

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 668/Ahd/2019  
Assessment Year 2013-14**

Dineshkumar Budhabhai Chauhan 2383, Makarba Vas, Dhukdo Kuvo, Behind Karnavati Club, Ahmedabad PAN: AHAPC3086D  (Appellant)	Vs	The ITO, Ward-4(3)(1), Ahmedabad (Respondent)
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**Appellant by : Shri Rushin Patel, A.R.  
Respondent by : Shri Rajdeep Singh, Sr.D.R.**

Date of hearing : 12-10-2022  
Date of pronouncement : 19-10-2022

**आदेश/ORDER**

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

The present appeal has been filed by the Assessee against the order dated 18.08.2018 passed by the Commissioner of Income Tax (Appeals)-7, Ahmedabad, as against the Assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The Grounds of Appeal raised by the Assessee are as follows:

*“1. The ld.CIT(A) erred in law and on facts in confirming the addition of Rs.25,55,279/- u/s. 50C of the I.T. Act 61 without appreciating the law and facts of the case properly.*

*2. The ld.CIT(A) erred in law and on facts in denying the cost of improvement of Rs.4,59,697/- while computing the capital gain on sale of impugned land without appreciating the law and facts of the case in proper perspective.”*

3. At the outset, Ld. Counsel for the assessee submitted that the assessee is one of the co-owner of the agricultural land. In respect of the five co-owners, the very same Bench of this Tribunal in ITA Nos. 490/Ahd/2019 to 494/Ahd/2019 in the case of Shri Baldevji Motiji Thakore and four Ors. vide order dated 16.09.2022 set aside the matter back to the file of the Assessing Officer with direction to compute the capital gain on sale of the property. The relevant portion of the judgment is as follows:

*8.7. In the case of K.P. Varghese, supra the Hon'ble Apex Court contemplated a situation, by way of an example, where the completion of sale took place after a couple of years after the date of agreement. In this connection it is pertinent to extract the relevant observations of the Hon'ble Supreme Court, at the cost of repetition, as the said example contemplated by the Hon'ble Apex Court is squarely applicable to the facts of the present case.*

*“There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement - and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement - the market price shoots up with the result that the market price prevailing on the date of sale exceeds the agreed price, at which the property is sold, by more than 15% of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would find in a large*

*number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no under-statement of consideration in respect of the transfer and the transaction is perfectly honest and bonafide and, in fact/ in fulfillment of a contractual obligation, the assessee, who has sold the property, should be liable to pay tax on capital gains which have not accrued or arisen to him? It would indeed be most harsh and inequitable to tax the assessee on income, which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carried out such a contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income, which has neither arisen to the assessee nor has been received by him."*

*8.8. The Hon'ble Apex court in the case of K.P. Verghese, supra has held that the provisions of section 52(2) that was existing at the relevant point of time was not applicable to a honest and bona fide transaction where the consideration received by the assessee was correctly declared or disclosed by him and there was no concealment or suppression of the consideration.*

*8.9. Thus the bonafideness of the transaction is to be seen in the assessee's case. The assessee entered into the Agreement of Sale on 31/12/2010 and received Rs. 16.34 lacs by two cheques in March 2011 and balance amount of Rs. 2.50 lacs on 21/09/2011, thus the entire sale consideration was received 14 months before execution of the Sale Deed. It is further seen more than 99% of the payment was received by cheque mode by the assessee. Thus the genuineness of the transaction namely the sale consideration as per the date Agreement of Sale namely Rs. 7,000/- are substantially paid to the sellers. However when the same piece and nature of land when registered as Sale Deed, 22 months thereafter then prevailing Jantri value of Rs. 16,500/- cannot be applied in this case. Taking overall circumstances of the case, in our considered opinion, it is a fit case to set aside the matter back to the file of the*

*AO with direction to compute capital gain on sale of the property by applying amended proviso to section 50C of the Act and recompute the capital gain.*

*8.10. Similarly, the assessee having produced details of expenses incurred in the construction of house for availing benefit under section 54F of the Act, the ld.AO is directed to consider supporting evidences filed by the assessee and also examine the evidences for claiming improvement expenses incurred by the assessee, while computing capital gains and granting exemption u/s. 54F of the Act. With these directions, we allow grounds of appeal of the assessee for statistical purpose. Thus, the appeal of the assessee is allowed for statistical purpose.*

*9. Since the grounds raised in other appeals in ITA Nos.491 to 494/Ahd/2019 of the other assessees are identical except variation in the quantum, our findings and conclusion in the case of Shri Baldevji Motiji Thakore in ITA No.490/Ahd/2019 shall apply mutatis mutandis in other assessees' cases (being the other co-owners of the land). With this observation, we allow all the appeals of the assessee for statistical purpose.*

4. The Ld. D.R. appearing for the Revenue has no serious objection in setting aside the case following the order passed in ITA No. 490/AHD/2019 (cited supra) being identical facts and the assessee also one of the co-owner.

5. We have given our thoughtful consideration and we find that the assessee is one of the co-owner along with other eight co-owners. The facts and disallowances are identical in nature as in the case of Shri Baldevji Motiji Thakore and therefore we set aside the matter back to the file of the Assessing Officer with direction to compute the capital gain on sale of the property by applying amended proviso to Section 50C of the Act and recomputed the capital gain. The A.O. also further directed to examine the evidences of claiming

the cost of improvement incurred by the assessee while computing the capital gains and grant exemption u/s. 54F of the Act in accordance with law. With these directions, the Grounds of Appeal of the assessee is allowed.

6. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 19 -10-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 19/10/2022**

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

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद