

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1893/Ahd/2019  
Assessment Year 2012-13**

Shri Babubhai Shantilal Solanki 189, Prajapavas, Tota Gam, Daskroi, Ahmedabad PAN No:APKPS8932C (Appellant)	Vs	The Income Tax Officer, Ward-7(1)(1), Ahmedabad (Respondent)
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**Appellant by : Shri Sulabh Padshah, A.R.  
Respondent by : Shri Dileep Kumar, Sr.D.R.**

Date of hearing : 19-07-2022  
Date of pronouncement : 03-08-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

The present appeal has been filed by the Assessee against the order dated 31.10.2019 passed by the Commissioner of Income Tax (Appeals)-6, Ahmedabad, as against the Assessment order passed under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The brief facts of the case is that the assessee is an individual and a pensioner. The assessee along with other four co-owners sold their property by entering into an Agreement of Sale on 03.10.2012 fixing the sale consideration of Rs. 4,50,00,000/- and received advance of Rs. 51,00,000/-. Thereafter Sale Deed was executed on 30.05.2011. The assessee filed its Return of Income for the Assessment Year 2012-13 on 21.03.2014 admitting the capital gain on his share of income of Rs. 90,00,000/- as one of the co-owner. Assessment order u/s. 143(3) was passed on 24.03.2015 making an addition of Rs. 40,40,225/- by invoking provisions of Section 55A and denying deduction claimed u/s. 54F of the Act. On filing appeal against this assessment order, the Ld. CIT(A) granted the deduction u/s. 54F of the Act. However Ld. CIT(A) confirmed the addition made u/s. 55A of the Act. Further appeal by the assessee before this Tribunal, the addition of Rs. 40,40,225 made u/s. 55A was deleted by the Tribunal vide order dated 27.06.2019 in ITA No. 727/Ahd/2016 and allowed the appeal in favour of the assessee.

2.1. In the meantime, Ld. PCIT by invoking Revision proceedings u/s. 263 of the Act passed an order dated 03.10.2016 directing the Assessing Officer to examine the sale of land, invoking the provisions of Section 50C of the Act. Accordingly, the Assessing Officer passed assessment order u/s. 143(3) r.w.s. 263 making an addition of Rs. 52,73,470/- by invoking the provisions of Section 50C of the Act. That is the sale consideration as shown in the sale deed of Rs. 4,50,00,000/-, however, Jantri value of the property as

per stamp valuation authority is of Rs. 7,13,67,350/-. Thus the difference of Rs. 52,73,470/- being 1/5<sup>th</sup> share of the assessee is added as the assessee's income. The assessee challenged this assessment order before the Ld. CIT(A), which the Ld. CIT(A) has confirmed the addition made by the Assessing Officer which is subject matter of appeal before us.

2.2. The Grounds of Appeal raised by the Assessee reads as under:

1. *The Id. Commissioner of Income Tax (Appeals) has grossly erred in law and on facts of the case in confirming the action of the Id. AO in making an addition of Rs.52,73,470/- u/s 50C of the Act.*
2. *Both the Id. Authorities have failed to appreciate that on the facts and circumstances of the case the Jantri Rate of the impugned property ought to have been taken as the Jantri Rate as applicable on the date of Agreement to Sale and that too also as applicable to Agriculture Land. Under the circumstances of the case, no addition could have been made.*
3. *Both the Id. Authorities have erred in law and on facts in not properly appreciating and considering various submissions, evidences and supporting placed on record during the course of the assessment proceedings and not properly appreciating various facts and laws in its proper perspective.*
4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s. 234A/B/C/D of the Act*

3. The Id. Counsel Shri Sulabh Padshah appearing for the assessee submitted before us. The brief notes of the above case as well as Paper Book running into 12 pages wherein copies of the assessment order dated 13.12.2019 passed u/s. 143(3) r.w.s. 147 of the Act in the case of other co-owners namely Smt. Hiraben Shantilal and Smt. Indiraben Shantilal. Wherein the returned income by the concerned assessee's of Rs. 1,10,090/- were being

accepted and the above reassessment order have been passed. In fact, the above reassessment were reopened for escapement of income to Rs. 52,73,470/- by invoking the provisions of Section 50C of the Act. However, the Assessing Officer satisfied with the explanation of the assessee and completed the assessment on the returned income of Rs. 1,10,090/-. Thus no additions have been made as against the returned income.

3.1. In assessee's case, the assessment order was revised u/s. 263 to invoke the provisions of Section 50C of the Act and to bring to tax, the differential amount of Rs. 52,73,470/- as per Section 50C of the Act. The Ld. Counsel further submitted that as per second proviso to Section 50C of the Act, the sale consideration of Rs. 4,50,00,000/- as admitted by the assessee in the agreement sale dated 03.12.2010 should be adopted for the purposes of capital gain and not the Jantri value of Rs. 7,13,67,350/- at the time of execution of the sale deed on 30.05.2011.

3.2. In support of the same, the assessee relied upon by the Co-ordinate Bench judgment in the case of Dharamshibhai Sonani Vs. ACIT, (2016) 75 taxmann.com 141 (Ahd) held as follows:

*"9. So far as the amendment to Section 50C being retrospective in effect is concerned, there is no doubt about the legal position. I hold the provisos to Section 50C being effective from 1st April 2003. This is precisely what the learned counsel has prayed for. In his detailed written submissions, he has made out of a strong case for the amendment to Section 50C being treated as retrospective and with effect from 1st April 2003. The plea of the assessee is indeed well taken and deserves acceptance. What follows is this. The matter will now go back to the Assessing Officer. In case he finds that a registered agreement to sell, as claimed by the assessee, was actually executed on 29.6.2005 and the partial sale*

*consideration was received through banking channels, the Assessing Officer, so far as computation of capital gains is concerned, will adopt stamp duty valuation, as on 29.6.2005, of the property sold as it existed at that point of time. In case the assessee is not content with this value being adopted under section 50C, he will be at liberty to seek the matter being referred to the DVO for valuation, again as on 29.6.2005, of the said property. As a corollary thereto, the subsequent developments in respect of the property sold (e.g. the conversion of use of land) are to be ignored. It is on this basis that the capital gains will be recomputed. With these directions, the matter stands restored to the file of the Assessing Officer for adjudication de novo, after giving an opportunity of hearing to the assessee and by way of a speaking order. I order so."*

3.3. Ld. Counsel further submitted as can be seen from the other two co-owners namely Smt. Hiraben Shantilal and Smt. Indiraben Shantilal cases. Therefore, the assessing officer has not invoked Section 50C of the Act and accepted the returned income filed by the assessee. The above reassessment has attained finality and not a subject matter of Revision by the ld. PCIT. Thus, the Ld. PCIT before verification of other co-owners cases as initiated the u/s. 263 proceedings in the present assessee's case which is against the principle of equity of law as enshrined in the Article 14 of the Constitution of India.

3.4. In support of the same, the assessee relied upon the Hon'ble Madras High Court judgment in the case of CIT vs. Kumarani Smt. Meenakshi Achi reported in 158 Taxmann.com 4 (MDS); Sangram J Patel vs. DCIT in ITA No. 377/Ahd/2018 order dated 25.10.2021 and also relied by the Co-ordinate Bench in the case of Rajeshkumar Shantilal Patel vs. ITO reported in 127 taxmann.com 342 ITAT Surat Bench.

4. Per contra, the Ld. D.R. appearing for the Revenue supported the order passed by the lower authorities and pleaded that the same be upheld and no interference is called for and thereby requested to dismiss the assessee's appeal.

5. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. It is seen from the sale deed executed on 30.05.2011, the entire consideration were being made through cheque payments. However, as it can be seen from the other co-owners assessment orders, the Income Tax Department has accepted the returned income filed by the respective assessee and has not adopted section 50C valuation for the other co-owners namely Smt. Hiraben Shantilal and Smt. Indiraben Shantilal as can be seen from the reassessment orders passed u/s. 143(3) r.w.s. 147 dated 30.12.2019. There cannot be two different yardsticks for the same set of sale transaction made by five co-owners. In this connection, we draw support from Rulings of the Hon'ble Madras High Court in the case of Kumarani Smt. Meenakshi Achi (supra) where it has been held as follows:

*"4.2 That apart, the Tribunal, while passing the order under appeal, had also taken into consideration the order of the Commissioner of Income-tax initiated under section 263 of the Income-tax Act, in and by which, the proposal to revise the assessment in the case of other co-owner was dropped, finding that there was no justification to reject the value adopted by the assessee. The Tribunal, in the light of the decision in Jaswant Rai v. CWT [1977] 107 ITR 477 (Punj. & Har.), held that differential treatment cannot be met out to another co-owner while making the assessment of the same property or while valuing the same property.*

*4.3 The learned counsel for the revenue is not in a position to satisfy us, as to how the Commissioner of Income-tax dropped the proceedings initiated under*

section 263 of the Income-tax Act qua the co-owner, who had also adopted the same value for the property as the petitioner herein.

5. It is trite that if during the same assessment year the same quantity of wealth in possession of one co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities sanctioned, it would militate against the principle of equality of law as enshrined in article 14 of the Constitution, vide Jaswant Rai v. CWT [1977] 107 ITR 477 (Punj. & Har.).

5.1. Similarly, Co-ordinate Bench of this Tribunal in the case of Shri Sangram J. Patel Vs. DCIT (supra) has held as follows:

*“12.4 It is not also out of place to mention that the assessee was the co-owner in the property along with his brother. The claim of the assessee's brother by the same AO was accepted and the deduction/exemption was allowed for the investment made by the co-owner with M/s Sharnam builders for the purchase of the property. In such a situation, we are of the view that the AO was to maintain the consistency. In simple words, the AO cannot reject the claim of the assessee whereas in the case of the brother of the assessee in the identical facts and circumstances, the same was accepted. Accordingly on this count, we are not convinced with the finding of the authorities below. Hence, we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is partly allowed for the statistical purposes.”*

5.2. Another Co-ordinate Bench of the Tribunal in the case of Rajeshkumar Shantilal Patel (supra) held as follows:

*“14. Considering the aforesaid factual and legal discussion, we accept the contention of Id. AR for the assessee that once, the similar STCG offered by the co-owner has been accepted by the revenue, and the assessee is also entitled for similar relief. We find convincing force in the submissions learned AR for the assessee. Hence, the appeal of the assessee is allowed. So far as the objection of learned DR for the Revenue is that the case of co-owner of Shri Dipakbhai Dalpatbhai Rana, no scrutiny assessment was initiated, is concern, we find that this fact was brought by assessee at the earliest possible action. The Revenue has not taken any action for reopening the case of co-owner and thereby accepted the similar STCG on same transaction, therefore, in our view, the assessee cannot*

be treated indifferently for similar transaction. Thus, the objection raised by the learned DR for the revenue is not acceptable to us."

6. Following the above judicial precedents, we have no hesitation in holding that different treatments cannot be given on the same set of facts in respect of different co-owners of a common piece of land which are subjected to capital gains. If such action on the part of Revision Authority is approved, it would militate against the principle of equality of law as enshrined in the Article 14 of the Constitution of India. Further, it is seen that the Id.CIT has not taken any steps for reopening the case of other co-owners viz. Smt. Hiraben Shantilal and Smt. Indiraben Shantilal and thereby accepted similar long term capital gain and on the said transaction. Therefore, in our considered view, the assessee cannot be treated differently for similar transaction.

6.1. On this ground, the assessment order passed u/s. 143(3) r.w.s. 263 is hereby quashed.

7. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 03-08-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 03/08/2022**

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

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue