

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

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

आयकर अपील सं./ITA No. 98/AHD/2021  
निर्धारण वर्ष/Asstt. Year:2011-2012

Rasikbhai Ramdas Patel, Lal Vas, At. Thol, Tal. kadi, Dist. Mehsana-382715. Gujarat.  <b>PAN: ABNPP2522Q</b>	Vs.	The Principal Commissioner of Income-Tax-3, Ahmedabad
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Tushar Hemani, Sr. Advocate with Shri Parimalsinh Parmar, A.R
Revenue by :	Shri Jamesh Kurian, CIT.D.R

सुनवाई की तारीख/**Date of Hearing** : **08/08/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **12/10/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax-3, Ahmedabad, dated 28/03/2021 arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The solitary issue raised by the assessee is that the learned PCIT erred in holding the assessment framed under section 143(3) read with section 147 of the Act as erroneous insofar as it is judicial to the interest of revenue under the provisions of section 263 of the Act.

3. The facts in brief are that the assessee in the present case is an individual and filed return of income declaring an income of ₹ 2,46,263.00 which was accepted in the assessment framed under section 143(3) read with section 147 of the Act vide order dated 18<sup>th</sup> December 2018. However, the learned PCIT on subsequent verification of the assessment records found that the assessment has been framed without considering necessary verification/ examination of certain facts. According to the learned PCIT the assessee has shown sale consideration against the transfer of immovable property registered on 18<sup>th</sup> June 2010 bearing registration No. 5912 at ₹ 27 Lacs but the same was valued for the purpose of the stamp duty at ₹ 64,46,939.00 which should have been taken as the sale consideration under the provisions of section 50C of the Act. But the AO has not done so despite undervaluation of the sale consideration by ₹ 37,46,939.00 which is an error causing prejudice to the interest of revenue.

4. Likewise, the Id. PCIT found that the assessee during the year purchased certain agricultural lands from different farmers. The assessee explained that the purchase consideration to the farmers was paid by M/s Aditya Infrastructure with whom assessee has entered into agreement to sale with respect to impugned agricultural property. The Learned PCIT found that the agricultural land can only be transferred to an agriculturist whereas M/s Aditya Infrastructure is not engaged in agricultural activity. Therefore, the agreement to sale by assessee with M/s Aditya Infrastructure for agricultural lands cannot be held legal in the eyes of law. Further, the assessee also failed to produce the evidences that the impugned land was finally transferred to M/s Aditya Infrastructure by executing the sale deed. Thus, the

assessee failed to properly explain the sources for purchase of land and the AO also did not make necessary inquiry and verification.

4.1 Thus, the learned PCIT in view of the above proposed to hold the assessment order of the AO as erroneous insofar prejudicial to the interest of Revenue.

5. The assessee in response to such show cause notice submitted that the property was sold through registered conveyance deed in the year under consideration but the same has actually been transferred in the earlier year and therefore, no cognizance can be taken of the value declared for the purpose of the stamp duty in registered sale deed under section 50C of the Act.

5.1 Besides the above, the assessee further contended that the property in dispute was an agricultural land and therefore if any income is arising on transfer, the same cannot be made subject to tax as the capital gain income from agricultural property is exempt from tax.

6. However, the learned PCIT rejected the contention of the assessee by observing that the property was registered dated 18 June 2010 and the sale consideration was received by the assessee one day prior to the date of registration i.e. 17 June 2010. Thus, it becomes evident that the property was transferred in the year under consideration. Without prejudice to the above, the learned PCIT also observed that even the property has been transferred in the earlier year i.e. financial year 2009-10 then the stamp value as applicable in financial year 2009-10 should be adopted in pursuance to the 1<sup>st</sup> proviso to section 50C of the Act.

7. The assessee has also not furnished any documentary evidence suggesting that the land in dispute was in the nature of agricultural land. Furthermore, the contention of the assessee itself is contrary to the facts available on record in the sense that the assessee himself has already offered capital gain of ₹19,000/- on the

transfer of land in dispute. Thus, the assessee on one hand is claiming that the land in dispute as agricultural land but on the other hand the assessee himself is offering income on the transfer of impugned land.

8. In view of the above the learned PCIT was of the view that the AO has not verified the applicability of the provisions of section 50C of the Act on the transfer of land in dispute and therefore the order of the AO is erroneous insofar prejudicial to the interest of revenue.

8.1 With regard to the agricultural properties purchased by the assessee for Rs. 37,44,000/- in his own name from farmers but the payment was made by M/s Aditya Infrastructure, the assessee failed to furnish evidence that the land actually was transferred to M/s Aditya Infrastructure. If the land has not been transferred, the payment made by the M/s Aditya Infrastructure to the farmers creates liability in the hand of the assessee but the assessee is silent on creation of such liability. In the subsequent year also the assessee showing the outstanding liability on account of purchase of land but reason for not repayment of such liability was not furnished. Thus, the sources of investment in agricultural land for Rs. 37,44,000/- remains unexplained and circumstances suggest unaccounted money of the assessee routed through M/s Aditya Infrastructure for making investment in land. Thus the learned PCIT was of the view that the AO has not examined the issue of source of purchase agricultural lands.

8.2 In view of the above, the learned PCIT held that the AO framed assessment without making any enquiry or inquiries which should have been made. Therefore the order of the AO is erroneous insofar prejudicial interest of the Revenue.

9. Being aggrieved by the order of the learned PCIT the assessee is in appeal before us.

10. The learned AR before us has assailed the order passed by the learned PCIT, holding the assessment framed by the AO under the provisions of section 143(3) read with section 147 of the Act, on various counts as detailed below.

• **With respect the addition proposed under section 50C of the Act**

- i. The land in dispute was actually transferred in the financial year 2009-10 corresponding to assessment year 2010-11 in pursuance to the provisions of section 153A of The Transfer of Property Act. According to the learned AR the agreement to sale was executed with respect to the transfer of agricultural land dated 06-10-2009, part consideration was received through the mode of cheque dated 12-08-2009 and 03-09-2009 and the possession was handed over to the buyer vide agreement dated 06-10-2009. Thus the conditions as specified under the provisions of section 153A of The Transfer of Property Act have been satisfied. Therefore, the date of registration of conveyance deed, though made in the financial 2010-11 corresponding to the assessment year 2011-12 does not have any relevance.
- ii. As the agreement to sale was entered in the financial year 2009-10 and part consideration was also received in the same financial year, thus the stamp value as applicable in the financial year 2009-10 should be adopted for computing the capital gain in pursuance to the proviso to section 50C of the Act. In support of his contention, the learned AR drew our attention on pages 185-194, 209-213, 216- 229 and 230-239 of the paper book which evidences that the agreement was entered dated 06-10-2009 and part consideration was received dated 12-08-2009 and 03-09-2009. All these events satisfy the provisions of the proviso to section 50C of the Act.
- iii. It was also contended that the land in dispute being agricultural land falls within the provisions of section 2(14) of the Act and therefore the same cannot be made subject to capital gain as it is not a capital asset.

iv. It was also contended that the assessee was holding the agricultural land and the agreement to sale was made for the transfer of agricultural land but after converting the same into nonagricultural land. The same was transferred after conversion by way of conveyance deed in favour to the buyer as it was not possible by the buyer to acquire the agricultural land. As such, the buyer has borne the conversion cost of agricultural land into non-agricultural land amounting to ₹ 36,50,240/- and the sum total of these 2 figures i.e. sale consideration and conversion cost works out at ₹ 63,50,240.00 which is similar to the value adopted by the learned PCIT i.e. 64,46,939.00 as stamp value for the purpose of computing the capital gain.

• **With respect to the addition in relation to unexplained investments**

i. The payment for the acquisition of 5 pieces agricultural lands was made by the M/s Aditya Infrastructure which is evident from the purchase deeds, agreement to sale, confirmation of the M/s Aditya Infrastructure and their bank statements showing the payments made to the sellers being farmers. Thus the source of making the investment was duly explained.

ii. Without prejudice to the above the learned AR further contended that once, no addition is made under the provisions of section 50C of the Act in the proceedings initiated under section 143(3) read with section 147 of the Act, the question of making any other addition in the hands of the assessee does not arise. As per the learned AR the proceedings were initiated under the provisions of section 143(3) read with section 147 of the Act on account of escapement of capital gain, but the AO has not made any addition qua such amount of capital gain, thus there was no occasion for making any other addition to the total income of the assessee which comes to the knowledge of the AO during the assessment proceedings giving rise to the escapement of income. Thus the learned PCIT cannot direct the AO to make any other addition on account of unexplained investments. As per the learned AR it

is the satisfaction of the AO for making any other addition to the total income of the assessee which comes to his knowledge during the assessment proceedings.

11. On the other hand the learned DR contended that the stamp value for the purpose of capital gain should be adopted as sale consideration in pursuance to the provisions of section 50C of the Act but the AO has nowhere made any reference to the provisions of section 50C of the Act. According to the learned DR, the AO, likewise, has also not made any verification about the source of investment made by the assessee in the properties. Thus, the assessment framed under section 143(3) read with section 147 of the Act is erroneous insofar prejudicial to the interest of revenue on account of non-verification. Hence the learned DR supported the finding of the learned PCIT.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that there are 2 issues based on which the learned PCIT concluded that the assessment has been framed under section 143(3) read with section 147 of the Act on account of non-verification of the items as discussed above.

12.1 Admittedly, the proceedings were initiated under the provisions of section 143(3) read with section 147 of the Act after recording the reasons that the assessee has transferred immovable property with registration No. 5912 dated 18 June 2004 consideration of Rs. 45,62,800/- but the assessee has not filed the return of income for the year under consideration. Thus, it was believed by the AO that the income of the assessee has escaped assessment and therefore proceedings under section 147 of the Act were initiated by issuing a show cause notice under section 148 of the Act. The assessee in response to such show cause notice declared income under the head capital gain on the transfer of the land/immovable property in dispute amounting to Rs. 19,000/- against the sale consideration of the land at ₹27 Lacs which was accepted by the AO in the assessment framed under section 143(3) read

with section 147 of the Act. In this connection, we have referred the assessment order and the notice issued by the AO during the assessment proceedings and note that there was no question raised with respect to the stamp value of the property which was to be taken as the sale consideration in pursuance to the provisions of section 50C of the Act. Thus, it appears that the order framed under section 143(3) read with section 147 of the Act is erroneous insofar as it is prejudicial to the interest of revenue on account of non-verification so far as the applicability of the provisions of section 50C of the Act.

12.2 At this juncture, it is also important to note that the stamp value has been determined at ₹ 64,46,939.00 as applicable in the year under consideration i.e. date of registration of conveyance deed. Thus as per the provisions of section 50C of the Act, such value should be adopted for the purpose of calculating the capital gain. However, such value is subject to certain exception. One of the exceptions as provided in the proviso to section 50C of the Act is that the value for the purpose of Stamp duty as applicable on the date of agreement shall be taken if there was part consideration received by the seller through the account by cheque. In the present case, the agreement was entered dated 06-10-2009 and the part consideration was received dated 12-08-2009 and 03-09-2009 both the dates following in the financial year 2009-10, thus we are of the view that the stamp value as applicable in the financial year 2010-11 should be taken for the purpose of computing the capital gain under the provisions of section 50C of the Act. According to the learned AR the stamp value as on the date of agreement is at ₹ 27 Lacs only at which the property in dispute has been transferred. Thus, the question of making any addition under the provisions of section 50C of the Act does not arise. Be that as it may be, the AO will verify the stamp duty value as applicable as on the date of agreement i.e. 06-10-2009 which would be adopted for the purpose of capital gain under the provisions of section 50C of the Act.

12.3 As the assessee succeeds on the contentions as discussed above, we are not inclined to deal with other contentions raised by the learned AR at the time of hearing.

12.4 Now coming to the investment made by the assessee in the properties, in this regard, we note that the proceedings under section 147 of the Act were initiated on account of escapement of income under the head capital gain. But the AO did not make any addition qua to the capital gain in the assessment framed under section 143(3) read with section 147 of the Act. As such, there was not made any kind of addition in the assessment by the AO, therefore the income declared by the assessee in the return was accepted in the assessment framed under section 143(3) read with section 147 of the Act. At this juncture, it is only important to note that we have already given the direction to the AO to adopt the stamp value as applicable as on the date of agreement, meaning thereby, there would not be any addition on account of capital gain against the finding of the learned PCIT.

12.5 It is the settled law that once no addition has been made by the AO based on the reasons recorded for initiating the proceedings under section 147 of the Act, there cannot be any other addition to the income of the assessee in the assessment proceedings under section 147 of the Act. In holding so, we draw support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT versus Mohammed Juned Dadani reported in 355 ITR 172 wherein it was held as under:

*30. We may also approach the question from a slightly different angle. It is not in dispute that once an assessment is reopened by a valid exercise of jurisdiction under Section 147 of the Act, it is open for the Assessing Officer to assess or reassess any income which had escaped assessment which comes to his light during the course of his assessment proceedings which was not mentioned in the reason for issuing notice under Section 148 of the Act. In a notice for reassessment which has been issued beyond a period of four years from the end of relevant assessment year, the condition that income chargeable to tax has escaped assessment for the reason of the failure on the part of the assessee to disclose truly and fully all material facts for the purpose of assessment must also be established unless ofcourse some other ground viz. non-filing of the return at all etc. is available to the Assessing Officer. If such non-disclosure of material facts is established with respect to the reason recorded for issuing notice for reopening the assessment, it would be open for the Assessing Officer to thereafter even assess other income which might have escaped assessment but which may not necessarily satisfy the requirement of non-disclosure of true and full material facts. If in such a situation, the stand of the revenue is accepted, a very*

*incongruent situation would come about if ultimately the Assessing Officer were to drop the ground on which notice for reopening had been issued but to chase some other grounds not so mentioned for issuance of the notice. In such a situation, even if a case where notice for reopening has been issued beyond a period of four years, the assessment would continue even though on all the grounds on which the additions are being made, there was no failure on the part of the assessee to disclose true and full material facts. In such a situation an important requirement of failure on part of the assessee to disclose truly and fully all material facts would be totally circumvented.*

12.6 Now the controversy arises whether the learned PCIT can hold the order of the AO as erroneous insofar prejudicial to the interest of revenue on account of non-verification of other items other than the items recorded in the reasons. The answer stands no. It is for the reason that it is the satisfaction of the AO to enlarge the scope of the proceedings under section 147 of the Act by including other items of income which comes to his notice with respect to which the income has escaped assessment. As such, the satisfaction of the learned the learned PCIT is not necessary for including other items on the reasoning that no verification was carried out. Accordingly, we hold that the finding of the learned PCIT on this count as well is not sustainable. Hence the ground of appeal of the assessee is allowed.

13. In the result the appeal filed by the assessee is **allowed**.

**Order pronounced in the Court on 12/10/2022 at Ahmedabad.**

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

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

Ahmedabad; Dated 12/10/2022  
*Manish*

**(True Copy)**

12/10/2022