

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1493/AHD/2019  
निर्धारण वर्ष/Asstt. Year:2016-2017

D.C.I.T. Circle-2(1)(1), Ahmedabad	Vs.	M/s. Fuji Silvertch Concrete Pvt. Ltd., 4 <sup>th</sup> Floor, House No.5, Magnet Corporate Park, Near Sola Flyover, Ahmedabad-380059.  <b>PAN: AACCF5460E</b>
------------------------------------------	-----	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>(Applicant)</b>		<b>(Respondent)</b>
--------------------	--	---------------------

Revenue by	:	Shri V.K. Singh, Sr.D.R
Assessee by	:	Shri S.N. Divatia, A.R

सुनवाई की तारीख/**Date of Hearing** : **21/07/2022**  
घोषणा की तारीख/**Date of Pronouncement**: **27/07/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income (Appeals)-2, Ahmedabad dated 15/07/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The only issue raised by the assessee is that the Ld.CIT(A) erred in deleting the addition made by the AO for Rs. 3,77,81,713/- as unexplained investment u/s 69B of the Act.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of Reinforced Cement Concrete Product. The assessee in the year under consideration has purchased two properties being lands at the value which was less than the circle value as provided under the provision of section 50C of the Act. The difference between the purchase value and the jantri value with respect to both the properties stands at Rs.3,77,81,713/-. Accordingly, the AO was of the view that the assessee has made investment in the properties, the source of which has not been explained by the assessee.

4. Accordingly, the AO treated such difference as unexplained money under the provision of section 69B of the Act and added the sum of Rs. 3,77,81,713/- to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A who deleted the addition made by the AO by observing as under.

*2.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The appellant has purchased land al" Survey No.345/1, 2 at Bagodara for Rs.1,42,50,000/- and land at Survey No.346 at Bagodara for Rs.2,22,54,000/-. The jantri value of the above property was Rs.3,49,28,571/- and Rs.3,93,57,142A respectively. The Assessing Officer in the assessment order has made the addition of Rs.3,77,81,713/- being the difference between jantri value and the agreement value u/s. 69B of the I. T. Act, 1961. The Assessing Officer has made the addition on the ground that the price paid for acquiring the lands are quite below the jantri value and concluded that amount expended on making such investment exceeded the amount recorded in the books of account.*

*2.4. The appellant I.as contended that it has paid consideration for the land as per the purchase deed and there is no evidence that it has paid anything more than what is stated in the purchase deed, and therefore, addition cannot be made u/s. 69B of the I. T. Act, 1961. Appellant further submitted that the Assessing Officer has made the addition of difference, of jantri value and sale consideration as per Section 50C which is not applicable in the case of purchaser as held by Honourable Gujarat High Court in the case of CT Vs. Sarjan Realities Ltd. [40 Taxmann.com 398].*

*2.5. It is seen that Assessing Officer has made the addition only on the ground that purchase value of the lands were less than the jantri value. Assessing Officer has not brought*

*any material on record to indicate that appellant has paid more than what is mentioned in the purchase agreement. The Income Tax Act has been amended by Finance Act, 2017 by introduction of section 56(ii) (x) as per which, if any person receives an immovable property for a consideration which is less than stamp value of the property, such consideration shall be taxable as income in the hands of buyer and chargeable under the head income from other sources. The section is applicable w.e.f. 01/04/2017. The Assessing Officer has invoked section 69B of the Act for making addition of difference between market value and purchase consideration in the line of section 50C which is not permissible as decided by Honourable Gujarat High Court in the case of CIT Vs. Sarjan Realities Pvt. Ltd. as under:-*

*"7. Clearly thus, section 50C of the Act by a deeming fiction substitutes the consideration received on sale of a capital asset by stamp duty valuation. Such deeming fiction, however, is applicable only in case of a seller for the purpose of section 48 of the Act.*

*8. In the circumstances, the Tribunal committed no error in continuing the view taken by the CIT (Appeals) that the Assessing Officer has wrongly applied the stamp duty valuation for the purpose of ascertaining the actual consideration expended by the seller of the land." 2.6. In view of the above, the addition made by the AO is not sustainable in the eyes of law and is **deleted**, the ground of appeal is accordingly **allowed**.*

6. Being aggrieved by the order of the learned CIT-A the Revenue is in appeal before us.

7. Both the Ld. DR and Ld. AR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the Hon'ble Gujarat High Court in the case of Pr. CIT. vs Om Sai Metals in Tax Appeal No. 440 of 2016 involving the identical facts and circumstances has decided the issue in favour of the assessee. The relevant extra of the order is reproduced as under:

*Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 30.11.2015 raising the following question of law for our consideration:*

*"(A) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in upholding the decision of CIT(A), who deleted the addition made by the AO under section 69B of the Act without appreciating the evidences gathered by the AO in form of comparable sales/purchase instances of similar locality and commercial value of land in question ?"*

*2. The issue pertains to addition made by the Assessing Officer with the aid of section 69B of the Income Tax Act relating to the purchase of land by the assessee. The Tribunal, while upholding the deletion made by the CIT(Appeals) made the following observations:*

*"7. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition made under section 69B of the*

*Act. It is n undisputed fact that Assessee has purchased land and it is not a case where Assessee has sold the land. We find that learned CIT(A) after considering the submissions of the Assessor has given u finding that provisions of Section 50C of the Act are not applicable to the present case in view of the fact Lhat Assessee is purchaser of the land and not the seller of the land. We further find that while deleting the addition learned CIT(A) has also noted that there is nothing on record to demonstrate that Assessee has paid a price higher than what is recorded by the Assessee in the books of accounts and further that the Sellers of the land, in their affidavits, have denied to have paid any money/consideration over and above the amount shown in the sale deed. Before us, nothing has been placed by the Revenue to demonstrate any fallacy in the findings of learned C1T(A), In view of the aforesaid facts, we find no reason to interfere with the order of learned CIT(A) and thus the grounds raised by the Revenue are dismissed."*

*3. It can thus be seen that CIT (Appeals) and the Tribunal concurrently came to the factual finding that there was no evidence to show that the assessee having paid any higher consideration over and above that reflected in the sale deed. No question of law arises. Tax Appeal is dismissed.*

8.1 Respectfully following the order of the Hon'ble Jurisdictional High Court as discussed above, we do not find any reason to interfere in the findings of the Ld.CIT(A). Accordingly, we uphold that the order of the Ld. CIT(A). Hence, the ground of appeal of the revenue is hereby dismissed.

9. In the result, the appeal filed by the Revenue is **dismissed**.

**Order pronounced in the Court on 27/07/2022 at Ahmedabad.**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**(True Copy)**

Ahmedabad; Dated 27/07/2022  
*Manish*