

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

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

आयकर अपील सं./ITA No.173/SRT/2018

(निर्धारण वर्ष / Assessment Year: (2011-12)

(Virtual Court Hearing)

Mr. Arjanbhai B. Davariya (HUF) 15/D, House No.175, 4th Floor, Gotalawadi, Katargam, Surat-395004	Vs.	Dy. Commissioner of Income Tax, Circle-3(2), Aaykar Bhavan, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACHD 2459 J		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Assessee by : Shri Mehul K. Patel, Advocate
राजस्व की ओर से /Respondent by : Shri Vinod Kumar– Sr.DR

सुनवाई की तारीख/ **Date of Hearing** : **17/01/2023**

घोषणा की तारीख/**Date of Pronouncement** : **30/03/2023**

आदेश / O R D E R

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

Captioned appeal filed by the assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-3, Surat [for short 'CIT(A)'] dated 15.12.2017, 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 28.03.2016.

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

“(1) The Learned CIT(A)-3, Surat has grossly erred in facts on account of disallowance / addition in respect of following:.

- The Learned CIT(A) – 3 has confirmed addition of Rs.10,28,375/- u/s 50C of the I.T. Act, 1961 after considering DVO's Valuation Report and Jantri Rate Value but Valuation method adopted by DVO is not sacrosanct, it is an estimation. However, when DVO has adopted comparative sales valuation method without considering available Sales Instances.*

(2) Assessee has already submitted relevant evidence to prove his contention.

(3) The appellant craves leave to add, alter, amend or delete any another ground or grounds during the pendency of the appeal.”

3. The relevant material facts, as culled out from the material on record, are as follows. Assessee before us is an individual and during the assessment year under consideration, earned income from house property, long term and short term capital gains and income from other sources. From the computation of income of assessee, it was noted by the Assessing Officer that assessee has shown the long term capital gain from the sale of following immovable properties.

S.No.	Particulars of property	Amount of sale consideration	Date of sale
1	Block No.39, Bharthana, Kosad	4,99,000/- (12.5% share	24.03.2011
2	Block No.42, Bharthana, Kosad	3,99,000/- (12.5% share)	-do-

To verify the jantry/stamp value of these properties, the assessee was asked to furnish the copy of registered sale-deed of sold properties. In response to the same, the assessee submitted the copy of the same. On going through the sale deed, it was observed by the Assessing Officer that the assessee had shown the sale consideration of the above properties lower in comparison to that of jantry/stamp value of the properties taken by the Land Registrar for stamp duty purpose. The description of the property in question is as under:

Sr.No.	Description of property	Selling price	Market price as per sale deed	Difference
1	Block No.39, Bharthana, Kosad	4,99,000/-	69,00,300/- (12.5% of 5,52,02,400/-)	64,01,300/-
2	Plot No.42 Moje Dumas, Surat	3,99,000/-	27,81,900/- (12.5% of 2,22,55,200/-)	23,82,900/-
Total				87,84,200

4. Therefore, a show cause notice was issued by Assessing Officer on 18.12.2015 and duly served upon the assessee. The assessee was asked as to why the jantri/stamp value should not be taken as sale value of the said property for the purpose of computing the long term capital gain and consequently, the amount of Rs.87,84,200/- (64,01,300 + 23,82,900) should be not added to the income of assessee, applying the provisions of Section 50C of the Act.

5. In response, the assessee appeared before the Assessing Officer on 28.12.2015 and requested to refer assessee's case to valuation officer for deciding

market value for both the properties. The request had been considered by the Assessing Officer and accordingly assessee's case has been referred for valuation on 07.01.2016.

6. In view of the above, the difference amount of Rs.87,84,200/- (64,01,300 +23,82,900) was added to the total income of the assessee on account of the long term capital gain invoking the provisions of section 50C of the Act subject to the outcome of departmental valuation officer's report for adopting market value of the immovable property.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of the Assessing Officer observing as follows:

"8. I I have perused the assessment order, submission of AR, and the verbal arguments. The only issue involved here is an addition in respect of LTCG u/s 50C of the Act. The Ld Assessing Officer invoked sec. 50C and applied jantry rates for calculating LTCG, since the DVO's valuation report was not received till the date of assessment. The DVO's report has since been received and the same is placed on record. The AR is objecting to the addition made on two grounds:

- (i) The calculation of appellant's share in the sale consideration made by Ld. AO applying jantry rate is wrong.*
- (ii) The valuation made by the DVO is incorrect.*

8.2 The reason / ground no. 1

The appellant has 12.5% in the land sold. The sale consideration as per the sale deed is Rs.4.99 lakhs and Rs.3.99 lakhs and the appellant's share are Rs.62,875 and Rs.49,875 respectively. The ld Assessing Officer while applying jantry rate calculated appellant's share at Rs.69.00 lacs and Rs.27.81 lacs respectively. The AR has demonstrated that the ld Assessing Officer has mistakenly taken total value as per jantry rate as assessee's share in the property whereas assessee's share being 12.5% comes to Rs.8,62,537 and Rs.3,47,625 respectively. This

dispute is anyway resolved by the Valuation Report of the DVO. The DVO has valued the two properties as under:

Sr.No.	Description of the property	Value adopted by the DVO in each property.
1	Land at block no.39 RS No.38	Rs.63,48,000 @ 1012 per sq. mtr)
2	Land at block no. 42 RS No.40 Bharthana Kosad Road measuring 2529 sq. mtrs.	Rs.28,96,000 (@ 1145 per sq.mtr.)

As per section 50C(2) of the Act, the value assessed by the DVO or the value as per the stamp duty whichever is lesser needs to be adopted as full value of consideration for calculation of Capital Gains as per sec.48. Accordingly, the ld Assessing Officer is directed to adopt the appellant's share in the full value of consideration given in column (5) below for computing Capital Gains as per section 48 of the Act.

Sr.No.	Property	Value as per DVO	Jantry value	Assessee's share in least of the two
1	Land at Block no. 39 RS No.38 Bharthana Kosad Road, Surat	Rs.63,48,000	Rs.69,00,000	Rs.7,93,500 @ 12.5% of DVO's value being lesser
2	Land at Block no.42 RS No.40 Bharthana Kosad Road Surat	Rs.28,96,000	27,81,000	Rs.3,47,625 (@12% jantry value being lesser)

Accordingly, this ground of the appellant is allowed. The Ld. AO is directed to re-compute the capital gains.

8.3 The next objection of the AR is on the method of valuation adopted by the DVO. The AR argues that the DVO has compared 3 sale instances of which two sale instances are physically closer to appellant's land and also within 65 days of the date of sale of the appellant's land. The 3rd sale instance is slightly distant than other two and also sale was 7 months prior to the appellant's sale, so the AR insists that the first two sale instances only are to be consider. It is further seen that the first two sale instances are at the rate of around Rs.500 to600 per sq.mtr, whereas the 3rd one is at Rs.1,718 per sq. mtr. Hence, considering the 3rd sale instance, disproportionately drives up the average of value.

8.4 I have considered the arguments of AR, I find that there is some substance in them, however, I do not feel it is adequate enough to reject the valuation of the DVO. The DVO being a qualified expert has applied these 3 sale instances presumably after considering that these 3 are the most comparable sale instances. **The AR has not brought any other sale instances to say that the DVO ignored**

sales instances more favourable to the price adopted by appellant. It is further seen that, on ignoring the 3rd sale instance, the average price is reduced to Rs.550 which practically defeats the very purpose of introduction of sec. 50C. In view of the above considerations, this ground and arguments of the AR on the valuation of DVO is rejected.”

8. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.
9. At the outset, Shri Mehul K. Patel, Learned Counsel for the assessee submitted that DVO’s report is not correct and he took us through paper book page-11 and stated that the total area of land is 6273 sq.mt. and as per assessee the selling price is Rs.80 per sq.mt. however, the DVO has taken the value of the land at Rs.1012 per sq.mt, which is not a reasonable sale price. The Ld. Counsel took us through paper book page-16, wherein comparative sale instances are given, which is reproduced below:

Sr. No.	Amount (Rs)	Location	Area (sq.mt.)	Rate (Rs/m2)	Seller	Regd.No/
					Purchaser	Date
1	1,46,19,000/-	Agri.land at Block No.45, RS No.57/1A, 43, 44, Bharthana-Kosad	29,238	500	Dhanjibhai N Patel and others Jivrajibhai S Dakara	4793 07/03/2011
2	1,28,00,000/-	Agri. Land at Block No.36, RS No.36, Bharthana-Kosad	21.448	596.79	Rajeshbhai R Patel and others Bhanuben Virjibhai Babriya and others	18308 24/12/2010
3	80,00,000/-	Agri.Land at Block no.46,RS No.45, Hissa No.1, Bharthana-Kosad	4654.00	1718.95	Sukhabhai Devjibhai Ahir and others Jayantibhai Virjibhai Babaria & others	5987 22/04/2010

10. The Ld. Counsel with the help of above comparative sale instances of DVO report, argued that in case of sale instance which pertains to the land area of 4654 sq.mt., wherein the rate was adopted at Rs.1718.95 per sq.mt. which is very higher side and this cannot be applicable in case of assessee under consideration.

