

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 3270/Ahd/2016

Assessment Year : 2012-13

Rajendra Laxmanbhai Makwana, N-102, Parikar-1, Nr. Khokhara Circle, Amraiwadi, Ahmedabad-380026 PAN: AFLPM 2848 C	Vs	Income Tax Officer, Ward-7(2)(4), Ahmedabad
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ITA No. 1183/Ahd/2017

Assessment Year : 2012-13

Subodh Laxmanbhai Makwana, M-302, Parikar-1, Nr. Khokhra Circle, Khokhra, Ahmedabad-380008 PAN : BICPM 9739 D	Vs	Income Tax Officer, Ward 1(3)(5), Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Sakar Sharma, AR
Revenue by :		Shri S.S. Shukla, Sr. DR

सुनवाई की तारीख/Date of Hearing : 31/03/2022

घोषणा की तारीख /Date of Pronouncement: 08/04/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

These two appeals filed by two assesseees against two separate orders passed by learned Commissioner of Income-Tax (Appeals)-7, Ahmedabad dated 28.09.2016 and by Commissioner of Income-Tax (Appeals)-10, Ahmedabad dated 10.02.2017 for Assessment Year 2012-13 involve some common issues relating to the computation of Long Term Capital Gain arising from the sale of capital asset being immovable property jointly owned by two assesseees and the same, therefore, have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. First we shall take up the appeal filed by Shri Rajendra Laxmanbhai Makwana being ITA No. 3270/Ahd/2016 which is directed against the order of learned Commissioner of Income-Tax (Appeals)-7, Ahmedabad dated 28.09.2016.

3. The relevant facts of the case giving rise to this appeal are that the assessee, who is an individual, filed his return of income for the year under consideration on 21.07.2012 declaring total income of Rs.3,74,560/-. During the year under consideration, the assessee along with his two brothers namely Shri Yogeshbhai Laxmanbhai Makwana and Shri Subodhbhai Laxmanbhai Makwana had sold an immovable property situated at Saijpura, Naroda, Ahmedabad jointly owned by them to M/s. Shanti Infra Developers, a partnership firm, for a total consideration of Rs.5,04,43,000/-. The said property comprising of 5327 sq. yards of non-agricultural land bearing final plot No.44 and Krishna Colony plot of 627 sq. yards along with the construction was acquired by the assessee and his brothers by way of inheritance after the death of their father late Shri Laxmanbhai Panchabhai Makwana on 21.06.1986. In the return of income filed for the year under consideration, his 1/3rd share in the Long Term Capital Gain arising from the sale of the said property was declared by the assessee at Rs.42,55,172/- and after claiming exemption of Rs.40,84,868/- under Section 54 of the Act, Long Term Capital Gain of Rs.1,70,304/- was offered to tax. As noted by the Assessing Officer, Banakhat in respect of this transaction was executed on 15.10.2010 while the final sale deed was registered with the Sub-Registrar, Ahmedabad on 09.09.2011. From the perusal of these two documents, the Assessing Officer noted that out of the total area of land of 8470 sq. yard originally belonging to the assessee's family, about 908 sq. yards of land was acquired for road while about 1608 sq. yards of land was reserved for Corporation as per the Town Planning Scheme and the

remaining plot area of 5954 sq. yards was transferred to the buyer. As per the Banakhat executed on 15.10.2010, the break-up of total consideration of the property amounting to Rs.5,04,43,000/- was given as under:-

1) 5327 sq. yards of plot No.44 @ 9000	=	Rs.4,79,43,000
2) Krishna Colony alongwith Construction in final plot No.44, 627 Sq. Yards	=	Rs. 25,00,000

		Rs.5,04,43,000

4. On verifying the sale deed dated 09.09.2011, the Assessing Officer found that there was no mention about any residential or commercial construction as claimed to be transferred by the assessee and even in the property schedule, it was clearly mentioned that non-agricultural open land was transferred. In the computation of capital gain, the cost of acquisition being the fair market value of the entire property as on 01.04.1981 was claimed by the assessee by taking into consideration area of land of 8470 sq. yards @ Rs.250/- per sq. yard and the cost of construction separately at Rs.24,92,400/- on the basis of valuation report of the Registered Valuer. As noted by the Assessing Officer, the fair market value of the land taken by the Registered Valuer in his report at Rs.250/- per Sq. Yard was based on two sale instances of the immovable property in the same locality. On verification of the relevant documents in respect of the said two sale instances, the Assessing Officer found that there were certain mistakes in the valuation report made by the Registered Valuer and the actual rate of the said sale instances was Rs.80/- per sq. yard. Keeping in view these glaring mistakes in the computation of Long Term Capital Gain made by the Assessing Officer, a letter was issued by him on 13.03.2015 requiring the assessee to show-cause as to why the transaction should not be treated as transfer of land only and deduction on account of cost of acquisition being fair market value of the land sold should not be restricted to Rs.80/- per sq. yard rejecting the index cost of construction claimed by the assessee. The

contents of the said letter issued by the Assessing Officer to the assessee were as under:-

“Please refer to the assessment proceedings pending in your case and hearing took place on various dates and furnished certain details by you

2. *On verification of the details furnished, it is noticed that you have shown Long Term Capital gain of Rs. 1,70,304/- after claiming exemption U/s 54B/54D/54G etc. of Rs.40,84,8698/- on sale of final plat No.44 of TP scheme No.47, Saijpur, Naroda, Ahmedobod admeasuring 5954 sq. yard for a consideration of Rs.5,04,43,000/- by you and 3 others. On verifying the Long term Capital Gain working it is noticed that you have worked out capital gain on the Long Term Capital Gain dividing the property in three parts as under*

	Area of land	Area of land after allotment of Final TP No.47
Value of Land (Residential)	2796	2796
Value of Land (Krishna Colony)	627	627
Value of Land (Commercial)	5047	2531
TOTAL AREA OF LAND	8470	5954

In this connection, you are requested to submit evidence regarding how the land of 8470 sq. yard you have divided into three parts as above. Please explain as to what is the basis for treating the land mentioned above of particular area to be commercial or residential, when the whole land has been sold at a uniform rate except the land of Krishna Colony which were sold for a consideration of Rs.25,00,000/- as stated in the Banakhat in respect of the said property. Further on verification of Banakhat agreement dated 15.10.2010 executed in respect of the said property it was clearly mentioned in the agreement that sale consideration has been fixed at the rate of Rs.9000/- per sq. yard and no where in the document it was mentioned that the consideration value has been paid for any residential building. On the other hand page no. 7 of the Banakhat Agreement at condition No. 6 it was mentioned that in respect of final plot No.44 out of 5954 sq. yard Krishna Colony was situated in the land area of 627 sq. yard and after deducting the same in the remaining 5327 sq. yard land, there was construction on the road side of the plot, Krishna Pottery works premises and residential building of the sellers were available. Out of the all constructions it was mentioned that only the road side construction demolition was on the hands of the buyer and the expenses on the same would be borne by the buyer. Thus from the condition mentioned it is clear that you have not handed over your residential premises and Krishna Pottery premises to the buyer but only

the road side constructions have been handed over to the buyer. This was also evidenced from the property details (Parishist in Gujarati) specified in the sale deed dated 09/09/2011. This shows that the residential building and Krishna Pottery work premises were disposed by you by your own way and the same were not transferred to the buyer. In this connection, you file evidence in support of your claim that you have sold residential building and Krishna Pottery Premises to the buyer. In the absence of the such evidence, it will be treated the capital asset as open land as stated in the Registered sale Deed executed by you in respect of the said property by you with 3 other for consideration of Rs.5,04,43,000/- vide document No.9822 dated 09/09/2011 and capital Gain exemption claimed will be treated U/s 54F and the calculation will be made accordingly. As the capital gain exemption U/s 54 will be available only if there is transfer of long term capital asset being building or land appurtenant thereto and being a residential house. But in your case the residential house were not transferred only the land have been transferred as evidence from the condition No.6 of your Banakhat and as per (parishist in Gujarati) of sale specified in the sale deed dated 09/09/2011 as such capital gain exemption will be available U/s 54F.

