

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.485/Ahd/2020  
Assessment Year: 2016-17**

Vimlaben Gunvantrai Patel,  
14, Avalon Crest,  
Opp. Shashwat Bungalow,  
Rajpath-Rangoli Road,  
Bodakdev,  
Ahmedabad.  
[PAN – AEPPP 6308 D]  
(Appellant)

vs. Income Tax Officer,  
Ward – 3(3)(5), Ahmedabad.

(Respondent)

Assessee by : Shri Manish J. Shah, AR &  
Shri Rushin Patel, AR

Respondent by : Shri Vidhyut Trivedi, Sr. DR

Date of hearing : 09.11.2022

Date of pronouncement : 18.11.2022

**ORDER**

This appeal is filed by the Assessee against the order dated 27.08.2020 passed by the CIT(A)-3, Ahmedabad for the Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal :-

“1. *The Ld. CIT(A) erred in law and on facts in confirming addition of Rs.22,90,197/- made by Assessing Officer by invoking provision of Section 56(2)(viii)(b) of the I.T. Act, 1961 being difference between value of property as per the valuation made by DVO and value of property as shown in Purchase Deed.*”

3. The assessee filed return of income on 04.08.2016 declaring total income of Rs.3,76,920/-. The Assessing Officer observed that during the year under consideration the assessee purchased property amounting to Rs.2,68,32,250/- in which the assessee's share (83.50%) is of Rs.2,24,04,928/-. The Assessing Officer observed that as per the valuation report received from the DVO the assessee's share

at 83.50% in the said property worked out to Rs.2,46,95,125/-. Therefore, the Assessing Officer made addition under Section 56(2) of the Income Tax Act, 1961 of Rs.22,90,197/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is an individual and filed the detailed objection with a request to determine the fair market value of the property through Departmental Valuation Officer within the provisions of Section 50C(2) read with Section 155(15) of the Act. The DVO determined the fair market value of the property under show cause at Rs.2,95,75,000/- as against the stamp duty rate of Rs.3,31,46,940/-. The Ld. AR submitted that the assessee was working as partner in various firms from which interest on capital, remuneration and share of profit from said firms are earned forming part of income from business and profession. As part of the business strategy the assessee acquired the land as stock in trade which ultimately be transferred to partnership firm for further development. The Ld. AR submitted that the Assessing Officer did not deny the fact that the assessee is a partnership firm engaged in real estate business and having income from property/interest, remuneration from such firms. Since the assessee had purchased the property, provisions of Section (2) of Section 56 of the Act are not applicable as per the submissions of the Ld. AR. The Ld. AR further submitted that valuation determined for the purpose of Section 56(2) by the DVO of Rs.2,95,75,000/- and the actual purchase consideration of property under appeal being made at Rs.2,68,32,250/-, the difference of Rs.27,42,750/- was being less than 10% of the fair market value and hence the said addition made be deleted.

6. Ld. DR submitted that the CIT(A) has rightly confirmed the order as the difference in fair market value and purchase price being less than 10% no exception for application of Section 56(2)(vii)(b) read with section 50C(3) of the Act. Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the fair market value and the purchase price the difference between both the price is less than 10%. As per the contentions of the assessee, the assessee is a co-sharer at 83.50% and is a working partner in the partnership firm which deals with real estate development. The Ld. AR at the time of hearing relied upon the decision of the Ahmedabad Tribunal in the case of Jitendra K. Sewani vs. ITO (ITA No.2252/Ahd/2017, order dated 19.10.2022) wherein the Tribunal has held that when the difference between the sale value adopted by the DVO and that of the assessee in respect of properties under consideration is less than 15%, then the sale value adopted by the assessee in its return of income may be taken into consideration for the purpose of determining the capital gain tax. The decision is applicable in the present case as well. The difference between the sale value adopted by the DVO and the fair market value is less than 10%, therefore, we restore this issue to the file of the Assessing Officer to determine the difference between the sale value adopted by the DVO and that of the assessee is less than 10% or not, if so then the same may be taken into consideration and decide accordingly. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. Appeal of the assessee is partly allowed for statistical purposes.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 18<sup>th</sup> day of November, 2022.

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 18<sup>th</sup> day of November, 2022**

**PBN/\***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*