However, the rate mentioned in the first sale instance at Rs.500/- sq.mt. may be quite reasonable. However, again, there is a huge difference between assessee's sale price at Rs.80/- per sq.mt. and the value shown by the DVO in the first sale instance of Rs.500/- per sq.mt. The Ld. Counsel also pointed out the other factors and disadvantage of the land, such as, the land is owned by other co-owners, the plot of land is situated in between, location of the plot is very inside from the main road and seven co-owners are from different family members. These factors contribute that the sale price of land is very lower side. Therefore Ld. Counsel contended that the suitable adjustment should be made in the sale price considering the following factors:

No..		
a	Dispute amongst co-owners	12.00%
b	Land was owned by co-owners	12.50%
c	Location was inside	10.00%
d	Large size of plot	15.00%

Hence, Ld. Counsel contended that by applying the Rule of thumb, (a broadly accurate guide, based on practice rather than theory) a suitable sale amount may be fixed for this land but it should not be Rs.1012 per sq.meter, as determined by DVO.

11. On the other hand, Ld. DR for the Revenue submitted that assessee has not disclosed the sale of such land in his return of income, therefore since income was escaped assessment and hence the assessee's case was re-opened u/s 147 of the Act. Hence, assessee has a *mala fide* intention as the assessee did not want to disclose such property to pay tax, however, since the reassessment proceedings were initiated against the assessee, therefore assessee has disclosed the sale of property. The Ld. DR, on merits of the case, submitted that comparable sale price adopted by DVO is correct and assessee has not submitted any comparable sale instances from his side to dispute the comparable sale price adopted by DVO. Hence, the sale value adopted by the DVO should be considered for calculation of long term capital gains and addition made by the Assessing Officer may be upheld.

12. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In our considered view, it was wholly erroneous on the part of the Ld. DVO to determine the fair market value of property by taking one of the sale instances for 4654 sq.meter land at Rs.1718.95 per sq.meter as compared to assessee's size of land at 6273 Sq.meter, which was valued by assessee at Rs.80 per sq.meter. The other sale instances taken by the Ld.DVO were 500 and 596.79 per sq.meter. Therefore, to compute the average sale price at Rs.1012 per sq.meter, the Ld.DVO ought not to have taken sale instance at Rs.1718.95 per sq.meter, as size of the land and other factors explained by ld Counsel have not considered by ld DVO. Therefore, the average sale price determined by ld DVO is unusual and odd.

13. We also note that assessee has not submitted the comparable sale instance subsequent to the date of sale. However, we note that ld DVO has considered the third comparable sale instance where the rate of Rs.1718.95 per sq.mt. was considered by him, which is higher very side and therefore we note that sale value should be determined for the assessee's land under consideration by taking first sale instance of @ 500/- per sq.mt. (*vide sale instances taken by the DVO in his Valuation Report*). However, before us Ld. Counsel for the assessee submitted that as per assessee, the sale price should be determined by taking @ Rs. 80/-per sq. mt. We note that there is a big difference between Rs.500 per sq.mt. as per DVO and @ Rs.80/- per sq.mt. as per assessee. The DVO in his report taken three sale instances viz., @ Rs.500/- per sq.mt. Rs.596.79 per sq.mt. and Rs.1718.95 per sq.mt. and arrived at average sale price of @ Rs.1012/- per sq.mt., which seems to be very higher side, considering the facts and circumstances of the land and considering the factors explained by Ld. Counsel in above para of this order.

14. We note that determination of fair market value, after all, is an estimate only and therefore, considering the facts and circumstances of the assessee's case, as noted above, we are of the view that ends of justice would be meet if a rate of Rs. 480 per sq.meter is adopted as sale value of assessee's land, as the same would

take care of the inconsistencies between DVO report and sale price adopted by the assessee. Therefore, we direct the assessing officer to recompute capital gain on sale of land by taking sale value of land at the rate of Rs. 480 per sq.meter.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced on 30/03/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 30/03/2023
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

// True Copy //

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat