

INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No.378/SRT/2019 (AY 2008-09)
(Hearing in Virtual Court)

ITO, Ward-1(2)(2), Room No. 117, Aayakar Bhavan, Majuragate, Surat-395001.	Vs	Shri Govindbhai Savjibhai Patel, D-104, Darshan Residency, Nr. Varachha Co-op. Bank, Canal Road, Puna Gam, Surat- 395010. PAN : ALMPP4409M
Assessee/ Appellant		Revenue/Respondent

Assessee by	Sh. Kiran K. Shah –CA
Revenue by	Ms. Anupma Singla – Sr.DR
Date of hearing	18.06.2021
Date of pronouncement	18.06.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-2, hereinafter referred as “ld. CIT(A)” Surat dated 14.05.2019 for the assessment year (AY) 2008-09.

The Revenue has raised the following grounds of appeal:

1. Whether on the facts and circumstances of the case and as per law, the Ld. CIT(A) was justified in deleting the addition of Rs.1,69,62,031/- made by the AO on account of unexplained investment in the land despite the facts that the addition was made on the basis of concrete evidences found & seized during the Search carried out on the premise of one of the seller namely Shri Pitamber B. Runchandani ?
2. Whether on the facts and circumstances of the case and as per law, the Ld. CIT(A) was justified in deleting the addition by treating the seized

papers as 'Dump Paper' and also the denial of application of Section 132(4A) of the Act?

3. Whether on the facts and circumstances of the case and as per law, the Ld. CIT(A) was justified in deletion of the addition made by the Assessing Officer without appreciating the facts that the part of entries on seized papers are tallied with the figures shown in registered sale deed ?

4. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of Assessing Officer may be restored to the above extent.

2. At the outset of hearing, the ld. Authorized Representative (AR) of the assessee submits that the grounds of appeal raised by Revenue are covered by the decision of Tribunal in assessee's co-owners case in ITA No. 385 to 388, 396/AHD/2017, ITA No. 2220 to 2222 & 2324/AHD/2016, dated 25.10.2019. The ld. AR of the assessee submits that similar additions on account of unexplained investment in land bearing S. No. 104, Magdalla, Surat were made by Assessing Officer (AO) in other co-owners case. On appeal before the ld. CIT(A), the addition in all cases were deleted. The Revenue filed appeal before the Tribunal and in all aforesaid cases the order of ld. CIT(A) was upheld. The ld. AR of the assessee submits that there is no variation in the fact, the assessee is one of the co-owner being having 1/9th share in the said piece of land. The ld. AR of assessee furnished the copy of Tribunal's order dated 25.10.2019.
3. On the other hand, the ld. Departmental Representative (DR) for the Revenue after going through the grounds of appeal and the order of

Tribunal in assessee's co-owners case submits that he strongly relied upon the order of Assessing Officer (AO).

4. We have considered the rival submission of both the parties and have gone through the orders of the lower authorities. We have seen that at the time of passing the assessment order the assessing officer made addition of Rs. 1.69 Crore on account of unexplained investment. The Id CIT(A) deleted the additions by taking view that the conclusion drawn by the assessing officer unrealistic and falls beyond scope of probability. We further find that similar additions of equallant amount in each of co-owners were made and in all case the additions were deleted by Id CIT(A). And of further appeal before the Tribunal in all cases the order of Id CIT(A) was upheld. Thus, in our view, the grounds of appeal raised by Revenue is covered by the decision of Tribunal in assessee's co-owners case decided by Tribunal vide order dated 25.010.2019 (supra). For completeness of this order, the relevant part of the order of Tribunal is extracted below:

“6. On appraisal of the above said finding, we noticed that the search and seizure action was taken on the premises of Shri Pitamber B. Ruchandani where from some paper found and seized. Shri Pitamber B. Ruchandani was one of the co-sellers. The loose papers were marked at page no. 117 to 119. The statement of the Pitamber B. Ruchandani was recorded in which he denied about the execution of the said piece of papers. However, he admitted that the hand-writing of the paper was of Shri Arjundas Rupchandani his brother who had died. He stated that he received an

amount in accordance with the sale-deed through cheques. The statement of another co-owner Shri Mahesh G. Patel was also one and the same. The assessee and other 9 purchasers nowhere cross-examined the co-owners. The documents is not signed by any party i.e. buyers and seller. The documents speaks no date of execution, the documents were also contained the brokerage which nowhere claimed by the seller as well as buyers. The documents also speaks about the divided of purchasers amount @ 25% whereas the seller are only two. The loose papers also speak about the property at R.S No. 105 which was not the part of the transaction. All the circumstances nowhere speak about the cogent and convincing reasons to raise the addition on the part of the purchasers. Moreover the document was not found in possession of the purchasers, therefore, the presumption raised in view of Section 132(4A) of the Act becomes non-applicable. We also find that the CIT(A) has sought the remand report from the AO which nowhere clearly speaks about the sale of land is a very high amount as mentioned in the impounded papers. Remand report speaks that the seller nowhere admitted any on money transaction even the documents were not executed by them also. The report obtained from the revenue office also nowhere speaks so high rate as mentioned in the impounded loose papers. The English version of the jantry is also hereby reproduced as under:-

“The appellant urges that these are jantry rates of area of Magdalla after 18.04.2011 which is not relevant for transactions in F.Y.2007-08.

