

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.167/SRT/2017

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Virtual Court Hearing)

Shri Rameshkumar M. Gajera, 20, Shubhlaxmi Housing Society, Nr. Bhid Bhajan Society, Nana Varachha Road, Surat – 395 006.	V s.	The Income Tax Officer, Ward- 3(1)(5), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ANMPG 7971 R		
(Assessee)		(Respondent)

Assessee by : Shri Bharat Jhaveri - AR

Respondent by : Ms. Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of Hearing : 07/06/2021

घोषणाकीतारीख/Date of Pronouncement: 28/06/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Assessee pertaining to Assessment Year 2013-14, is directed against the order passed by the Id.Commissioner of Income Tax(Appeals)-3, dated 22.08.2017, which in turn arises out of an assessment order passed by the Id.Assessing Officer under section 143 (3) of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’], dated 29.01.2016.

2. Grievances raised by the assessee are as follows:

- “(1). *The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition of Rs 11,94,518/- made on account of income from long term capital gain.*
- (2). *The learned CIT(A) has erred both in law and on the facts of the case in adopting full value of consideration at Rs. 50,37,500/- as per deeming provision of Section 50C of the Act instead of Rs. 35,72,900/- shown by the appellant towards sale consideration.*
- (3). *The learned CIT(A) has erred both in law and on the facts of the case in not appreciating that the appellant's rights and title over the plots are restricted to the area of 470.20 sq mtrs. whereas the sub-registrar has levied stamp duty on*

the area of 650 sq mtr which also includes common open plot (COP) and road area of 179.80 sq mtrs.

- (4). *The learned CIT(A) has erred both in law and on the facts of the case in not appreciating that the deeming fiction as provided u/s 50C of the Act in respect of full value of consideration is applicable only for Section 48 and is not applicable to Section 54F of the Act.*
- (5). *The learned CIT(A) has erred both in law and on the facts of the case in not directing the Assessing officer to make reference to the valuation officer u/s 50C of the Act more particularly when the appellant has disputed the value adopted by the sub-registrar for the purposes of levy of stamp duty.*
- (6). *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submission, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.”*

3. Although, in this appeal the assessee has raised multiple grounds of appeal, however, at the time of hearing, we note that solitary grievance of the assessee is that Id.CIT(A) has erred in law in confirming the addition of Rs.11,94,518/-, on account of income from Long Term Capital Gain (when the assessee has invested entire sale consideration in specified asset, purchasing new residential house).

4. Succinct facts are that assessee filed his return of income on 27.12.2014 declaring total income of Rs.3,31,220/-. The return of income was processed under section 143(1) of the Act. Later on, the assessee's case was selected for scrutiny through CASS. The Id.Assessing Officer framed assessment under section 143(3) of the Income Tax Act, 1961 dated 29.01.2016. During the course of assessment proceedings, it was noted by the Id.Assessing Officer that assessee has sold Plot No.37, 38, 39, 40, 48 and 49 during the assessment year under consideration. The Id.Assessing Officer got information under section 133(6) of the Income Tax Act, from sub-registrar Katargam, Surat. The Sub-registrar submitted the copies of sale deed of Plot No.37, 38, 39, 40, 48 and 49 along with Jantri Value of each plot. On verification of details it was noted by the Id.Assessing Officer that there are

difference in the sale consideration taken by the assessee and as per valuation of the Stamp Valuation Authority. Therefore, the ld.Assessing Officer issued a show cause notice dated 21.01.2016 to the assessee to explain the difference between sale consideration and Jantri Value. The said show cause notice of the assessing officer is reproduced below:

“In connection with assessment proceedings for assessment year 2013-14. It is noticed that you have sold the following plots during the year under consideration.

Sr No	Detail of Property	Sale consideration Rs	Jantri Value Rs
1	Plot No 37 situated at Jhangirpura	7,50,600/-	10,85,000/-
2	Plot No 38 situated at Jahangirpura	5,61,600/-	7,75,000/-
3	Plot No 39 situated at Jahangirpura	5,75,900/-	7,75,000/-
4	Plot No 40 situated at Jahangirpura	5,61,600/-	7,75,000/-
5	Plot No 48 situated at Jahangirpura	5,61,600/-	8,13,750/-
6	Plot No 49 situated at Jahangirpura	5,61,600/-	8,13,750/-
	TOTAL	35,72,900/-	50,37,500/-

3.In view of the above, you are to show cause as to why the difference between sale consideration & the value taken as per Jantri rate amounting to Rs 14,64,600/- should not be added to your total income under section 50C of the Act.

4.You are requested to furnish your explanation / submission in this regard on or before 18-1-2016 at 11.30 AM. If no details are submitted addition of Rs. 14,64,600/- will be made without any further intimation to you.”

5.In response to the above show cause notice, the assessee submitted his reply stating that the value assessed by Stamp Valuation Authority is not applicable to the assessee. The assessee also submitted that the difference between sale consideration and Jantri Value(Stamp Valuation Authority) is not taxable in the hands of the assessee, as he has invested the entire sale consideration in the specified assets under section 54F of the Act.

6. However, Assessing Officer has rejected the contention of the assessee and held that Jantri Value of various plots came to Rs.50,37,500/-. Therefore, Assessing Officer has taken the Jantri Value, that is, value adopted by the Stamp Valuation

Authority of Rs.50,37,500/- as full value of consideration and computed the capital gain as follows:

<i>Long Term Capital Gain</i>	<i>Rs.11,94,518</i>
<i>Sale Consideration as per jantri value</i> Rs.50,37,500/-	
<i>Less: Indexed cost of acquisition</i> Rs. 2,31,982/-	
<i>Less. Deduction u/s 54F</i> Rs. 36,11,000/-	
<i>Income from Long term Capital Gain</i> Rs.11,94,518/-	

7. This way, the assessing officer made the addition of Rs.11,94,518/-.

8. On appeal, Id.CIT(A) has confirmed the action of Assessing Officer. The Id.CIT(A) has reiterated the stand taken by the Assessing Officer and stated that Assessing Officer has rightly recomputed the Long Term Capital Gain by adopting the Jantri Value as sale consideration received as per section 50C of the Act which resulted in addition to the tune of Rs.11,94,518/-. The Id.CIT(A) has also considered the alternative ground raised by the assessee and noted that assessee had claimed deduction under section 54F of the Act to the extent of Rs.36,11,000/- and the same has been allowed by Assessing Officer in the assessment order therefore, no further deduction under section 54F may be allowed. During the appellate proceedings, the assessee pleaded that he has invested, the full value received as per sale deed, in eligible assets, under section 54F of the Act. Therefore, the assessee submitted before the Id.CIT(A) that even after applying section 50C of the Income Tax Act, the entire recomputed Long Term Capital Gain is eligible for deduction under section 54F of the Act. However, the Id.CIT(A) has rejected the contention of the assessee and denied further deduction to the assessee and restricted the deduction under section 54F of the Act to the tune of Rs.36,11,000/- only.

9. Aggrieved by the order of Id.CIT(A), the assessee is in appeal before us.

10. The Id.Counsel for the assessee submits before us that Stamp Duty Authority valued the various plots at Rs.50,37,500/- (jantri value) and AO computed the capital gain of Rs.11,94,518/- taking into account the Jantri value. The assessee

has invested the whole sale consideration in purchasing the new residential property, therefore, the provisions of section 50C of the Act will not be applicable to the assessee. That is, when entire amount of sale consideration has been invested in specified assets under section 54F of the Act, then no capital gain would be payable by the assessee, therefore, capital gain computed by the AO at Rs. 11,94,518/- should be deleted.

11. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

12. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessee has sold various plots and received the sale consideration of Rs.35,72,900/-. The assessee has invested Rs.36,11,000/-, the entire sale consideration in the specified assets, as mentioned in section 54F of the Income Tax Act, 1961. We note that while working out the Long Term Capital Gain, the Id.Assessing Officer has taken the sale consideration as per Jantri Value at Rs.50,37,500/-. From the said Jantri Value (sale consideration), the Id.Assessing Officer has deducted the index cost of acquisition to the tune of Rs.2,31,982/- and thereafter the Id.Assessing Officer has deducted the deduction under section 54F of the Income Tax Act to the tune of Rs.36,11,000/-, and thus the assessing officer worked out the resulted Long Term Capital Gain to the tune of Rs.11,94,558/-. However, we note that assessee has actually invested entire sale consideration in the specified assets (new residential house) under section 54F of the Act, therefore, assessee need not to pay any capital gain tax, even if the Id.Assessing Officer has computed the Long Term Capital gain by taking Jantri Value of Rs.50,37,500/-. In this regard, the reliance is placed on the judgement of the Co-ordinate Bench of ITAT Jaipur in the case of Prakash Karnawat Vs. ITO 160 taxmann.com 357 (Jaipur) wherein it was held as follows:

“8. We find similar facts are involved in the present case. Assessee has received sale consideration of Rs.40,00,000/- which has been invested in the Bonds in view of provisions of section 54EC. Therefore, assessee is entitled for deduction under section 54F. The provisions of section 50C are applicable for the purposes of section 48 and for the purpose of section 54F as held by the Tribunal in case of Gyan Chand Batra (supra). Findings of Tribunal have been reproduced somewhere above in this order which were taken in ITA No. 9/JP/2010 for assessment year 2006-07. Similar view has been expressed by the Bangalore Bench of the Tribunal in case of Gouli Mahadevappa (supra). Since entire amount of sale consideration has been invested in Bonds, therefore, in our view provisions of section 50C are not applicable as held by Jaipur Bench and Bangalore Bench. Respectfully following the decisions of the Tribunal, we hold that AO and ld. CIT(A) were not justified in invoking provisions of section 50C and alternatively the capital gain shown by assessee. Accordingly the addition made and sustained by the lower authorities is deleted.”

13. Considering the above facts and circumstances, we are of the view that assessee is not liable to pay Long Term Capital Gain Tax. Since entire amount of sale consideration has been invested in specified assets (new residential house) under section 54F of the Act, therefore, in our view, provisions of section 50C of the Act are not applicable to the assessee under consideration. Therefore, respectfully following the binding precedent of the Jaipur ITAT, in the case of Prakash Karnawat (supra), we delete the addition of Rs.11,94,518/-.

13. In the result, appeal of the assessee is allowed.

Order is pronounced at the time of hearing of appeal on 28/06/2021 in the Virtual Court of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Surat /दिनांक/ Date: 28/06/2021 /sgr

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat