

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRIPAWAN SINGH, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.373/SRT/2018**

**(निर्धारणवर्ष / Assessment Year: (2013-14)**

**(Virtual Court Hearing)**

The Asstt. Commissioner of Income-tax, Circle-3(1), Room No.112, 1str Floor, Anavil Business Center, Adajan Char Rasta, Surat	<b>V</b> <b>s.</b>	Shri Dhanesh M. Sanghvi Diam Jewels, 7/4155, Sunder Sadan, Galemandi, Suthar Faliya, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>ANXPS 9521 M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Nirav Shah, C.A

Respondent by : Mrs. Anupama Singla– Sr.DR

सुनवाईकीतारीख/ **Date of Hearing** : 14/12/2021

घोषणाकीतारीख/**Date of Pronouncement**: 20/12/2021

**आदेश / O R D E R**

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

Captioned appeal filed by the Revenue pertaining to assessment year 2013-14, is directed against the order passed by the Commissioner of Income Tax(Appeals)-3, Surat, dated 12.03.2018, which in turn arises out of an assessment order passed by the Assessing Officer ('AO' for short) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), vide order dated 29.03.2016.

2. Grounds of appeal raised by the Revenue are as follows

*"1. Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the Assessing Officer u/s 50C by relying upon the judgment in the case of KP Varghese vs. ITO 131 ITR 597 which deals with Section 52 of the Act pertains to computation of capital gain and C.B Gautam vs. UOI 199 ITR 530 which deals with provisions of section 269UD(1) of the Act where as the instant case deals with deeming provisions of Section 50C of the Act?*

*2. On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the assessing officer"*

3. Brief facts of the issue in dispute are stated as under. Assessee is an individual before us. The assessee filed his return of income for AY 2013-14 on 18.10.2013 showing total income at Rs.18,64,210/-. From the computation of income, it was seen by assessing officer that assessee has shown short term capital gain from the sale of immovable properties. On verification, it was noticed by assessing officer that assessee has shown sale consideration lower than the stamp value of the properties. The description of the property in question is as under:

Sr.No.	Description of property	Selling price	market price as per sale deed	Difference
1	Moje Kabilpore, Tal Navsari, Dist. Surat R.S.No.1/1	70,00,000/- (35% of Rs.,2,00,00,000/-)	2,40,87,143/- (35% of Rs.,6,88,20,409)	1,70,87,143
2	Shop No.421, Shiv Shakti Complex, GhodDood Road, Surat	14,57,000/-	14,59,184/-	2,184
			Total	1,70,89,317

Therefore, assessing officer issued a show cause notice to assessee asking the assessee, as to why the difference of Rs.1,70,87,143/- between the sale consideration and stamp value should not be added to his total income. In response, the assessee submitted its reply and also requested the assessing officer to refer assessee's case to the Departmental Valuation Officer (DVO) for ascertaining the fair market value of the property.

4. Accordingly, a reference was made to DVO on 11.02.2016. The Departmental Valuation Officer (DVO) could not submit the report during the assessment proceedings and requested to extend the time limit at least by two months. The DVO alternatively asked the assessing officer to make provisional assessment in the assessee's case. Accordingly, assessing officer made the addition of Rs.1,70,87,143/-, on account of short term capital gain by invoking the provisions of section 50C of the Act subject to the outcome of departmental valuation officer's final report for adopting market value of the immovable property.

5. Aggrieved, the issue was taken up before the first appellate authority for relief. Before the CIT (A), it was contended by the assessee that difference between

DVO Valuation and value taken by the assessee, is only 14.09% which may be ignored. The Ld. CIT(A) Surat in appeal No.CAS/3/921/2016-17 dated 12.03.2018, has allowed the appeal of the assessee and deleted the addition of Rs.1,70,87,143/- relying upon the decision of the Ld. CIT(A)-1, Surat in the case of co-owner, Payal Vishal Gandhi and the decisions of the Hon'ble Supreme Court in the case of C.B Gautam vs. UOI 199 ITR 530 and K.P.Varghese vs. ITO 131 ITR 597.

6. Aggrieved, the Revenue has come up with the present appeal. Learned 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. On the other hand, Learned Counsel argued that Commissioner of Income Tax (Appeals) has passed a reasoned and speaking and the difference between DVO Valuation and value taken by the assessee, is only 14.09% which may be ignored.

7. 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 issue under consideration is no longer *res-integra*. The said issue is covered by the judgment of the Coordinate Bench of ITAT Surat in the case of Mansukhbhai Nanjibhai Bhimani, in ITA No.348/SRT/2019 (AY 2014-15), order dated 13/12/2021, wherein it was held as follows:

*"6. We have heard the submission of ld. Authorised Representative (ld.AR) of the assessee and the learned senior departmental representative (Sr DR) for the revenue. The ld AR for the assessee submits that he a very short issue remains for consideration of the Tribunal is that when variation in valuation as sustained by the ld.CIT(A), against the value as per registered deed is less than or only 15% whether the additions is still sustainable. The ld.AR for the assessee submits that the variation in value as per the sale deed and the value and Fair Market Value(FMV) determined by the DVO with regard to property shown at Sl.No.1 and 2 is only 5.77%, thus, the assessee is entitled to the benefit of Proviso to section 50C(1) inserted w.e.f 01.04.2019, which enhanced the tolerance bent in valuation from 5% to 10%, which has been held to be retrospectively by the decision of Mumbai Tribunal in Maria Fernandes Chery [2021] (123 taxmann.com 252, Mumbai) decision of Delhi Tribunal in Amrapali Cinema [2021] 127 taxmann.com 376 (Delhi). 7.The ld.AR for the assessee further submits that the fair market value (FMV) determined by DVO is based on estimation and the Co-ordinate Bench of Tribunal in Rahul Construction (38 DTR 19 Pune) held that difference between the sale consideration of property shown by the assessee and*

FMV determined by the DVO being less than 10% the AO was not justified in substituting the value determined by the DVO for sale consideration disclosed by assessee. In Smt Sita Bai Khetan 181 TTJ 549 (JP), the Tribunal held that difference between the valuation property adopted by the Stamp Valuation Authority and the consideration declared by the assessee being less than 10%, and the AO was directed to adopt the value declared by the assessee for computation of Capital Gain. Similar view was taken in Krishna Enterprises 146 DTR 73, Mumbai.

8. For property mentioned at Sl. No. 3 and 4, the ld.AR of the assessee submits that there is a difference of 14.77% and 14.58% in value shown in the documents and the fair market value determined by DVO. The ld AR for the assessee submits that various benches of Tribunal in following cases held that difference up to 15% estimate needs to be ignored against the declared value.

- C.B.Gautam Vs UOI (65 Taxman 440 (SC),
- Smt. Vimlaben Bhagwandas Patel Vs CIT [1979] 118 ITR 134 (Guj HC) and
- Bimla Singh Vs CIT [2009] 308 ITR 71 (Pat).

9. The ld.AR for the assessee accordingly submits that by taking a broad view, the assessee may be allowed relief. The ld AR for the assessee furnished chart showing percentage of difference in the value shown by the assessee and the value accepted by ld CIT(A).

10. On the other hand, the ld. Sr. DR for the Revenue supported the order of ld. CIT(A). The ld. Sr. DR submits that whatever relief was claimed before the ld. CIT(A) was granted to the assessee. The assessee has now raised an additional plea about the tolerance range of 10% or 15% with regard to properties shown at Sl.No.1, 2 & 3, 4 respectively. The case laws relied by the assessee with regards to the property shown at S. No. 3 & 4 are based on different set of fact and are not applicable on the facts of the present case. The ld. Sr. DR for the Revenue prays for dismissal of appeal.

11. We have considered the submission of both the parties and have gone through the orders of authorities below. We find that there is no mush dispute on the facts of the case. During the hearing ld AR for the assessee furnished a chart showing the details of difference in % of value declared by the assessee and value accepted by the ld CIT(A), the relevant part of which is recorded below;

	Property No.	Value as per document	Share of assessee	Value accepted by CIT(A)	Difference in %
1	Property at Sr No.1	41,00,000	100%	43,51,000	5.77
2	Property at Sr No.2	41,00,000	100%	43,51,000	5.77
3	Property at Sr No.3	97,01,250	50%	56,91,000	14.77
4	Property at Sr No.4	15,20,000	25%	4,44,883	14.58

12. We find that with regard to properties shown at Sl.No.1 and 2 in the table mentioned in para no.11 there is no difference of 5.7% between the value declared by assessee and the value determined by the DVO. Therefore, we find convincing force in the submission of ld.AR of the assessee that the assessee is eligible of benefit of amendment made in section 50C(1) by inserting 3<sup>rd</sup> Proviso for enhancing tolerance bend for variation between declared value vis-à-vis stamp valuation from 5% to 10% was held to be retrospective from the date when section 50C was inserted w.e.f 01.04.2003. It has been held so by Co-ordinate Bench of

*Mumbai Tribunal in Maria Fernandes Chery (supra). Similar view was reiterated by Delhi Tribunal in Amrapali Cinema (supra), therefore, respectfully following the decision of Coordinate Benches as referred above and considering the fact that the difference between the declared value and the value determined by the DVO is only 5.77%. Thus, we direct the AO to delete the addition qua property mentioned at Sl.No.1 and 2.*

*13 So far as the property mentioned Sl.No.3 and 4 are concerned, we find that there is a difference of 14.77% and 14.58% between the value declared by assessee and the fair market value determined by DVO which is beyond the maximum tolerance band of 10% as per the proviso to section 50C(1) of the Act. Therefore, the benefit of said proviso cannot be extended to the assessee. The reliance on various case laws by the Id.AR of the assessee, as mentioned in para – 8 (supra), we find that these case laws are not applicable on the facts of the present case as all those case laws relates to addition in different chapter of Income Tax Act and facts of all those cases are altogether different and the ratio of all those cases are not applicable on the facts of the present case. Therefore, in our considered view, the assessee is not entitled for the benefit of proviso to section 50C(1) qua property shown at S No 3 & 4 and accordingly, the addition with regard to property mentioned at Sl.No.3 and 4 are upheld.*

*14.In the result, appeal of the assessee is partly allowed.”*

8.As the issue is squarely covered by the decision of the Coordinate Bench, in the case of Mansukhbhai Nanjibhai Bhimani (supra),and there is no change in facts and law and we find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the judgment of the Coordinate Bench we allow the appeal of the Revenue to the extent indicated in the judgment of the Coordinate Bench (supra) .

9. In the result, appeal of the Revenue is allowed to the extent indicated above.

Order pronounced on 20/12/2021by placing the result on the notice board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat/दिनांक/ Date:20/12/2021

Dkp Outsourcing Sr.P.S.

**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

// True Copy //

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat