, Surat. The said order has no relation or link with the transaction of assessee. The assessee sold his land at the rate of Rs. 400/- per Square meter as determined by local Stamp Authorities. There is no evidence that the assessee or its co-owners have received any excess amount. The reopening itself is bad in law. The assessee has raised grounds of appeal challenging the validity of reopening before first appellate authority. However, no finding was given by first appellate authority, as the assessee was granted relief on merit of the case. Therefore, the assessee has filed Cross Objection.
8. In alternative submissions the ld. AR submits that the assessee is share holder of 21.75% of land. The assessing officer reopened the case of the

assessee and made huge addition of Capital Gain on the basis of decision of CIT(A)-IV Surat (supra), however, in case of its co-owner neither their cases were reopened nor any addition was made. The revenue cannot treat the assessee indifferently on similar transaction. In support of his submission the AR relied upon the decision of Madras High Court in CIT Vs. Kumar Rani Meenakshi Achi (207) 292 ITR 624 (Mad), decision of Ahmedabad Bench in Chetanbhai Prahaldhbhai Gami Vs. ITO (ITA No. 2082/Ahd/2013) dated 19.07.2019 and CBDT Circular No.014(XL-35) dated 11.04.1955 and decision of this Bench in case of late Shri Mohanlal Ambelal Desai through L/h Alka Mohanlal Desai ITA No. 1570/AHD/2015 dated 15.12.2020.

9. On the other hand the ld. Sr DR for the revenue supported the order of the assessing officer. The ld DR for the revenue submits that the case laws relied by the ld AR for the assessee are based on different facts.
10. We have considered the rival submissions of the parties and have seen the orders of the lower authorities. The assessing officer reopened the case on the basis of AIR information as well as on the basis of order of ld. CIT(A)-IV Surat(supra), wherein he estimated the rate of land in Survey No. 227, Bhestan Surat, @ Rs. 5000/- per square meter. Though the assessee objected about the applicability of similar rate in case of assessee. The assessing officer after rejecting the objection of the assessee applied the

similar rate in case of assessee and estimated the value of sale consideration in respect of share of the assessee and worked out the Capital Gain at the hand of the assessee. The Id. Commissioner (Appeals) deleted the entire addition by taking view that the assessing officer has not given any finding or conducted any independent inquiries that the land sold by assessee can be equated on the same rates. It was also held that no physical inspection has been done; no finding on location of the land, size of the plot has been given. If this land is adjoining to the assessee's land, which could be one of the bases for comparing the rates, has also not been carried out by the assessing officer. The composition of two pieces of land being located in the same area which may be spreading in several kilometer is an absolutely absurd and fallacies comparison. It was further held that by no stretch of imagination, without making any sport physical verification, two piece of land can be compared to work out the fair market value. The assessing officer has simply borrowed the finding of CIT(A)-IV, Surat, without seeing its relevance or reference and applied the fair market value on the assessee's land. No addition under section 50C can be made in absence of any evidence. It was also observed that the order of Id CIT(A)-IV, Surat, on the basis of which the additions was made, has been set-aside by Tribunal in ITA No. 3374/Ahd/2009 dated 23rdApril 2010. In our view the Id.

Commissioner (Appeals) has passed a reasoned and detailed order after considering all the facts, which we affirm.

11. Considering the facts that we have affirmed the order of ld. Commissioner (Appeals), therefore, adjudication on alternative submissions of assessee has become academic. Resultantly, the appeal of the revenue is dismissed. Considering the facts that we have affirmed the order of ld. Commissioner (Appeals), hence, the adjudication of grounds of appeal raised in the Cross Objections has also become academic and the same are dismissed as infractious.

12. In the result the appeal of the revenue is dismissed and the Cross Objections of the assessee is dismissed as infractious.

Order was pronounced on 19th April 2021, by placing the result on notice board.

Sd/-

(Dr. ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

सुरत/Surat, दिनांक Dated: 19th April 2021

Self by author /**Dragon**

Copy of order sent to:-

Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

By order

/ / TRUE COPY / /

Assistant Registrar, Surat