3. In the Long Term Capital Gain working you have shown the value of construction as under:-

Description	Residential	Commercial	Total Value
Residential Bungalow	427000		427000
Shops, Hall & Worker Room		760500	760500
Worker Room (Krishna Colony)		339200	339200
Open Marginal Shed		277200	277200
Ceramic Factory Shed		96000	96000
Ceramic Furnace #01		300000	300000
Ceramic Furnace #02		100000	100000
Chimney of Ceramic Furnace		50000	50000
Compound Wall		109200	109200
Cost-Brick Flooring	33300		33300
Total Value of Construction before Index	460300	2032100	2492400

You have shown the construction of commercial value of the property as Rs.20,32,100/- and construction of residential value of the property as Rs.4,60,300/- totaling Rs.24,92,400/-. In this connection, you are also requested to furnish the details of commercial activities carried out in the said property since when the commercial activities were carried out and by whom were the activities undertaken. You are also required to state till when the commercial activities were carried out in the said property and submit

copy of return of income. Profit & Loss A/c and Balance Sheet filed by the said concern if, you and your family members were proprietor, partners or director in the said concern at the time of closure of commercial activities.

Further, you are required to specify the land area on which such construction was made alongwith details of area of construction of the property. In Sale Deed agreement executed, no where it was mentioned that the consideration amount has been separately paid for the construction stated by you. In the Banakhat also as per condition No.6, it was mentioned that only the road side shops have been handed over at the disposal of the buyer. This shows that the construction value claimed in respect of the residential and commercial have been disposed off by the seller at his own hand end were not transferred to the buyer. In view of the same, you are required to submit any documentary evidence that the considerations have been received for construction as claimed by you. You are also required to submit the evidence for transferring the construction value stated by you to the buyer and consideration received for the same. In the absence of the such evidence, it will be treated as open land as stated in the Registered sale Deed executed by you in respect of the said property by you with 3 other for consideration of Rs.5,04,43,000/- vide document No.9322 doted 09/09/2011.

4. The valuation of land of the said property your valuer, Shri Kanu P Gajjar has considered Rs.250/- per square yard. The valuer has reported at page 7 of the report that sales instances from the registered office for the year 1980-81 in respect of R. Survey No.977, Moje Saijpur Bogha were considered and the tabulation of the same is produced as under.

"Sale Instances from register office for year 1980/81.(R. Sur. No:- 977, Moja; Saijpur Bogha)

SR.NO	1	2
AMOUNT	RS. 20000	RS. 90000
LOCATION F.P. NO. /SUR. NO.	SP.NO:-21/P.R.SUR. NO:- 16.	S.P.NO.--35/1, R. SUR. NO:- 16.
AREA SQ. ML. /SQ.YDS	100.00 SQ.YDS.	412.00 SQ. YDS
NAME OF SELLER	-	-
NAME OF PURCHASER	-	-
DATE OF REGISTRATION	15/07/1981.	05/12/1961.
REGISTRATION NO.	8792	2036
RATE PER SQ.MT/SQ. YDS.	RS.200/- PER SQ.YDS.	RS. 218/- PER SQ.YDS.

5. This office has called for the copy of Sale Deed bearing No.8792 dated 15/07/1981 and Registration No.2036 doted 05/12/1981 from the Sub

Registrar Office, City Zone. Ahmedabad vide letter dated 05/03/2015. The Sub Registrar vide letter dated 12/03/2015 submitted the copy of the above documents which is enclosed herewith.

On verification of Copy of Document 8792 dated 15/07/1981 it is noticed that the said document was executed between Okhabhai Jorabhai Rabari (Seller) with Mrs. Mohinibai (purchaser) for a consideration of Rs.20,000/-. In the sold Deed in the Property Schedule it was mentioned that the sale deed were executed in respect of Plot No.21 (Paiki) admeasuring 1000 sq. yards (Paiki) 250 sq. yards out of S.No.16(Paiki) of Sahijpur Bogha Jaluka City Ahmedabad. On the basis of this rate the valuation of land comes to Rs.80/- Per Sq. yard. Whereas your valuer in his valuation calculated the same of RS.200/- per sq. yard specifying the area of property under sale as 100 sq. yard instead of 250 Sq. yard specified in the Registered Sale Deed. In view of the same, you are required to show cause as to why the rate of the land should not be taken at the rate of Rs.80/- sq. yard instead of Rs.250/- claimed in the valuation report.

Further on verification of copy of document No.2036 dated 05/12/1981 it is noticed that the said document was executed between Shri Parshotambhai Shamjibhai Pate' and two others (Sellers) with Shri Lakhmichand Mohandas Maiani and three others (Purchaser) for consideration of Rs.90,000/-. In the in the property schedule it was mentioned the property as "Building, Saijpur Bogha, Nagar Panchayat No.7747 to 7751, Sub Plot No.35A admeasuring 412 sq. yard out of Survey No.42 and 43 of Sahijpur Bogha Taluka City Ahmedabad". Thus, the property under sole vide this document was in respect of building with land and not only the land as claimed by the Registered Valuer in his valuation Report. This fact is also clear from the page No.7 of the deed wherein it was mentioned as "the sellers hereby sell, convey and transfer in perpetuity the property shown in the schedule of the property annexed hereto, with ownership rights of construction, site and plot, with ownership rights of constructions site and plot, with rights of passage and easement and with all other rights existing expressly and impliedly for Rs.90,000/-". On the basis of this rate, the valuation of construction property alongwith land comes to Rs. 218.45/- Per Sq. yard. Thus, the above sale instances put forth by the valuer is in respect of building construction with land as such the same is not applicable to the open land as worked out by the valuer for the land under consideration. In view of the same you are required to show cause as to why the valuation of land should not be taken as Rs.80/- sq. yard as per the sale instances of document No.8792 dated 15/07/1981 in place of Rs.250/- claimed by you as per the valuation Report.

6. From the above it is clear, the valuation Report done and prepared by Shri Kanu P Gajjar of Ameer Engineer is made based on incorrect facts, which can

be evidenced from the details of safe instances quoted and interpreted by the valuer for determining the valuation of the land and construction.

7. In view of the above, you are required to furnish evidence details as called for above to establish your claim that you have sold residential land and construction, commercial land and construction and open land as claimed in your calculation of Capital Gain and the valuation adopted in respect of the same. In the absence of the above details your transaction will be treated as in respect of Open Land and the valuation of Rs.80/- sq. yard as per the sale instances document No.8792 doted 15/07/1981 will be taken into the calculation of value of land as on 1/4/1981 and the cost of construction on the land claimed by you will be rejected."

5. In reply to the show-cause notice issued by the Assessing Officer, the following explanation, in detail, was offered by the assessee vide letter dated 19.03.2015:-

"In reply to the above mentioned show cause notice, kindly find our clarification regarding the doubts raised on Long Term Capital Gain of Rs. 1,70,304/- after claiming exemption u/s 45B/54D/54G etc. of Rs. 40,84,868 on sale of FP 44 of TP Scheme No. 47, Saijpur Bogha, Ahmedabad admeasuring 5854 Sq. Yard Non-Agriculture Land with Buildings & Constructions for a consideration of Rs. 5,04,43,000/- which is correct in all Terms & Means.

We were holding total 8470 Sq Yard of land with construction bearing Revenue Survey No.7 of Saijpur Bogha, Ahmedabad. Town Planning Department acquired total 2516 Sq. Yard of open Land under TP Scheme 47 of Saijpur Bogha, Ahmedabad and allotted total 5954 Sq. Yard of Land with Construction.

The division of Land area is done into three parts based on the valuation report of Government Approved Valuer Mr. Kanu Gajjar of Ameer Engineers and actual site location.

In detail as under:

Survey No. 7	Acquisition of Land	F.P. 44 of TP-47	Description
2796 Sq. Yard	0 Sq. Yard	2796 Sq. Yard	Land with Construction of Bungalow used for Residential Purpose
627 Sq. Yard	0 Sq. Yard	627 Sq. Yard	Land with the Construction of Krishna Colony

5047 Yard	Sq.	2516 Yard	Sq.	2531 Sq. Yard	Land with the Construction used for Commercial purpose under the name of "Krishna Pottery Works"
8470 Yard	Sq.	2516 Yard	Sq.	5954 Sq. Yard	Total Land with the Construction

1. The land and construction of Krishna Colony was sold at a fixed consideration of Rs. 25,00,000.00 (Rupees Twenty Five Lac only) because the possession of land & construction was with 10 to 12 Tenants and not with us. The Buyer agreed to buy the 627 Sq. Yard land and construction with the liability to pay any amount as demanded by the tenants to get possession of land with construction on it. The Buyer made settlements with the tenants to get the possession of land with the construction on it but still as on date there is one tenant who holds the possession of land with construction on it and has refused the settlement offer of the Buyer, same can be physically verified by the Department. The possession of rest of 5327 Sq. Yard land with construction (both Commercial & Residential land with the construction) was with us and hence sold at the rate of 9,000.00/Sq. Yard (Rupees Nine Thousand per Sq. Yard).

2. Page No 5 of "Banakhat" confirms that there was a construction of Krishna Colony along with other construction which was used for our commercial & residential purpose. The land along with construction to be called as "Majkur Jamin".

3. Para 6 at Page No. 8 of "Banakhat" confirms that there was a construction of Krishna Colony, construction of shops, construction of Krishna Pottery Works which was used for commercial purpose and the construction of Bungalow which was used for residential purpose by us.

4. The construction is an immovable property and cannot be moved away from one land to another land. Sir, it is not possible to sale the land without passing the possession of construction on the land to the Buyer. The Seller has to either demolish the total construction on the land to make the land "Open to Sky " and then sell the land "Open to Sky" to the Buyer OR pass the possession of the construction (Pratyahsh or Paroksh Kabja) to the "Buyer" along with the possession of the land. Sir, in the registered "Banakhat" or registered "Sales Deed" we as a Seller of said property have never declared that we have sold a "Open to Sky Land" nor the Buyer has declared that they have purchased a "Open to Sky" Land from us. Sir, the "Banakhat" and the "Sales Deed" are itself the evidence that we have sold the land with construction on it.

5. Sir, we have never demolish any construction on the subject land and has passed the possession of construction along with the possession of land. Sir,

the Department, if require, may issue a notice to the "Buyer" to confirm that the land was sold along with the construction on it. Contact details of one of the partner of "Shanti Infra Developers " as under:

Mr. Bhupendra Patel, Mobile No. 9825131250, as on date.

6. Sir, we have not received any extra amount for the construction but the entire consideration of Rs. 5,04,43,000/- is the total sale value of land with construction on the land.

7. Sir, if the indexed value of any construction is disallowed then same shall be consider as the "Capital Loss" as this amount related to the sale of subject land with construction and for the same Accounting Year to get net Capital Gain on sale of said properly.

8. The Commercial Activities on the said land was started by Mr. Ranchodlal Maganlal Shah in 1945 under the name of "Krishna Pottery Works" as a "Proprietorship Firm". Further, my uncle Mr. Naranbhai Panchabhai Makwana purchased the property and legal rights to continue the commercial activities in the name of "Krishna Pottery Works" as a "Proprietorship Firm". Further, my father Mr. Laxmanbhai Panchabhai Makwana enters into the business as a Partner with my uncle and jointly continued the commercial activities as "Partnership Firm". The "Partnership" was dissolved in 1975 and my father became sole "Proprietor" of said business. He died in 1986 and we as legal heirs entered into the business as "Partners" and continued the business under the name "Krishna Pottery Works". The business was stopped in 1994 and the licenses to run the business were surrendered to the concerned authority (copy of cancellation of License attached). Sir, as per my knowledge and information the "Books of Records" has to be preserved for the period of 10 Years and as it was very difficult to preserve the "Books' of Records" for such a long period of more than 10 years for a "Partnership Firm" same has been periodically destroyed.

9. Sir, in regards to the valuation of any land, the sale value of other property for the same period are taken as a indicative value and then final market value of land is determined considering many other factors affecting the cost. The indicative value can never be considered as FMV in any case without considering the additional factors affecting the cost. The sale value of one land can never be the same to the sale value of other land

10. Sir, the value of land at all location in a particular ward (say, entire Saijpur Bogha Ward) is never the same as lots of factors are affects the value of land. Few factors as per my knowledge and information are listed below:

- i. Total plot area of land to be sold or purchased*
- ii. Type of land. A Commercial Land is more costly than a Residential Land and a Residential Land is more costly than an Agriculture Land.*

- iii. *Locality where the subject land is situated. Whether the land is located in an undeveloped area, developing area or a developed area. Whether the land is located in a slum area, middle class area, upper middle class area or upper class area.*
- iv. *Type of existing constructions nearby the subject land.*
- v. *Approach Road to the subject land.*
- vi. *Level of subject land compared to the level of the Approach Road.*
- vii. *Availability of Parking Space or any other "Open to Sky land" nearby the land.*
- viii. *Availability of Garden, Parks, etc nearby the subject land.*
- ix. *Facility of Street Light, Drainage and Pure Water available nearby to the subject land.*
- x. *Electric Power Supply Line nearby to the subject land.*
- xi. *Mode of Transport (Domestic or Commercial) available nearby the subject land.*
- xii. *Rain Water deposition in the Monsoon Season during the heavy rainfall and extent of possible damage if there is a heavy rainfall.*
- xiii. *Facility available for removal of water deposition and solid waste materials.*
- xiv. *Any other physical factor affecting the usage of land.*

11. *Sir, the valuation of the said land is true and correct in all means and terms as mentioned in the Valuation Report because:*

- i. *Sir, the valuation is done at actual after considering all the factors affecting the value of the property as mentioned above.*
- ii. *Sir, on the Page No. 6 of the Valuation Report dated 06.04.2011. It is clearly stated that "The plot is situated in Saijpur Bogha to Kubernagar Road. This is fully developed area with Residential and Commercial buildings".*
- iii. *The said land is situated on a 40' wide Main Road which latter proposed to be converted to a 60' wide Main Road under T.P Scheme 47 of Saijpur Bogha.*
- iv. *Full facility of movement of any type of Commercial Vehicle at the Main Gate of subject Land.*
- v. *Full facility of Public Transport Service as the Bus Stop was adjacent to the wall of subject land under the name "Navi Chawl Bus Stop".*
- vi. *Full facility of Street Light on the Main Road to which subject land was located.*
- vii. *Our land was suitable for any type of construction related to Factory, Commercial Building, Mall, Multiplex, Residential Constructions. (Bungalows, Tenements. Raw Houses, Flats & Apartments, etc). Multistory Buildings, etc.*
- viii. *Main Drainage Line is passing right in the front of the Main Gate of subject Land.*

- ix. *Power Sub-Station is located at the distance of about 500 Meters away from the Main Gate of Subject Land.*
- x. *Approximately 2/3 area of Saijpur Bogha is facing the problem of Rain Water Deposition during the rainy season but as our land was located at the height more than that of Main Road, we never faced the problem of Rain Water Deposition till the date nor we have suffered any loss due to the same.*

12. *Sir, Kindly find attached copy of Original Lease Deed executed between Kuberdas Hargovendas Modi and Samuben on 03/05/1947 (copy of Original Lease Deed attached herewith). As per the Original Lease Deed Samuben purchased Lease Rights from Kuberdas Hargovandas Modi which was later sold to our Parents on 27/10/1975 and further we have recently sold this lease rights on 09/09/2011 vide registered Sales Deed. Sir, as per the original Lease Deed executed on 03/05/1947, the value for 8470 Sq. Yard Land was decided to be Rs. 42,350/= as agreed on 03/05/1947. If the amount of Rs. 42,350/= was kept in a Saving Bank Account on 03/05/1947 then what would be the accumulated value with interest (considering Rate of Interest @ 4%, as applied for Saving Bank Account, which is exempted from Income Tax) for the period from 03/05/1947 up to 01/04/1981 (for 137 Quarters)..?. If same is calculated by the formula $A=P (1+R/100)^n$, then the Amount comes to Rs. 91,28,951/= and "Rate per Sq. Yard" of Rs. 1078/= as on 01/04/1981. Sir, the rate considered by the "Government Approved Valuer" Mr. Kanu Gajjar of Ameer Engineers is very low compared to above calculation still we have considered the same as it was worked out by a Government Approved Valuer and in no circumstances same can be further reduced.*

13. *Sir, Kindly refer to the "Sales Deed" registered at Sr. No. 2036 / 1981 on 27/02/1981. As mentioned in the Sales Deed total 412 Sq. Yard of Land with very old construction (the construction was done in 1966 as mentioned on the Page No. 6) was sold for Rs. 90,000/= as agreed. There is no clarification about the status of construction, whether it was useable or unusable. There is no specific value declared for such old construction. The said plot was a Residential plot and the value of Residential plot is much lower than a Residential cum Commercial Plot. The plot area is too small compared to our plot and a commercial construction can't be done in any circumstances in the said plot. There is nothing specific related to the location of said plot, whether the plot was situated in undeveloped area or a developing area or developed area but our plot was located in well developed area and on the 40' Main Road. Also the 412 Sq. Yard plot was located on an approach road of 20' width and not on the Main Road. Still, 412 Sq. Yard land was sold at the value of Rs.90,000/= (@ 218.45 per Sq Yard). The rate at which the 412 Sq. Yard plot was sold is a good indicative rate for the purpose of valuation of our plot. Our plot was a big commercial cum residential plot. Also, the rate of a big commercial cum residential plot is*

always much higher compared to a small residential plot and the therefore the value of our commercial cum residential plot as per Valuation Report is a justified value in all terms & means.

14. *Sir, Kindly refer to the "Sales Deed" registered at Sr. No. 8792/1981 on 15/07/1981. As mentioned in the Sales Deed it was a very small residential plot owned by a "Rabari" Okhabhai Jorabhai Rabari in Rabari Vas, with a narrow entrance to the said plot compared to the above described plot mentioned at Sr. No. 12. The plot was located in a slum area without any facility as described above. As per Sales Deed 250 Sq. Yard residential plot of "Rabari Vas" in a slum area was sold at Rs. 20,000.00 (@ 80.00 per Sq. Yard). If a very small residential plot with a very narrow entrance and without any facility in the slum area of "Rabari Vas" is sold @ 80.00 per Sq. Yard than the value of our commercial cum residential plot located on 40' Main Road with all facility as described above is justified. A multistory building can be constructed on our plot for the purpose of Commercial or Residential purpose but in no circumstance a multistory building for commercial purpose or residential purpose can be constructed in such a small residential plot located in a slum area of "Rabari Vas" with such narrow entrance. As per Government Norms for the construction of any multistory building the plot area should have good approach road with sufficient "Open to Sky" land (for the reason of fire safety purpose and Transportation of Goods & Public Services). The rate of such a small residential plot in slum area can't be considered for the valuation of our plot. A bid is good indication that if a small residential plot in a slum area with very narrow entrance and without any facility is sold at the rate of 80.00 per Sq. Yard then the value of our commercial cum residential plot is a justified value.*

Sir, the rate of a commercial cum residential plot is always much higher compared to the residential plot and the value of our plot is correct in all terms and means.

15. *Sir, it is clear that the valuation report done and prepared by Shri Kanu P. Gajjar at Ameer Engineers, which is based on the detailed of sale instances quoted and interpreted for determining the valuation of the land and construction, is true in all terms and means.*

16. *Sir, this is a very long term holding and I shall be allowed to claim the benefits of Long Term Capital Gain without any deduction."*

6. The explanation offered by the assessee as above was not found acceptable by the Assessing Officer. He noted from the relevant details given on page No.5 of Banakhat that the consideration was decided for plot area of 5327 sq. yards @ Rs.9000/- per sq. yard and for Krishna Colony with

construction on plot area of 627 sq. yards at Rs.25,00,000/-. According to the Assessing Officer, it was thus clear that the subject matter of transfer of property was land only except the Krishna Colony plot where some road side construction was there. He noted that the said road side construction was to be demolished by the buyer at his own expenses and there was no mention of construction of residential bungalow or commercial premises either in Banakhat or even in final sale deed. He also noted that as per the conditions agreed in the said documents, any amount/consideration in respect of land acquired as per Town Planning Scheme from Government was to be received by the seller and the buyer had no right on the same. He further noted that the subject matter of property sold as per the sale deed executed on 09.09.2011 was non-agricultural leasehold open land and nowhere it was mentioned that the construction right of the property was transferred to the buyer. The Assessing Officer also referred to the photograph of the property shown in page Nos. 28 & 29 of the sale deed which clearly evidenced that there was no construction of residential bungalow or the commercial property in existence on the land sold by the assessee. He held that the subject matter of transfer thus was not of residential bungalow of the seller and the construction of Krishna Pottery Works as claimed by the assessee and it was only the open land which was sold/transferred as stated in the property schedule of Banakhat and sale deed.

7. As regards the rate of Rs.250/- per sq. yard adopted by the assessee as fair market value of the land as on 01.04.1981 on the basis of the valuation report of the Registered Valuer, the Assessing Officer found that there were mistakes in the calculation made by the Registered Valuer while working out the rate of Rs.250/- per sq. yard on the basis of comparable instances of sales. Since the said mistakes were glaring and accepted even by the Registered Valuer in his statement recorded on oath, the Assessing Officer

adopted the fair market value of the land of the assessee as on 01.04.1981 at Rs.80/- per sq. yard rejecting the contention of the assessee that the rate of Rs.250/- per sq. yard was determined by the Registered Valuer on the basis of other factors also. The Assessing Officer thus held that what was sold by the assessee was only the non-agricultural open land of 5954 sq. yards without there being any residential bungalow or commercial property as claimed by the assessee. He accordingly adopted the cost of acquisition of the land so sold by the assessee being the fair market value of the land as on 01.04.1981 calculated by applying rate of Rs.80/- per sq. yard on the area of 5954 sq. yards and allowed deduction for the same applying the indexation. He rejected the claim of the assessee for deduction on account of cost of construction of bungalow and commercial area by holding that the same was not subject matter of transfer. He also disallowed the claim of the assessee for exemption under Section 54 of the Act by holding that the Long Term Capital Gain had arisen to the assessee from sale of open land and not the residential house as claimed by the assessee, but allowed exemption u/s 54 of the Act on proportionate basis. He accordingly worked out the share of the assessee in Long Term Capital Gain arising from the sale of immovable property at Rs.1,12,98,510/- as against Rs.1,70,304/- shown by the assessee as under:-

	Total	1/3 share of assessee
Sale Consideration	50443000	16814333
Less Transfer Cost	1489776	496592
Net Consideration	48953224	16317741
Indexed Cost of Land: Area of land sold 5954 sq yard value of land as on 01.04.1981 @ Rs.80 per sq. yard as per para 5.9 of the order Rs.4,76,320/- indexed cost of land = 476320/100*785	3739112	1246371

CAPITAL GAIN	45214112	15071371
Exemption u/s 54F	3772860	3772860
Taxable Capital Gain	41441252	11298510

8. The addition made by the Assessing Officer on account of Long Term Capital Gain was challenged by the assessee in an appeal filed before the learned CIT(A) and the following submissions were made on behalf of the assessee before the learned CIT(A) in support of the various issues raised ground-wise relating to the addition made by the Assessing Officer on account of Long Term Capital Gain:-

"1. Ground No.1 :

"The learned assessing officer has grossly and grievously, erred in law and on facts by ignoring the valuation of the property as on 01/04/1981 as valued by your appellant's valuer while computing the capital gain and hence, valuation given by your appellant be considered as final and long term capital gain be computed accordingly."

Ground No.2:

"The learned assessing officer has grossly and grievously erred in law and on facts by not considering cost of construction by stating that, there was no construction on land while computing the capital gains and accordingly, your appellant humbly prays to your honour for allowing the cost of construction and indexation thereon from the period 01/04/1981 since, it was constructed before 01/04/1981 considering the valuation made by the registered valuer for computing the long term capital gain accordingly."

Kindly refer to Para-6 of my factual submissions on page no.4 wherein, your appellant has pin-pointed that the learned assessing officer has ignored major contents of the valuation report of M/s. Ameer Engineers. He has not considered the contents on page no.8 to 11 of the valuation report wherein, the values of other assets as noted hereunder are mentioned:

NO.	DESCRIPTION	VALUE AS ON 01/04/1981
A.	Residential Bungalow	4,27,000
B.	Shops, Hall and Worker Room	7,60,500
C.	Worker Room	3,39,200
D.	Ceramic Factory Shed	2,77,200
E.	Open Marginal Shed	96,000

F.	Ceramic Furnaces	3,00,000
M G.	Ceramic Furnaces	1,00,000
0 H.	Chimney of Furnaces	50,000
5 I.	Compound Wall	1,09,200
f J.	Brick Flooring	33,300
	TOTAL Rs.	24,92,400

Most of the construction work was made in the F.Y.1979-80 by the father of your appellant and therefore, it is humbly submitted that at the time of valuing the property as on 01-04-1981, the learned assessing officer has to consider the valuation of the above-noted assets which were in existence and in use as on 01-04-1981 for the purpose of arriving at the cost of the captioned property for computing the long term capital gain. It would not be out of place to invite your kind attention to the fact that the assertion arrived at by the learned assessing officer of treating the sale of property as the sale of land only is very much wrong and out of place. Your appellant and his family members have sold land with existing constructions thereon as clearly defined in the Agreement to Sell as well as in the sale deed, itself. Of course, for the purchaser, the construction existing on the said land was of no use and of no value and hence, he has not assigned any value to the construction, whereas, we-the sellers have definitely sold the said property alongwith construction existing thereon. To evidence the existence of the other assets, we have submitted copies of bills of Municipal Tax of earlier years for your kind considerations.

Again, kindly refer to the copy of the Sale Deed wherein, on the last page of the Sale Deed, two photographs are attached wherein also, the structure standing on the captioned property is nothing but our residence which was vacated only on the date of sale of the property. Also, copies of the tax bills also reflect that, the residential constructions were in existence for years together upto the date of entering into the agreement to Sell and your appellant and the family members had permitted to remove the structures gradually on request by the purchaser on payment of substantial amount of sale value and it was also very clearly mentioned in the Sale Deed that, the purchasers had removed, some of the structures at their own cost only.

In view of the abovenoted submissions, we humbly submit that the values assigned to the structures existing as on date of Agreement to Sell must be considered with indexation for computing the long term capital gain.

2. Ground No.3

"The learned assessing officer has grossly and grievously erred in law and on facts by calculating the cost of the land by taking area of land of 5954 square yards only instead of actual area of land of 8,470 square yards, your

appellant humbly prays for your honour to consider the total area of land and cost of construction for 8,470 square yards as claimed by your appellant as final and long term capital gain be computed accordingly."

Kindly refer to para-4 of your appellant's factual submission on page no.2 wherein, it was very clearly informed to the learned assessing officer that the total area of land was 8470 Sq.Yds. and as per the proposed town planning scheme no.47 as announced by the government in C.Y. 2009, the clear available area of plot was 5954 Sq.Yds. The said scheme was not finalized till the execution of the sale deed but since, the said proposed town planning scheme was announced, one has to consider the same while, planning for future development of the property. Factually, the said proposed town planning scheme is finalized only 2-3 months back and yet, the excess land to be acquired by government out of 8470 Sq.Yds. is so far not acquired and the same is in full possession of the buyers only. Your appellant just want to convey that your appellant had invested for 8470 Sq.Yds only and on sale of the said property considering the sale value of 5954 Sq.Yds., he loses his all rights from 8470 Sq.Yds. and the total cost of 8470 Sq.Yds. becomes the total cost for 5954 Sq.Yds. and the said cost of 8470 Sq.Yds. alongwith other constructions added thereafter in the year 1979-80 must be considered with indexation for computing the long term capital gain on sale of the whole property.

To give an example, presuming that I am holding 1000 shares of a public limited company at the cost of Rs.10000/-. After five years, the said company made reduction of capital and it allots 100 shares in place of 1000 shares. Here, my cost of each share after reduction of capital would be Rs.10,000/- and thereby Rs.100 per share, since, my investment in the shares of the said company remains Rs.10000/- only even after reduction of capital, Similarly, my plot of 8470 Sq.Yds. costing at Rs.2117500/- (As per Valuation Report) now becomes plot of 5954 Sq.Yds because of the proposed new T.P. Scheme, but, my cost for the said property remains Rs.2117500/- only. The learned assessing officer has very wrongly reduced my cost proportionately and therefore, your appellant prays that the said cost should not be reduced in proportion of the area of land and the indexation should also be considered on the cost of the plot of 8470 Sq.Yds. only for computing long term capital gain.

In view of the abovenoted submission, your appellant prays your honour to allow the full cost alongwith indexation instead of proportionately reduced cost as wrongly arrived by the learned assessing officer.

3. Ground No.4:

"The learned assessing officer has grossly and grievously erred in law and on facts by treating investment in residential house for the purpose of deduction

from capital gain u/s 54 instead of deduction of investment under section 54F, your appellant humbly prays your honour to consider the amount of investment u/s 54 as claimed by your appellant as final and long term capital gain be computed accordingly."

Kindly refer to Para 6, 7 and 8 on page no.4,5 and 6 of my factual submission wherein, it is very clearly mentioned that, the captioned property had structures like residential bungalow for self and family, Krishna Colony for residence of employees of Krishna Pottery Works, Aacharya Ni Chali (tenanted residential properly) kachchishops and factory of Krishna Pottery Works, Accordingly, it would be very much evident from the list of properties mentioned above that major portion of the property contained only residential premises (self and rented), To evidence this statement, we have enclosed the copies of municipal bills wherein, the names of tenants are mentioned in the bills alongwith the nature of property are very clearly mentioned. Further, a copy of letter for allotment of PAN and PAN Card of your appellant is also enclosed to evidence that your appellant was also residing in the same property till the finalization of the deal of the captioned property. A rough copy of sketch of the captioned property is also enclosed herewith for your ready reference.

It may further be noted that the factory premises of Krishna Pottery Works was not in use since 1994-95 and since, the said firm had closed its business activities from 1994-95 itself, it ceased to be a commercial premises from that year only. We have also enclosed a copy of application for surrender of the respective licence in the name of Krishna Pottery Works. In view of the abovenoted evidences and explanation, we humbly submit that the captioned property was mainly occupied and used as residential premises and therefore, your appellant is very much entitled to claim exemption and deduction u/s.54 and not u/s.54F as wrongly allowed by the learned assessing officer.

4. Ground No.5:

"The learned assessing officer has grossly and grievously erred in law and on facts by totally ignoring the provisions of section 55A as amended to be effective from 01/07/2012 and also, he has ignored the date of transaction being 08/09/2011 and thereby, your appellant humbly prays to your honour to accept the valuation as adopted by your appellant for computing Long Term Capital Gains on sale of the property in question."

Referring to the para-5.9.14 on page no.26 of the assessment order, the learned assessing officer has himself mentioned that the department has not objected the valuation report done by the registered valuer, your appellant does not press this grounds of appeal with a request that since, the department has not objected to the valuation report done by the registered valuer and since, there is no negative remark in the assessment order about the valuation of the other assets amounting to Rs.24,92,400/- and since,

now, it is an established fact supported by the evidences enclosed in the paper book submitted herewith, the valuation of Rs.24,92,400/- in respect of other assets as on 01-04-1981 be allowed as deduction alongwith respective indexation thereon from the sale proceeds received by your appellant on sale of the captioned property."

9. In continuation of the above submission, further submissions were also made on behalf of the assessee vide letter dated 13.09.2016 as under:-

"In continuation with our submission did.30/7/2016, your appellant would like to further submit the submissions alongwith other records as noted herein below:

1. a) *A copy of Agreement to Sale without possession dtd. 15th October,2010 - duly translated in English (Original being in Gujarati] in respect of sale of leasehold rights of the non-agricultural land situated in the outskirts of Moje. Village Saijpur Boga in the Registration Dist. Ahmedabad, Sub-Dist Of City Taluka Ahmedabad - 6 (Naroda). Submitted in paper book atSr.No.2 -page no. 5 to 25.*

b) *A copy of sale deed did. 08/09/2011- duly translated in English (Original being in Gujarati) in respect of sale of leasehold rights of the non-agricultural land situated in the outskirts of Moje. Village Saijpur Boga in the Registration Dist. Ahmedabad, Sub-Dist. Of City Taluka Ahmedabad - 6 (Naroda), -submitted in paper book at Sr.No.3 - page no.26 to 55.*

c) *A copy of affidavit dtd.28/07/2016 of Makwana Rajendrabhai Laxmanbhai - duly translated in English (Original being in Gujarati).Submitted in paper book atSr.No.10 - page no.99 to 103.*

d) *A copy of Sale Deed dtd. 13/10/1975 in respect of sale of leasehold rights of 999 years of the property situated in the outskirts of Moje. Village SaijpurBoga in the Registration Dist. Ahmedabad, Sub-Dist, Of City Taluka Ahmedabad - 6 (Naroda), - duly translated in English (Original being in Gujarati).*

e) *A copy of Sale Deed dtd. 13/10/1975 in respect of sale of leasehold rights of 999 years of the property - known as Krishna Pottery Works situated in the outskirts of Moje. Village Saijpur Boga in the Registration Dist. Ahmedabad, Sub-Dist. Of City Taluka Ahmedabad-6 (Naroda) - duly translated in English (Original being in Gujarati).*

f) *A copy of letter dtd.12/06/2000 of Sr. Supervisor of workshops, Shram Bhavan, Khanpur, Ahmedabad. In respect of closure of manufacturing process in Krishna Pottery Works - duly translated in. English (Original being in Gujarati).*

2. Yours honour's kind attention is invited to the copy of sale deed in respect of sale instance mentioned by the Govt. approved valuer and discussed by the learned assessing officer in the assessment order. A copy of the sale deed is enclosed herewith for your kind reference. Analyzing the rate, area and other contents mentioned in the sale deed, it may be noted that the said property was sold in 1981 at Rs.80/- per Sq.Yds. and the same property was sold in 1946 at Rs.2 per Sq.Yds. and accordingly, there is an appreciation of 40 times in value of land of that area. As mentioned in our earlier submission dtd.30/07/2016, the property of this sale instance is far away and interior to the main road and main area as shown in the map submitted in the paper book at page no.129. Your appellant has marked the property in question with sky blue colour and the property of sale instance in yellow colour.

Now, coming to our property, the said property was purchased in 1947 at Rs.5 per Sq.Yds. and the rate of appreciation of 40 times applying to this property for arriving at the valuation as on 01-04-1981, it comes to Rs.200/- per Sq.Yd. and accordingly also, your appellant humbly submits that the valuation done by the Govt. approved valuer of the property in question is very much reasonable and just.

It would not be out of place to mention at this juncture that the learned assessing officer has not disputed this sale instance at all and therefore, your appellant humbly requests your honour to allow the rate of valuation of our property as valued by your appellant and oblige.

In view of the earlier submission dtd.30/07/2016 alongwith the paper book containing 132 pages and the abovenoted submission, your appellant prays to your honour to kindly allow the appeal and oblige. Your appellant would be pleased to submit further submission and/or explanations, if any, asked for in this connection on hearing from your honour."

10. The learned CIT(A) did not find merit in the submissions made on behalf of the assessee and proceeded to confirm the addition made by the Assessing Officer on account of Long Term Capital Gain for the following reasons given in paragraph Nos. 4.2 to 4.2.3 of his impugned order:-

"4.2 I have considered the assessment order and the submissions made by the appellant. The AO made the impugned the addition holding that the subject matter of transfer was open land and not land with construction. He also did not accept the valuation report furnished by the appellant during the assessment proceedings because the said contained factual errors in respect of the area of the land and the comparison with other sale instances. The

appellant on the other hand contended that the land had been sold with construction and that the rate of valuation taken by the registered valuer was also correct and that the AO had no authority to reject the valuation report submitted by him.

4.2.1 I have perused the various documents that have been submitted by the appellant which include copy of banakhat dated 15.10.2010, copy of sale deed dated 08.09.2010, copy of valuation report or Ameer Engineers dated 06.04.2011, copy of old bills and letters, etc. It is seen from the same that the property under consideration i.e. non agricultural land at No. 44 of T.P. Scheme No. 47, Saijpura, Naroda, Ahmedabad measuring 5954 sq. yards was sold by the appellant along with his mother and two brothers to M/s. Shanti Infra Developers for a consideration of Rs.5,04,43,000/-. The said property had been acquired by the appellant and his family by way of inheritance after death of the appellant's father. It was noted by the AO that out of the total area of 8470 sq. yards, the transaction of sale had been carried out for the area of 5954 sq. yards. Moreover, the appellant worked out the capital gains on transfer of this property by taking the land value of the property at Rs.250/- per sq. yard on the basis of valuation report of Shri Kanu P. Gajjar dated 06.04.2011. After going through all the submissions made by the appellant and the assessment order wherein the issue as well as the appellant's submission made during the assessment proceedings have been discussed at length, the following points emerge:

- (i) The appellant vide his letter his letter dated 13.03.2015 made to the AO submitted that the division of the land area was done into three parts based on the valuation report of the Government approved valuer. It is noted, however, that in the original valuation report i.e. 06.04.2011, the bifurcation of the land is not mentioned.*
- (ii) It is contention of the appellant that as per banakahat, there was construction on the land which was used for residential and commercial purpose. However, in page No. 5 of the banakhat it is clearly mentioned that the consideration has been decided for an area of 5327 sq. yards at Rs.9,000/- per sq. yard and in respect of Krishna Colony with construction for an area of 627 sq. yards at Rs.25 lakhs. Thus, it is evident that the transfer of property for which consideration was paid was only for the land of 5954 sq, yards.*
- (iii) A perusal of the conditions in the banakhat also shows that except the Krishna Colony construction, no other construction of residential or commercial premises has been mentioned.*
- (iv) On page No. 10 of the banakhat, it is clearly stated that the final plot No. 44 is approximately 5954 sq. yards of non agricultural land.*

- (v) Further, the sale deed of the said property which was concluded on 09.09.2011 states on page No.5 that the final plot No. 44 allotted to the assessee was of 5954 sq. yards non agricultural land leasehold "open land" called majkur jamin.
- (vi) Further, the appellant does not have any evidences regarding the value of the commercial properties claimed by him and also does not have any evidences regarding the construction of the said shops/commercial properties, etc.
- (vii) A perusal of the valuation of the report calculated by the. Registered Valuer is also seen as being incorrect since the area measured is wrong. Further, the valuer has also made a mistake by taking the sale instances as "land with construction" whereas the transfer was only in respect of land. Thus, the valuation of land is to be taken as Rs.80/- per sq. yard and not Rs.250/-claimed by the valuation report.
- (ix) A statement u/s. 131 was recorded by the AO from Shri Kanu P. Gujjar, approved valuer whose report had been relied on by the appellant. In response to question Nos. 7&8, the valuer admitted that he had made an error in specifying the area of land as well as giving his valuation for "land with construction" instead of "land".

4.2.2 Considering all the above facts, it is clear that the sale transaction was in respect of land only and not land with construction. The claim of the appellant in the submission made during appellate proceedings that the said land was sold with construction is negated by the sale deed itself which says that the transaction has been made for open land. Moreover, it is evident from the sale deed and the banakhat that the sale transaction is in respect of an area of 5954 sq. yards and not 8470 sq. yards as claimed by the appellant. Further, the report of the valuer contains factual errors in terms of the area of land and comparison of similar sale instances as has been admitted by him in the statement given to the AO. As such, the same cannot be accepted. It is also seen that the appellant has not given any evidences with respect to the construction claimed to be existing on the property and has merely stated its presence which does not find place in the banakhat.

4.2.3 Considering all these facts, I am of the opinion that the AO has rightly recomputed the capital gains and the addition made by him is therefore confirmed. Further, it is seen that the AO has also granted exemption u/s. 54F to the appellant. Considering these facts, the addition made by the AO is confirmed. Ground of appeal Nos. 1 to 5 are accordingly dismissed."

11. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal on the following grounds:-

1. *The Ld. CIT(A) erred on facts and in law in upholding action of Assessing Officer in making addition of Rs. 1,11,28,206/- as long term capital gain.*
2. *The Ld. CIT(A) erred on facts and in law in upholding action of Assessing Officer in substituting value of property as on 01/04/1981 of his own against value determined and certified by Registered Valuer and adopted for computing long term capital gain by appellant.*
3. *The Ld. CIT (A) erred on facts and in law in upholding action of Assessing Officer that land area for the purpose of computing long term capital gain need to be taken at 5954 Sq Yards against 8470 Sq Yards considered by the appellant.*
4. *The Ld. CIT (A) erred on facts and in law in upholding action of Assessing Officer in non granting deduction for indexed cost of construction on the grounds that there was no construction on the land inspite of furnishing of all relevant information and documents. Alternatively, Ld. CIT(A) ought to have allowed indexed capital loss for the construction standing on the land*
5. *The Ld. CIT(A) erred on facts and in law in not adjudicating ground in relation to restricting deduction u/s 54/54F.*
6. *The Ld. CIT(A) erred on facts and in law in not adjudicating ground in relation to non invoking of provisions of section 55A of the Act by the Assessing Officer while substituting value of property as on 01 /04/ 1981 of his own against value determined and certified Registered Valuer for the purpose of computing long term capital gain by appellant.*

12. We have heard arguments of both the sides and also perused the relevant material available on record. Ground No.1 raised by the assessee in this appeal is general in nature while Ground No.6 raised by the assessee is not pressed and argued by the learned Counsel for the assessee at the time of hearing.

13. As regards the issue raised in Ground No.2 relating to the cost of acquisition of the immovable property sold as claimed by the assessee at Rs.250/- per sq. yard being the fair market value as on 01.04.1981, it is observed that the same was claimed by the assessee on the basis of

valuation report of the Registered Valuer. In the said valuation report, the Registered Valuer had relied on two comparable instances of sale during the relevant period to arrive at the fair market value of the immovable property at Rs.250/- per sq. yard. On verification, the Assessing Officer found that there were certain calculation mistakes committed by the Registered Valuer while working out the rate of Rs.250/- per sq. yard and the same were accepted even by the Registered Valuer himself in the statement recorded on oath. The Assessing Officer accordingly corrected the said mistakes and arrived at a rate of Rs.80/- per sq. yard which he adopted as the cost of acquisition of the property sold by the assessee being fair market value as on 01.04.1981. At the time of hearing before us, the learned Counsel for the assessee has submitted that the Assessing Officer in the case of one of the brothers of the assessee and co-owners of the property in question Shri Yogeshbhai Laxmanbhai Makwana had accepted the rate of Rs.250/- per sq. yard as the fair market value of the property as on 01.04.1981. He has submitted that the concerned learned PCIT, however, issued a notice under Section 263 on the basis of proposal received from the Assessing Officer proposing to revise the assessment in the case of Shri Yogeshbhai Laxmanbhai Makwana by adopting the cost of acquisition as on 01.04.1981 @ Rs.80/- per sq. yard instead of Rs.250/- per sq. yard. He has contended that the proceedings under Section 263 of the Act, however, were dropped by the concerned PCIT vide his order dated 24.10.2016 after taking into consideration the submissions made by the assessee as well as the fresh report of the Registered Valuer submitted by the assessee in support of his case. He has contended that the rate of Rs.250/- per sq. yard as of 01.04.1981 thus has been accepted by the PCIT in the case of Shri Yogeshbhai Laxmanbhai Makwana, one of the co-owners of the property. Learned DR, on the other hand, has contended that the PCIT in the case of Shri Yogeshbhai Laxmanbhai Makwana, one of the co-owners of the

property, having dropped the proceedings under Section 263 of the Act, it cannot be said that there is a decision on merit rendered by him accepting the rate of Rs.250/- per sq. yard of the property as on 01.04.1981. After going through the order of learned PCIT dated 24.10.2016 passed under Section 263 of the Act in the case of Shri Yogeshbhai Laxmanbhai Makwana, a copy of which is placed on record by the learned Counsel for the assessee, we are unable to accept the contention of the learned DR. It is observed that the proceedings under Section 263 initiated in the case of Shri Yogeshbhai Laxmanbhai Makwana, one of the co-owners of the property in question, on the similar issue, were dropped by the concerned learned PCIT after recording his findings/observations as under:-

"Facts of the case have been considered alongwith submissions made by the AR. It is observed that the value adopted by shri Kanubai Gajjar was not correct & there were many flaws as discussed above.

The report of another Govt. approved Registered valuer Shri Bakul Desai dated 09-03-2016 determining value of plot as on 01-04-1981 appears to be more reasonable & based on geographical, scientific & environmental factors, which may determine the valuation of land to a great extent. The value of land in question as on 1.04.1981 has been taken by the AO at Rs. 250/-Sq. yard. In my considered view the value of land cannot be taken at Rs. 80/-sq. yard. Because it doesn't appear to be proper considering location of land, its distance from Airport, Railway line etc. The valuer though has quoted value such a 350/- sq yard & Rs. 400/- sq yard & Rs.210 sq yard for the different locations, It is viewed that the value adopted by the AO of @ Rs. 250/- was neither less nor more, but reasonable considering location & other factors like proximity distance from Airport Authority, Railway line etc. It has been explained that restrictions are also imposable it plots are very near to Railway line, Airport etc.

Thus, it is observed that the working of capital gain based on value of Rs. 250/- Sq. yard by the A.O. was not unreasonable. Hence the order passed by the AO u/s 143(3) of the Act in captioned case was neither erroneous nor prejudicial to interest of Revenue. The proceeding initiated u/s 263 of the Act are hereby dropped."

14. A perusal of the relevant findings/observations recorded by the learned PCIT in the order passed under Section 263 clearly shows that the

similar issue was examined by him in the light of the submissions made on behalf of the assessee as well as the fresh valuation report of another Govt. approved Registered Valuer submitted by the assessee. After taking into consideration this relevant documentary evidence, the learned PCIT arrived at a conclusion that the value of land in question as on 01.04.1981 taken by the Assessing Officer cannot be taken at Rs.80/- per sq. yard as the same was not proper considering the location of land, its distance from Airport, Railway line etc. He found that the value adopted by the Assessing Officer at Rs.250/- per sq. yard was neither less nor more and it was reasonable considering the location and other factors like proximity distance from Airport, Railway line etc. In this regard, he also derived support from the valuation report of another approved valuer submitted by the assessee wherein the rates of Rs.350/- per sq. yard, Rs.400/- per sq. yard and Rs.210/- per sq. yard were quoted as comparable instances. In our opinion, the similar issue thus has already been decided on merit by the learned PCIT in the case of Shri Yogeshbhai Laxmanbhai Makwana, one of the co-owners of the property in question, after taking into consideration all the relevant aspects and we do not find any justifiable reason to take a different view in the matter. We accordingly direct the Assessing Officer to adopt the rate of Rs.250/- per sq. yard as the cost of acquisition as on 01.04.1981 being the fair market value of the property in question while computing the Long Term Capital Gain and allow Ground No.2 of the assessee's appeal.

15. The issue involved in Ground No.3 relates to the area of land to be taken into consideration for determining cost of acquisition to be deducted while computing Long Term Capital Gain.

16. As per Banakhat as well as sale deed, 5954 sq. yards of land was sold/transferred by the assessee and other co-owners to the purchaser.

While computing the Long Term Capital Gain arising from the said transfer, cost of acquisition being the fair market value as on 01.04.1981 was worked out by the assessee taking into consideration the area of land of 8470 sq. yards. In this regard, it was contended on behalf of the assessee before the Assessing Officer as well as before the learned CIT(A) that the total area of property sold was originally 8470 sq. yards, out of which 908 sq. yards of area was deducted for road while 1608 sq. yards of land was reserved for Corporation as per the Town Planning Scheme. It was claimed by the assessee that the property sold thus was comprising of land of 8470 sq. yards as originally acquired and, therefore, this entire area should be taken into consideration for the purpose of determining the cost of acquisition deductible for the purpose of Long Term Capital Gain. At the time of hearing before us, the learned Counsel for the assessee has reiterated this stand taken on behalf of the assessee before the authorities below which we are unable to accept. As rightly held by the authorities below in this regard, the total area of land having been sold/transferred by the assessee and other co-owners being undisputedly 5954 sq. yards, the cost of acquisition with reference to the land so transferred only can be claimed as deduction. The land reserved for road as well as for Corporation as per the Town Planning Scheme was never the subject matter of transfer and, therefore, the same cannot be considered for the purpose of determining the cost of acquisition for the purpose of computing Long Term Capital Gain arising from the property in question which comprised of plot area of 5954 sq. yards only. At the time of hearing, learned Counsel for the assessee, in reply to a query raised by the Bench, has submitted that the assessee and other co-owners have not received any compensation for the area of land reserved for road and Corporation as per the Town Planning Scheme. The learned DR, on the other hand, has contended that they are, however, entitled for such compensation and as specifically agreed between the parties, any such

compensation whenever paid will be received by the assessee and other co-owners and the buyer will have no right on the same. Keeping in view all these facts and circumstances of the case, we are of the view that what is to be considered for the purpose of computing the cost of acquisition which is deductible while computing the Long Term Capital Gain is the area of 5954 sq. yard of land which is actually transferred by the assessee and other co-owners to the purchaser and not the total area of land of 8470 sq. yards as originally acquired by them. In that view of the matter, we uphold the impugned order of the learned CIT(A) on this issue and dismiss Ground No.3 of the assessee's appeal.

17. As regards the issue involved in Ground No.4 as to whether the property sold by the assessee was comprising of any residential or commercial construction as claimed by the assessee, it is observed that even though there was a mention of a residential bungalow and commercial structure in the valuation report of the Registered Valuer which was taken into consideration in estimating the cost of the property as on 01.04.1981, the Assessing Officer and learned CIT(A) have taken a view on the basis of various adverse findings/observations recorded by them that what was sold/transferred by the assessee was only the non-agricultural open land without there being any construction of residential and commercial nature. In this regard, the learned Counsel for the assessee has submitted that there is a clear mention in the agreement to sale/banakhat that the property was being sold/transferred together with construction. The Assessing Officer, however, found that the construction referred to in Banakhat was a road side construction and Krishna Colony construction which was to be demolished by the purchaser. He also referred to the consideration agreed between the parties which comprised of plot of 5327 sq. yards @ Rs.9000/- per sq. yard, totaling to Rs.4,79,43,000/- and Krishna Colony construction

on plot of 627 sq. yards amounting to Rs.25,00,000/-. He noted that if at all there was construction of residential and commercial nature on the property sold by the assessee, the consideration for the same should have been specified separately. He also found that in the final sale deed dated 09.09.2011 executed in respect of the property in question, nowhere it was mentioned that there was a sale/transfer of residential construction or commercial construction as claimed by the assessee. He noted that in the property schedule, it was clearly mentioned that non-agricultural open land was being transferred. He also found from the photograph of the property shown at page nos. 28 & 29 of the sale deed that there was no residential or commercial construction and it was a clear case of transfer of non-agricultural open land by the assessee to the purchaser. At the time of hearing before us, the learned Counsel for the assessee has relied on the old bills of Municipal Corporation as well as some electricity bills, copies of which are placed in the paper-book, to support and substantiate the case of the assessee that there was a residential bungalow constructed on the property in question sold by the assessee. A perusal of this documentary evidence, however, shows that there is nothing to show that the same were pertaining to the residential bungalow of the assessee or his family. In any case, the moot question is that whether the property in question sold by the assessee and his family members was a non-agricultural open land or there was residential and commercial construction which had also been transferred/sold to the purchaser. In this regard, we have already noted that the findings recorded by the Assessing Officer as well as by the learned CIT(A) on the basis of the relevant documentary evidences especially the banakhat and final sale deed are sufficient to show that what was transferred by the assessee was only the non-agricultural open land and there was no transfer of any residential or commercial construction. The deduction on account of cost of acquisition is to be allowed with reference

to the property sold or transferred by the assessee and since there is nothing on record to conclusively prove that the residential and commercial construction was also transferred by the assessee, we find ourselves in agreement with the authorities below that what was transferred or sold by the assessee was only the non-agricultural open land and the assessee, therefore, was not entitled for deduction on account of cost of acquisition of residential and commercial construction. Ground No.4 of the assessee's appeal is accordingly dismissed.

18. As regards the issue involved in Ground No.5 relating to the assessee's claim for deduction under Section 54 on account of investment made in residential house, it is observed that deduction of Rs.40,84,868/- under Section 54 was claimed by the assessee while computing the Long Term Capital Gain arising from the transfer of the property in question by treating the same as a residential property. The Assessing Officer, however, held that it was a case of transfer of non-agricultural open land by the assessee without there being any construction of residential house and the assessee, therefore, was not entitled for deduction under Section 54 for the investment made in the residential house but was entitled for exemption under Section 54F on proportionate basis. He accordingly allowed the claim for such exemption under Section 54F at Rs.37,72,860/- as against the claim of the assessee for exemption of Rs.40,84,868/- under Section 54 of the Act. As agreed by the learned representatives of both the sides, this issue is consequential to the issue involved in Ground no.4 of this appeal and since the same has already been decided by us against the assessee by holding that what was transferred by the assessee was the non-agricultural open land without there being any construction of residential house thereon. Following this conclusion drawn by us, we hold that the assessee is not entitled for exemption under Section 54 of the Act, but he is entitled for

exemption under Section 54F as allowed by the authorities below. Ground No.5 of the assessee's appeal is accordingly dismissed.

19. Now we take up the appeal filed by other assessee Shri Subodh Laxmanbhai Makwana being ITA No.1183/Ahd/2017 which is directed against the order of learned CIT(A)-10, Ahmedabad dated 10.02.2017. Grounds raised by the assessee in this appeal read as under:-

1. *The Ld. CIT(A) erred on facts and in law in upholding action of Assessing Officer in making addition of Rs. 1,11,64,420/- as long term capital gain.*
2. *The Ld. CIT(A) erred on facts and in law in upholding action of Assessing Officer in substituting value of property as on 01/04/1981 of his own against value determined and certified by Registered Valuer and adopted for computing long term capital gain by appellant.*
3. *The Ld. CIT(A) erred on facts and in law in upholding action of Assessing Officer in non granting deduction for indexed cost of construction holding that there was no construction on the land inspire of furnishing of all relevant information and documents. Alternatively, Ld. CIT(A) ought to have allowed indexed capital loss for the construction standing on the land.*
4. *The Ld. CIT(A) erred on facts and in law in not adjudicating ground in relation to restricting deduction u/s 54/54F.*
5. *The Ld. CIT(A) erred on facts and in law in not adjudicating ground in relation to non invoking of provisions of section 55A of the Act by the Assessing Officer while substituting value of property as on 01/04/ 1981 of his own against value determined and certified Registered Valuer for the purpose of computing long term capital gain by appellant.*

20. Ground No.1 raised by the assessee in this appeal is general in nature while Ground No.5 raised by the assessee is not pressed and argued by the learned Counsel for the assessee at the time of hearing.

21. As regards the issue raised in Ground No.2 relating to the cost of acquisition of the immovable property sold as claimed by the assessee at Rs.250/- per sq. yard being the fair market value as on 01.04.1981, it is observed that the same is similar to the one involved in Ground No.2 of the

appeal of the assessee Shri Rajendrabhai Laxmanbhai Makwana, one of the co-owners of the same property, in ITA No.3270/Ahd/2016, which has already been decided by us in the foregoing portion of this order. Since the material facts relating to this issue as involved in the case of Shri Subodhbhai Laxmanbhai Makwana are similar to the case of Shri Rajendrabhai Laxmanbhai Makwana, we follow our conclusion drawn in the case of Shri Rajendrabhai Laxmanbhai Makwana and direct the Assessing Officer to adopt the rate of Rs.250/- per sq. yard as the cost of acquisition as on 01.04.1981 being the fair market value of the property in question while computing the Long Term Capital Gain. Ground No. 2 of assessee's appeal is accordingly allowed.

22. So far as the issue raised by the assessee in Ground No.3 as to whether the property sold by the assessee was comprising of any residential or commercial construction as claimed by the assessee is concerned, we find that we have already dealt with the similar issue in Ground No.4 of the appeal of the assessee Shri Rajendrabhai Laxmanbhai Makwana, one of the co-owners of the same property, in ITA No.3270/Ahd/2016, in the foregoing portion of this order. Since the material facts relating to this issue as involved in the case of Shri Subodhbhai Laxmanbhai Makwana are similar to the case of Shri Rajendrabhai Laxmanbhai Makwana, we follow our conclusion drawn in the case of Shri Rajendrabhai Laxmanbhai Makwana and accordingly dismiss Ground No.3 raised by the assessee.

23. As regards the issue involved in Ground No.4 relating to the assessee's claim for deduction under Section 54 on account of investment made in residential house, it is observed that the same is similar to the one involved in Ground No.5 of the appeal of the assessee Shri Rajendrabhai Laxmanbhai Makwana, one of the co-owners of the same property, in ITA No.3270/Ahd/2016, which has already been decided by us in the foregoing

portion of this order. Since the material facts relating to this issue as involved in the case of Shri Subodhbhai Laxmanbhai Makwana are similar to the case of Shri Rajendrabhai Laxmanbhai Makwana, we follow our conclusion drawn in the case of Shri Rajendrabhai Laxmanbhai Makwana and hold that the assessee is not entitled for exemption under Section 54 of the Act, but is entitled for exemption under Section 54F of the Act. Ground No.4 of the assessee's appeal is accordingly dismissed.

24. In the result, both appeals of the assesseees are partly allowed as indicated above.

Order pronounced in the open Court on 8th April, 2022 at Ahmedabad.

Sd/-

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 08/04/2022

SR

आदेश की प्रतिलिपि अद्येषित/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 प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad