

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.345/SRT/2018

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Physical Court Hearing)

Smt. Raginiben Devendrabhai Pandya E-26, Shantivan Society-1, Kaliyawad, Navsari	Vs.	Income Tax Officer, Ward-4, Rangpuja Building, Swapnalok Complex, Nr. Kaliawadi Bridge, Junathana, Navsari-396445
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BDXPP 0899 P		
(Assessee)		(Respondent)

Assessee by : None

Respondent by : Shri Vinod Kumar– Sr.DR

सुनवाईकी तारीख/ Date of Hearing : 28/06/2022

घोषणाकी तारीख/Date of Pronouncement : 29/08/2022

आदेश / ORDER

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

Captioned appeal filed by the assessee, pertaining to assessment year 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-Valsad [‘Ld. CIT(A)’ for short] dated 06.12.2017, which in turn arises out of an assessment order passed by the Assessing Officer (‘AO’ for short) u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 27.12.2016.

2. Grounds of appeal raised by assessee are as follows:-

“1. Reference to Departmental Valuation Officer (DVO) u/s 55A(a) of the Income-Tax Act, 1961:

As per Ld. AO the Fair Market Value as on 01-04-1981 is Rs.8/Sq. Mt. (supported by Sale Instances) whereas as per assessee it is Rs.20/- Sq.Mt. Section.55A(a) of Income Tax Act before Amendment on 01-07-2012 clearly says that if Fair Market Value is more than Value as per assessee than only mater can be referred to DVO. The Ld. CIT(Appeal) has also adopted the Fair Market Value given by DVO which is also not proper as reference to DVO in itself is against the Sec.55A(a) not according to law and therefore liable to be quashed.

2. Non-Applicability of Section 50C:

The Ld. AO has not been justified in making the addition u/s 50C of the Act without considering the facts of the case. Section 50C is applicable only to Capital Assets for limited purposes of calculation of full value of consideration received / accruing as a result of transfer. The Ld. AO is taxing the sale of Land which is already sold and taxed in 1980 to 1985 and in 207-08 and again in 2012-13 and thus taxing the income on sale of same land which is double taxation. The Ld. AO can at the most tax incremental revenue received as business income not as capital gain u/s 50C of the Income Tax Act.

3. The assessee prays to your honor to either quash the entire proceeding or remand back the case to the Ld. AO for fresh consideration.”

3. Notice of hearing of this appeal was sent to the assessee at the address given by the assessee in Form No.36. The said notice has not been returned unserved. This appeal was listed for hearing before this Tribunal on several time. Today i.e. on 28.06.2022 when the case was called for hearing, none appeared on behalf of the assessee nor any request for adjournment was made. It means that assessee is not interested in prosecuting this appeal. Therefore, we have heard Id DR for the Revenue and perused the material available on record.

4. The relevant material facts, as culled out from the material on record, are as follows. The Assessing Officer had computed long term capital gain as per provision of Section 50C of the Act whereby the sale consideration of the land was taken at Rs.10,90,75,456/- on the basis of stamp duty valuation of the land on the date of sale. Further, the AO has taken fair market value of the land as on 01.04.1981 (for cost of acquisition) at Rs. 8 per sq.mtr. on the basis of sale instances of similar property sold in 1981. Based on the assessee's request at the time of assessment proceedings, reference was also made to the DVO u/s 50C(2) of the Act. However, the DVO report was not received till the date of passing of assessment order. Therefore, AO made addition to the tune of Rs.1,78,90,886/-.

5. In the appellate proceedings, the AO has forwarded DVO report vide letter dated 24.08.2017 and assessee has also filed copy of DVO report. As per the DVO report, the fair market value of the land sold as on 14.05.2012 is Rs.4,02,22,000/- as against deemed sale consideration u/s 50C of the Act at Rs.10,90,75,456/-. The DVO has also stated that the fair market value of land as

on 01.04.1981 @ Rs. 20 per sq.mtr. declared by the assessee is fair and reasonable. As per the DVO report, the objections on dispute related to title of the said land was already considered before arriving at fair market value for sale consideration of Rs.4,02,22,000/-. The Id CIT(A) observed that assessee's contention of sale considerations being only Rs.32,00,051/- due to disputes in the legal title to the said land should not be considered because the DVO's report has taken into account all these disputes and objections of the assessee. The Id CIT(A) also observed that assessee's contention of fair market value of the land at Rs.32,00,051/- is also not acceptable in view of the fact that the purchaser has paid stamp duty on the said land transactions totaling to Rs.53,45,000/-. It is highly improbable that someone will purchase property of Rs.32,00,051/- by paying stamp duty of Rs.53,45,000/-. This further gives credence to the valuation by the DVO being based on realistic value of the land and embedded dispute to the title. Hence, assessee's contention of accepting sale value of land at Rs.32,00,051/- was rejected by Id. CIT(A). In view of these facts and circumstances, the assessee's capital gain was worked out by Ld. CIT(A) as follows:

<i>1/6th of sale consideration of Rs.4,02,22,000/-</i>	<i>Rs.67,03,667/-</i>
<i>Less: cost of acquisition (as taken by the Assessee in the computation)</i>	<i>Rs. 4,84,022/-</i>
	<i>Rs.62,19,645/-</i>

Thus, Ld CIT(A) worked out net long term capital gain taxable in the hands of assessee at Rs.62,19,645/-. As assessee had already shown long term capital gain of Rs.49,319/-, the addition of long term capital gain of Rs.61,70,326/- (Rs.62,19,645 – Rs.49,319/-) was held by the Id CIT(A). We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order passed by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A), his order on this addition is, therefore, upheld and the grounds of appeal of the assessee are dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced on 29/08/2022 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Surat/दिनांक/ Date:29/08/2022

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat