

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
[Conducted through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.860/Ahd/2018
निर्धारण वर्ष/Asstt.Year : 2010-11

Melabhai Dhulabhai Parmar Tower Falio, Village Karachia (Bajwa), Bajwa-Karachia Road Dist. Vadodara Pin 391 310.	Vs	ITO, Ward-1(2)(1) Vadodara.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Pritesh Shah, AR
Revenue by :	Shri Kamlesh Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 09/11/2021
घोषणा की तारीख /Date of Pronouncement: 16/11/2021

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-5, Vadodara dated 19.12.2016 passed for the Asstt.Year 2010-11.

2. Sole grievance of the assessee in the present appeal relates to computation of long-term capital gain on sale of land bearing survey no.516 and 517 situated at village Karachiya.

3. Brief facts of the case emerging out from the record would reveal that the assessee has sold land at Survey No. 516 and 517 in village Karachiya, for a consideration of Rs.19 lakhs on 8.12.2019. Stamp duty valuation

authority has valued the property at Rs.1,99,40,816/- for the purpose of charging of stamp duty. The AO got the information, and he issued notice under section 148 of the Act because the assessee has not filed return of income. During the course of assessment proceedings, the Id.AO confronted the assessee as to why the deemed value for the purpose of computation of capital gain under section 48 be not taken equivalent to the value determined for the purpose of stamp duty. The AO confronted the assessee for invocation of section 50C which authorises AO to replace the sale consideration received by the assessee with the deemed consideration adopted for the purpose of stamp duty charging. The assessee requested the AO to refer the matter to the DVO, and accordingly, a reference was made, who determined value of the property on the date of sale at Rs.24,81,400/-. The assessee accepted this value. The Id.AO has calculated the capital gain after adopting this value. However, while calculating the capital gain, the Id.AO did not take into consideration cost of acquisition for the reason that the assessee has not filed return nor filed any computation indicating cost of acquisition. Appeal to the CIT(A) did not bring any relief to the assessee.

4. With the assistance of the Id.representatives, we have gone through the record carefully. Section 48 of the Income Tax Act provides computation of capital gain. This section contemplates that income chargeable under the head capital gain shall be computed by deducting from the value of consideration received or accruing as a result of the transfer, the amounts, viz. (i) expenditure incurred wholly and exclusively in connection with such transfer, and (ii) the cost of acquisition asset and the cost of any improvement thereto. Thus, the cost of acquisition is essential components for calculating capital gain. Even if the assessee has not claimed it by way of return or by way of computation during the assessment proceedings, then also the AO

should have worked out the estimated cost, and same could be worked out after taking opinion of the DVO. The AO has adopted the sale value on the basis of the DVO's report. He could have asked same officers to calculate the acquisition cost. The details of cost of acquisition could be ascertained from the copy of the sale deed. In the narration of the property, details of ownership of the assessee might have been mentioned. Therefore, we remit this issue to the file of the AO directing him to compute the cost of acquisition also before calculating capital gain/loss. The ground of appeal of the assessee, is thus, allowed for statistical purpose.

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 16th November, at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT