

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 253/Rjt/2019 for A.Y. 2014-15 &  
ITA No. 255/Rjt/2019 for A.Y. 2014-15**

Shri Mahesh Bhikhubhai Varotaria Avantika Complex 3 <sup>rd</sup> Floor-Limda Lane Corner, Jamnagar-361008  PAN No: ABDPV4498F	Vs	The ITO, Ward-2(1), Jamnagar  (Respondent)
Shri Anil B Varotaria Complex 3 <sup>rd</sup> Floor-Limda Lane Corner, Jamnagar-361008  PAN No: ACVPV3770H (Appellant)	Vs	The ITO, Ward-2(1), Jamnagar  (Respondent)

**Assessee Represented: Shri Mehul Ranpura, A.R.  
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 27-03-2023  
Date of pronouncement : 12-04-2023

**आदेश/ORDER**

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

These appeals are filed by the two different Assesseees as against two separate Appellate orders dated 17.09.2019 and 27.08.2019 passed by the Commissioner of Income Tax (Appeals), Jamnagar, arising out separate Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15. The main dispute is about the valuation of purchase of agricultural lands which is common in both the cases, hence both the appeals are disposed of by this common order.

2.1. The brief facts of the case is that the above two assesseees are brothers who purchased a large piece of agricultural land comprising in Nine Survey Nos. for a consideration of Rs. 2,47,75,000/-. On verification of the sale deeds, it is found that the Stamp Duty Valuation of all the agricultural lands amounting to Rs. 2,59,59,184/- which resulting in a difference of Rs. 11,84,184/-. The Assessing Officer issued a show cause notice, since the difference between the purchase consideration and Stamp Duty Valuation exceeds Rs. 50,000/- why the difference amount should not be added as income u/s. 56(2)(vii)(b) of the Act.

2.2. The assessee replied furnishing an Annexure showing property wise consideration paid along with stamp duty paid and difference in jantri value. As per the Annexure the working of jantri value is Rs. 2,59,59,184/- and difference as per the jantri value is 11,84,184/- which represents 4.56% of the total consideration. The assessee further submitted valuation is a matter of estimation, where some degree of difference is bound to occur. However the

difference between the valuation adopted by the Stamp Duty Valuation Authority and the actual amount paid by the assessee is less than 10% which is liable to be ignored.

2.3. The assessee further relied upon Hon'ble Supreme Court judgment in the case of C.B. Gautam Vs. Union of India 199 ITR 530, that no addition can be made on this count. The assessee also relied upon Pune Bench Tribunal decision in the case of Rahul Construction Vs. DCIT wherein the difference between the figure shown by the assessee and the estimation made by the DVO is less than 10% then no addition be made. Thus the assessee pleaded to drop the proposed additions.

2.4. However the Assessing Officer made addition of Rs. 11,53,674/- u/s. 56(2)(vii)(b) of the Act, the A.O. also made one more addition of excess agricultural income and determined the total income and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) after considering the submissions of the assessee reduced the addition from Rs.11,53,674/- to Rs.5,21,500/- and held as follows:

*“Having considered the evidence produced by the assessee and having taken into account all the relevant materials gathered by me, I estimate the Fair. Market Value of the said property in respect of Shri Anilbhai Bhikhubhai Varotaria, Jamnagar as follows:*

Sr.	Property	Declared Value	Estimated Value	As On
1.	R. S No. 176/2. Naghedi, Jamnagar.	Rs. 20,00,000/-	Rs. 20,00,000/-	31.03.2014
2.	R. S No. 1 76/4. Naghedi, Jamnagar.	Rs. 20,00,000/-	Rs. 20,00,000/-	31.03.2014
3.	R. S No. 177/1. Naghedi, Jamnagar.	Rs. 25,35,000/-	Rs. 25,35,000/-	14.06.2013
4.	R. S No. 177/2. Naghedi, Jamnagar.	Rs. 30,40,000/-	Rs. 30,40,000/-	14.06.2013
5.	R. S No. 177/3. Naghedi, Jamnagar.	Rs. 30,40,000/-	Rs. 30,40,000/-	14.06.2013

6.	R. S No. 177/4. Naghedi, Jamnagar.	Rs. 30,40,000/-	Rs. 30,40,000/-	14.06.2013
7.	R. S No. 177/5. Naghedi, Jamnagar.	Rs. 30,40,000/-	Rs. 32,88,000/-	14.06.2013
8.	R. S No. 177/6. Naghedi, Jamnagar.	Rs. 30,40,000/-	Rs. 30,40,000/-	14.06.2013
9.	R. S No. 177/7. Naghedi, Jamnagar.	Rs. 30,40,500/-	Rs. 33,13,500/-	14.06.2013
	<b>Total</b>	<b>Rs. 2,47,75,000/-</b>	<b>Rs. 2,52,96,500/-</b>	

5.3 As can be seen from the above that the property bearing R.S. No. 177/5 and as reflecting as per Sr. No. -7 of the chart has been valued by the departmental valuation officer at Rs. 32,88,000/- and whereas the assessee has declared the value of this property at Rs. 30,40,000/-. Thus there is a difference of Rs. 2,48,000/- between the two values of this property i.e. the value as determined by the departmental valuation officer and the value as declared by the assessee. Likewise the property bearing RS no. 177/7 as appearing as per Sr. NO. 9 has been valued by the departmental valuation officer at Rs. 33,13,500/- and whereas the assessee has declared the value of such property at Rs. 30,40,000/-. Thus there is a difference of Rs. 2,73,500/- between the values of this property i.e. the value as determined by the departmental valuation officer and the value as declared by the assessee. Thus total difference of values as adopted by the departmental valuation officer and the value as declared by the assessee in respect of above two properties is coming to Rs. 5,21,500/- (i.e. Rs. 2,48,000/- + Rs. 2,73,500/-) which is more than 5% of the value of Rs. 60,80,000/- of such properties as declared by the appellant. In view of this the AO is directed to adopt the value of the property bearing RS. No. 177/6 at Rs. 32,88,000/- and value of the property bearing R S No. 177/7 at Rs. 33,13,500/- as determined by departmental valuation officer for making the addition u/s. 56(2)(vii) of the Act. This is in view of the fact, the addition in the case of assessee u/s. 56(2)(vii) will be Rs. 5,21,500/- and not Rs. 11,53,674/- as made by the AO. Again the decision of honorable ITAT Kolkata in the case of Chandra Prakash Junjunvala vs. DCIT in ITA No. 2351/Kol/2017 as relied by the assessee is not applicable to the case of the assessee as the difference between the value declared by the assessee for the above two properties and the value determined by the departmental valuation officer is more than 5%. Thus the ground of appeal no. 1 of the assessee is partly allowed and the assessee will get part relief of Rs. 6,32,174/-."

4. Aggrieved against the same, the assessee is in appeal before us in ITA No. 253/Rjt/2019 in the case of Shri Mahesh B. Varotaria raising the following Grounds of Appeal:

1. Ld. CIT Appeal Jamnagar Erred on law as well as on fact to Partially confirm the Order of Id AO to retain addition of Rs.5,21,500/ u/s. 56(vii)(b)(ii) i.e. difference between addition made by AO Rs.11,53,674/- (Circle rate Rs.92,33,674/- Less Actual purchase price Rs.80,80,000/-) Less Valuation made by Departmental Valuation Officer Rs.86,01,500/- on account of alleged difference between actual purchase price and Valuation made by Department VO without complying various legal formalities to be observed as stated under section 56 vii like purchase is made by appellant by payment of extra money or location and joint owner ship and agricultural land etc. hence addition is prejudicial and illegal and contrary to the fact of the case hence Rs 5,21,500/- retained by CIT Appeal from addition made by AO amounting to Rs.11,53,674/- may be deleted

*2. Any other grounds presented with the permission of your honor at the time of hearing.*

5. Ld. Counsel Mr. Mehul Ranpura appearing for the assessee submitted before us. The assessee purchased the agricultural land in different survey numbers jointly with his brother Anil B. Varotaria. Though this is a whole piece of agricultural land and for the sake of administrative convenience total 9 sale deeds were registered. When a big piece of land is purchased, some difference in valuation used occur based on the location of the land, extent of the land and various other market situations. If all the nine pieces of land is considered and the estimated value determined by the District Valuation Officer is considered, then the difference will be less than 5% of the total value namely Rs. 5,21,500/-. Therefore the addition made by the A.O. and partial confirmation made by the Ld. CIT(A) is liable to be deleted.

6. Per contra, the Ld. D.R. appearing for the Revenue supported the order passed by the Lower Authorities and thereby requested to uphold the same.

7. We have given our thoughtful consideration and perused the material available on record. The Ld. CIT(A) while giving partial relief to the assessee has considered the difference between the declared value determined by the assessee and estimated value determined by the DVO is relating to two survey numbers only, wherein there is different in value and thereby given relief of Rs. 6,32,174/- to the assessee. Since the above agricultural land is one lot of large extent of land purchased by the assessee along with his brother as co-owners, once the entire transactions is to be taken as

one transaction then the difference between the declared value by the assessee and that is determined by the DVO, which is less than 5% only. Therefore taking into account, the totality of the transactions made by the assessee, we find that the invocation of Section 56(2)(vii)(b) does not arise in this case. Therefore we direct to delete the entire addition made by the Assessing Officer u/s. 56(2)(vii)(b) of the Act.

8. In the result, the appeal filed by the Assessee in ITA No. 253/Rjt/2019 is hereby allowed.

**ITA No. 255/Rjt/2019**

9. The assessee in this case is the co-owner of the above purchase of agricultural lands. Therefore the decision rendered in ITA No. 253/Rjt/2019 will hold it good for this case also. Thus the grounds of appeal raised by the assessee is hereby allowed and the addition made u/s. 56(2)(vii)(b) is hereby directed to be deleted.

10. In the result, the appeal filed by the Assessee in ITA No. 255/Rjt/2019 is hereby allowed.

Order pronounced in the open court on 12-04-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 12/04/2023**

**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,  
राजकोट