

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.777/AHD/2018
निर्धारण वर्ष/Asstt. Year: 2012-2013

I.T.O, Ward-3(2)(4), Ahmedabad.	Vs.	Shri Ashok Vadilal Patel, 12, Pushpak Bungalow, Nr. Lad Society, Vastrapur, Ahmedabad. PAN: ASHPP5597Q
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(Applicant)		(Respondent)
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Revenue by :	Shri L.P. Jain, Sr.D.R
Assessee by :	Shri Tushar Hemani, Sr. Advocate with Shri P.B. Parmar, A.R

सुनवाई की तारीख / **Date of Hearing** : **31/05/2021**
घोषणा की तारीख / **Date of Pronouncement**: **23/06/2021**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax(Appeals)-3, Ahmedabad, dated 16/01/2018 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. The Revenue has raised the following grounds of appeal:

1. *The Ld.CIT(A) has erred in law and on facts in directing the A.O. to adopt the value of the property at Rs. 1,43,80,860/-(at the rate of Rs. 618/- per sq. meter) instead of Rs. 3,88,60,900/-(at the rate of Rs. 1670/- per sq. meter) adopted by the A.O. in the assessment*

order without appreciating the fact that the A.O. has adopted the rate of the land at Rs. 1670/- as per the calculation sheet provided by the Sub Registrar, Sanand dated 27/02/2015.

2. *On the facts and circumstances of the case, the Ld. Commissioner of Income-tax (A) ought to have upheld the order of the Assessing Officer in respect of above issues.*
3. *It is, therefore, prayed that the order of the Ld. Commissioner of Income-tax (A) may be set-aside and that of the Assessing Officer be restored.*

3. The solitary issue raised by the Revenue is that the learned CIT-A erred in directing the AO to adopt the rate of ₹ 618 per square meter with respect to the sale of property against the rate adopted by the AO at Rs. 1,670 per square meter.

4. The facts in brief are that the assessee in the present case is an individual and has filed his return of income declaring an income of Rs. 7,18,775.00 from other source and from the partnership firm. The assessee in the year under consideration has sold a property being land admeasuring 23270 square meter. As per the assessee the land was sold at ₹200 per square meter aggregating the sale consideration at Rs. 46,54,000.00 only. However, the AO found that the land in question was valued for the purpose of stamp duty at the rate of 1,670.00 per square meter aggregating to sale consideration of Rs. 3,88,60,900.00 under the provisions of section 50C of the Act. Accordingly, the AO has taken the sale consideration for the purpose of capital gain at Rs. 3,88,60,900.00 for working out the capital gain.

5. Aggrieved assessee preferred an appeal to the learned CIT (A) who was pleased to reduce the rate of the land to Rs. 618 per square meter against the rate adopted by the AO at Rs. 1,670 per square meter. Thus, the learned CIT (A) allowed the relief to the assessee in part.

6. Being aggrieved by the order of the learned CIT (A), both the Revenue and the assessee filed the appeal before the ITAT. The Revenue was in appeal against the direction of the Id. CIT-A for taking the rate at ₹ 618 square meter against the rate adopted by the AO at Rs. 1,670.00 per square meter whereas the assessee was in appeal in ITA No. 427/AHD/2018 against the direction of the learned CIT-A for

adopting the rate at ₹ 618 per square meter against the rate declared by him (the assessee) at ₹ 200 per square meter.

7. The learned DR before us vehemently supported the order of the AO. On the other hand the learned AR before us submitted that the ITAT has passed a separate order with respect to the appeal filed by the assessee bearing ITA No. 427/AHD/2018 vide dated 29th of January 2021. The ITAT in the said order was pleased to direct the AO to take the rate for the sale of land in question at ₹200 square meter only. The learned AR accordingly contended that the appeal filed by the revenue against the direction of the learned CIT (A) for reducing the rate at ₹ 618 per square meter against the rate adopted by the AO at Rs.1,670.00 per square meter cannot be entertained as the ITAT has already directed to adopt the rate for the sale of land at Rs. 200 per square meter only. The learned AR in support of his contention has filed the copy of the ITAT order in ITA No. 427/AHD/2018 for our perusal. The learned AR vehemently supported the order of the learned CIT (A).

8. We heard the rival contentions of both the parties and perused the materials available on record. The issue before us revolves whether the rate of the land for working out the sale consideration for the purpose of capital gain should be taken at ₹ 618 as directed by the learned CIT (A) or Rs. 1,670.00 as adopted by the AO. The issue on hand does not require any further consideration for the simple reason that the ITAT in the own case of the assessee in the appeal preferred by the assessee in ITA No. 427/AHD/2018 vide separate order dated 29th of January 2021 has directed the AO to adopt the rate for the sale of land at Rs. 200 per square meter. The necessary extract of the order is reproduced as under:

6. We have duly considered rival contentions and gone through the record carefully. The case of the assessee is that he has entered into an agreement to sell the land admeasuring 23270 sq.meters comprising in survey no.973 of Village Rethal, Ta. Sanand, Dist. Ahmedabad with Infinity Infra Projects P.Ltd. This agreement was executed on 30.12.2010 and consideration was settled at Rs.46,54,000/-. On 31.12.2010 the value of the land for the purpose of stamp duty was fixed at Rs.140/- per sq.meter by the stamp valuation authority. The assessee has agreed to sell at the rate of Rs.200/- per sq.meter. According to the assessee, he received Rs.5.00 lakhs as token consideration and Rs.41,54,000/- on 26.4.2011. The sale deed was registered on 23.11.2011 bearing no.7606. The State of Gujarat for the purpose of charging stamp duty has re-determined the value of the property

in this year, and new rates were notified on 18.4.2011. Since the assessee presented the sale deed on 24.5.2011 for registration before the sub-Registrar, Sanand, but was not registered on account of insufficiency of stamps put on it. The purchaser has paid stamp duty at Rs.200/- per sq.meter whereas according to the stamp duty valuation officer rates have been revised to Rs.1670/- per sq.meter. This rate was erroneously fixed, and it was revised subsequently by reducing it Rs.618/- per sq.meter. In other words, on the date when sale deed was presented for registration i.e. 24.5.2011, jantri rate for the purpose of payment of stamp duty was Rs.618/- per sq.meter.

7. *The dispute between the assessee and the Revenue is, for the purpose of section 50C, which rate is to be deemed as full consideration for the sale of this property for purpose of section 48 of the Act ? According to the assessee, the rate should be adopted at Rs.200/- per sq.meter, which was settled between him and the vendee on the date of agreement i.e. 30.12.2010. On this day, even the stamp duty valuation authority has also fixed rate of Rs.140/-. Had the sale deed been executed on this date for the purpose of section 50C no other consideration could be deemed because the sale consideration disclosed by the assessee at the rate of Rs.200/- per sq.meter was far higher than Rs.140/- per sq.meter. It is pertinent to observe that the assessee has entered into an agreement to sale on 30.12.2010. Had the assessee not executed the sale deed, then time limit for filing a suit for specific performance under the Specific Relief Act has been provided in the Limitation Act, and this limitation is three years from the date of the agreement. In case vendee refused to get the sale deed registered, then the assessee can only sue for specific performance persuading the vendee to purchase land. In that circumstance, the assessee would not get anything more than the amount agreed in the agreement. Similarly, there can be a time gap between the date of agreement vis-a-vis ultimate registration of sale deed. There can be an appreciation or depreciation in the value of the property. In other words, at the time of execution of agreement in respect of an immovable property, the right in persona is created in favour of the transferee/vendee. When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone-else, because vendee in whose favour the right in persona is created has legitimate right to enforce specific performance of the agreement, if vendor for some reason is not executing the sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. It is an encumbrance on the property and considering this aspect, one has to adopt the rate for the purpose of section 50C on the date on which agreement was executed. In the present case, the payments have been made through account payee cheque, and time gap between the presentation of the sale deed for registration vis-a-vis revision of rates for the purpose of charging higher stamp duty is not substantive and considerable. The sale deed was presented on 24.5.2011 whereas the rates were revised on 18.4.2011. The time gap between the agreement vis-a-vis sale deed is also not substantive. Agreement is dated 31.12.2010 and sale deed was presented for registration on 24.5.2011. Considering this hardship for the vendors, section 50C was amended and second proviso has been brought on the statute book, which authorized an assessee to argue that where the amount of consideration or part thereof has been received by way of account payee cheque, then the appointing day for the purpose of valuation of the property for the purpose of section 50C is to be taken the date of agreement. This proviso has been held to be applicable with retrospective effect by the ITAT, Ahmedabad in the case of Dharamshibhai Sonani Vs. ACIT, 161 ID 627 (Ahd-Trib). It is also pertinent to note that the assessee has submitted before the Id.CIT(A) that simultaneous sale deed was registered on survey no.932, 951, 899 and 894 where stamp duty valuation authority has also accepted the rate at Rs.200/- per sq.meter and the sale agreement were entered on 30.12.2010. The assessee has placed copies of the sale deed before the Id.Revenue authorities below, but in spite of that even under section 50C(2), this aspect was not appreciated. Taking into consideration all the facts and circumstances, we are satisfied that for the purpose of computation of long term capital gain on sale of land, the value shown by the assessee at the rate of Rs.200/- per sq.meter is to be adopted. We accordingly direct the AO to take value disclosed at the rate of Rs.200/-*

per sq.meter, and thereafter calculate the long term/short term capital gain, if any, leviable in the hands of the assessee. First ground of appeal is accordingly allowed.

9. Admittedly, the decision rendered by the ITAT in the own case of the assessee as discussed above is binding on us. Therefore we have no other alternate except to follow the order as discussed aforesaid. Accordingly, we hold that the appeal preferred by the revenue is devoid of any merit and thus liable to dismissed.

10. In the result the appeal filed by the Revenue is **dismissed**.

Order pronounced in the Court on 23/06/2021 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

**(True Copy)
23/06/2021**