English version of jantry records

Deputy Collector office, Valuation of Stamp Duty Office Surat
Patrak No.1, (Revenue Area)
District Surat Taluka Choryasi Area Magdalla
Rate of stamp duty valuation of land from 01.04.1999

Sr. No	R S No	Description of Area	Rate of land per sq mtr	Remarks
48	80 & 81	Agricultural	298/-	
49	82 to 84	Other than Agricultural	1190.0	
50	85 & 86	Agricultural	298/-	

51	87	Other than Agricultural	1190.0	
52	88	Agricultural	298/-	
53	89	Other than Agricultural	1190/-	
54	90 & 91	Agricultural	298/-	
55	92 to 102	Agricultural	119/-	
56	103 to 105	GIDC Reservation	295/-	
57	106	ONGC Acquire	27/29	
58	107 & 108	ONGC Acquire	12/53	
59	109	Agricultural	8/67	
60	110	Agricultural	8/68	

Jantry1.04.1999 was revised by 50% from dated 09.02.2007
 Jantry of 01.04.1999 was revised by 57.50% from dated 01.04.2007
 Village Namuna No.6 Hak Patrak
 District Surat Taluka Majura Moje Magdalla

Nondh no. Date Mode of change	Details of noting	Concerned survey/blo ck no. and sub part and khata no.	Earlier disqualifie d nondh no./date	Endorsement of the officer and sign/date and name and designation
2205\11.09.2012 BY order	Rectification order The Appellant Shri Hitendrabhai Dhameliya of Village Magdalla Taluka City Surat has filed an application to rectify on the base of opinion of Mamlatdhar Shri City Taluka no JDK./Magdalla/amendment/Reg No. 1307/12 to 11.09.2012 Order	85 02 (457)		Certified by order of Hon'ble Mamlatdar City Taluka Reg No. 1307/12 dt 11.09.2012. Section 135 D verified by serving of notice by regd AD certified (S C Gamit) Circle Officer Othwa City Taluka Surat 01.01.2013
	On the base of index dt 02.06.2011 the amendment Nondh no. 2109 is made and following persons are deleted. Labhuben Janyantibhai Jalwantbhai Jayantilal Shantaben Danabhai Paresh Danabhai Alphaben Pareshbhai Dhansukh Kanjibhai			

	Suresh Laljibhai Suresh Laljibhai Govindbhai Savjibhai This is being noted on the base of order of Mamlatdhar Shri City Taluka Surat and copy of 7/12 nakat.			
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Upto 01.04.2008 (Magdalla)

Zone	Rate of developed open land per sq meter	Land + Construction per sq meter			Rate of industrial open land per sq mtr	Rate of agricultural land per sq mtr.	
		12000	13200	14000		3000	2400
41/1	8000	12000	13200	14000	8000	3000	2400

Description

R S No. 16 to 83 and all other plots include in Zone boundary except government plots.

Village namuna No. 6 Hak Patrak
District Surat Taluka Majura Moje Magdalla

Nondh no Date Mode of change	Details of noting	Concerned survey/block no. and sub part and khata No.	Earlier disqualified nondh no./ date	Endorsement of the officer and sign/date and name and designation
2109 02.06.201 1 Sell	Sale of non agricultural land by regd sale deed. The non agricultural land as mentioned in S No. and area hector 0-83-00 sq meters in the next column is in the name of persons viz; Labhuben Jayantibhai, Jalwant Jayantihai, Shantaben Danabhai, Paresb Danabhai, Alphaben Pershbhai, Dhansukhbhai, Kanjibai, Suresh Laljibhai Givindbhai Svjibhai and Ahok Mohanbhai. The said land TPS No. 31 F P No. 62/2/2 bearing area 5395 sq meters is converted for commercial purpose and non-agricultural has been sold to Veer Developers by his partner Hitendra Dahyabai Dhameliya for Rs.47476000/- Rupees four crores seventy four lacs seventy six thousands only) The appellat has filed copy of 7/12 nakal, 8-A No.6 patrak, index and affidavit for noting by the seller in the			Certified On the base of application along with 7/12 nakal, 8-A indexed copy of registered sale deed and the affidavit of seller, it is certified after verification by service of notice by regd AD u/s 135D Certified (TN Pachhigar) Oficer Athwa\City Taluka Surat 13.10.2011

	final plot bio.62/2/22 area 5395 sq meters.			
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7. The assessee purchased the land @ 469.87 per sq. mt. which is in consonance with the rate obtained from sub-registrar. However, the Assessing officer adopted the rate @ 13189 per sq. mt. (Rs.15777/- per sq. yard) which seems highly improbable. The assessee subsequently converted the land from agricultural land into non-agriculture and for commercial purpose and then sold it to Veer Developers for a sum of Rs.4,74,76,000/-. Taking into account all the facts and circumstances on record, we nowhere found any justification to rely the documents impounded from co-owner to hold the view of Assessing Officer justifiable, therefore, taking into account all the facts and circumstances mentioned above, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfered with at this appellate stage. Accordingly, We affirm the finding of the CIT(A).

8. In the result, appeal filed by the revenue is hereby ordered to be dismissed.

ITA Nos.386 to 388/Ahd/2017 & 396/Ahd/2017 & 2221/Ahd/2016, 2222/Ahd/2016 & 2304/Ahd/2016

9. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.2220/Ahd/2016, therefore, there is no need to repeat the same. The matter of controversy is also the same. The finding given above while deciding the appeal of the assessee bearing ITA. No.2220/Ahd/2016 is quite applicable to the facts of the present case as mutatis mutandis being the Assessee are the co-purchaser in the land. Accordingly, these appeals of the revenue are hereby ordered to be dismissed on similar lines.

10. In the result, appeals filed by the revenue are hereby ordered to be dismissed."

5. Considering the decision of Tribunal in co-owners cases on similar set of fact and on similar ground and respectfully following the order of Tribunal, the appeal of Revenue is dismissed.
6. In the result, appeal of Revenue is dismissed.

Order announced on 18th June, 2021 by placing result on notice board.

Sd/-

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 18/06/2021 /SK, PS

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar, ITAT, Surat