

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]
BEFORE WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 21/Ahd/2019
(Assessment Year: 2013-14)

Jamila Mohmedrafiq Imam Nani Vahorvad, Marhaba Street, Himatnagar, Gujarat	Vs.	ITO, Sabarkantha Ward-4, Himmatnagar
[PAN No.ACUPI9475K]		
(Appellant)	..	(Respondent)

Assessee by :	Shri P. F. Jain, C.A.
Revenue by :	Shri V. K. Singh, SR. DR
Date of Hearing	16.03.2022
Date of Pronouncement	30.03.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 07.12.2018 passed by the Commissioner of Income Tax (Appeals)-6, Ahmedabad arising out of the order dated 28.12.2016 passed by the ITO, S.K., Ward-4, Himmatnagar under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2013-14.

2. The assessee has sold an immovable property amounting to Rs. 25,00,000/- by and under a sale deed registered dated 17.04.2012 with the Office of the Sub-Registrar, Vejalpur, Ahmedabad. The assessee has not filed any return of income. For verification of income chargeable to tax under the head Capital Gain under Section 48 of the Act for A.Y. 2013-14, the case was reopened under Section 147 of the Act whereupon the assessee filed its return of income manually on 26.08.2016 declaring total income at Long Term

Capital Gain of Rs. 629/-. Upon perusal of the said return filed by the assessee in response to the notice under Section 148 of the Act it was found that for calculation of Long Term Capital Gain (in short 'LT CG'), the valuation of the property as on 01.04.1981 was taken by the assessee at Rs. 3,52,100/- and shown Long Term Capital Gain Rs. (-) 692/-, whereas the Assistant Valuation Officer-II (AVO) intimated the fair market value of the property as on 01.04.1981 at Rs. 43,693/- and finally Long Term Capital Gain / Short Term Capital Gain to the tune of Rs. 26,27,026/- was added to the total income of the assessee by the Ld. AO which was, in turn, confirmed by the Ld. CIT(A). Hence, the instant appeal before us.

3. The assessee has challenged the maintainability of the proceeding initiated under Section 147 of the Act before us apart from the additions made on merit. In that view of the matter we would like to address the issue of maintainability of the proceeding itself since it goes to the root of the matter.

4. The case of the assessee is this that the property in question was transferred on 27.03.2012 when the consideration amount was received and possession of the said property was handed over to the purchaser. Thus, the transaction falls within A.Y. 2012-13. Therefore, the reopening of issue allegedly for A.Y. 2013-14 as void ab initio and thus, liable to be set-aside. Page 10 of the Paper Book containing the first page of the deed of sale specifically mentioned the date as 27.03.2012 at 12.26 pm. Moreover, the stamp duty paid to the tune of Rs. 1,48,500/- by the assessee is reflecting at the top of the page. Whereas Revenue harps upon the date of registration of the property as on 17.04.2015 as informed by the Sub-Registrar, Ahmedabad-10, Vejalpur and thus taking into consideration transaction took place in A.Y. 2013-14 the reopening was done.

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5. However, we find that the case made out by the assessee is duly supported by series of documents filed before us including the registered deed dated 27.03.2012 which is evident at Page 33 of the Paper Book filed before us. The details of payment made to the assessee in respect of the property is also reflecting from Page 35 to 36 of the said Paper Book; handing over possession of the property in question to the purchaser by the assessee vendor is well mentioned therein. It may happen that the registration though done on 27.03.2012 it has been recorded in the books of the concerned Registrar being Document No. 1356 on 17.04.2015 due to heavy workload in the year ending.

6. Thus, taking into consideration the entire aspect of the matter, each and every details of the sale deed, the consideration paid by the assessee, the possession handed over by the assessee to the purchaser, the Government seal, the stamp duty paid on such registration and the date mentioned as the execution of the sale deed as on 27.03.2012 we find no infirmity in the case made out by the assessee in holding the transaction took place in A.Y. 2012-13 and not A.Y. 2013-14. In our considered opinion the transfer took place in A.Y. 2012-13 as rightly claimed by the assessee and therefore, reopening of assessment on the count of escaping assessment of the income of the assessee chargeable to tax for A.Y. 2013-14 has no legs to stand upon. The reopening of assessment under Section 147 of the Act as impugned is thus, quashed.

7. In the result, this appeal of the assessee is allowed.

This Order pronounced in Open Court on

30/03/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 30 /03/2022
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad