

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH,
SURAT**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**ITA No. 143/SRT/2020 (AY: 2015-16)
(Hearing in Physical Court)**

Vinod Jerambhai Patel, D-1108, Spring Velly, Nr. Pushpavatika Hall, New City Light Road, Surat. PAN: ABCPP 1420 E	Vs.	P.C.I.T.-1 Aayakar Bhavan, Majura Gate, Surat-395002.
APPELLANT		RESPONDEDNT

Assessee by	Shri Rohit Taja, CA
Department by	Shri Ariju Jaikaran, CIT-DR
Date of hearing	06/04/2023
Date of pronouncement	12/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Principal Commissioner of Income tax-1, Surat [in short the Id. Pr.CIT] dated 19/03/2020 passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) for the Assessment Year (AY) 2015-16. The assessee in his appeal has raised the following grounds of appeal:-

- “1. On the facts and circumstances of the case and in law, Id. Pr.CIT-1, Surat erred in passing the order under Section 263 of the Income Tax Act, 1961 (the Act) which is in contrary to the material on record and provisions of the Act and is unjust and bad in law.*
- 2. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee is an individual filed his return of income for the A.Y. 2015-16 on 30/03/2016 declaring total income of Rs. 5,11,77,270/-. The case of assessee was selected for complete scrutiny for verification of sale of property, which is shown less in income tax return than the sale consideration reported in Form No. 26QB and long term capital gain. The Assessing Officer after serving notice under Section 143(2) and 142(1) of the Act dated 24/08/2017 and 30/10/2017 completed the assessment on 19/12/2017 in accepting the returned income. Subsequently, the assessment was revised by the Id. Pr.CIT. Before revising the assessment order, the Id. Pr.CIT issued show cause notice under Section 263 dated 05/03/2020. In the show cause notice, the Id. Pr. CIT noted that on perusal of assessment record it was observed that the assessee sold immovable property at Moje Village Umra District Surat on 24.06.2014 and shown less value of sale consideration than the value determined by Stamp Valuation Authority, therefore, provision of section 50C is applicable. The assessee filed its reply on 11/03/2020. In the reply, the assessee explained that he had sold a Flat No. D/801, Krish Enclave, Tarzan Cooperative Housing Society for a sale consideration of Rs. 58,07,300/-, the purchaser paid stamp duty of Rs.5,60,000/-, which was paid twice. The assessee further explained that there was no registered conveyance deed in favour of predecessor

in interest of assessee, from whom the assessee purchased the said flat (asset). The first party signed the sale deed as a confirming party. Thus, on such sale deed the stamp duty was charged double of the Jantri Value. Details of valuation as per ready reckoner of Jantri value was provided. The assessee contended that the provisions of Section 50C is not applicable on the transaction of assessee. The reply of assessee was not accepted by the Id. Pr.CIT. The Id. Pr. CIT held that the assessee failed to explain as per which Section of Stamp Duty Act, the purchaser was liable to pay duty on behalf of confirming party. The transaction made by assessee for sale of property is treated as single transaction and not double transaction, therefore, paying total amount of duty on behalf of confirming party is not a valid contention of assessee. The stamp duty paid by assessee @ 4.9% of purchase value. Thus, as per Stamp duty paid on such transfer, the value of sale consideration comes to Rs. 1.14 crore which is higher by Rs. 57.17 lacs than the registered value, therefore, provisions of Section 50C of the Act is applicable and transaction is required to be taxed as per Section 50C of the Act. Thus, the assessment order passed by the Assessing Officer in not considering such fact are erroneous and prejudicial to the interests of revenue. The Id Pr CIT held that assessment order is passed without making enquiry or verification which should have been made by the Assessing Officer. The Id. Pr. CIT thereby set aside the

assessment order with the direction to frame the assessment *de novo* to the extent of examining such issue after making proper enquiry and giving opportunity to the assessee. Aggrieved by the order of Id. Pr.CIT, the assessee has filed present appeal before this Tribunal.

3. We have heard the submissions of the learned Authorised Representative (AR) of the assessee and the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee submits that the case of assessee was selected for scrutiny to verify the difference in the sale consideration and consideration reported in Form 26QB and on issue of long term capital gain. During the assessment, the Assessing Officer examined both the issues after issuing detailed show cause notices to the assessee. The Assessing Officer issued show cause notice dated 19/07/2017, 24/08/2017, 13/10/2017 and 27/10/2017. In response to such show cause notices, the assessee vide his reply dated 04/12/2017 furnished copy of purchase and sale deed and the explanation with regard to stamp duty paid twice in respect of flat No. D/801, Krish Enclave, Tarzan Housing Cooperative Society. The assessee also explained that as per Bombay Stamp Act, 1958, applicable to State of Gujarat, that where any instrument comprising or relating to several distinct matter or distinct transaction shall be chargeable with the

aggregate amount of duty with separate instrument, each comprising or relating to one of such matters or distinct transaction would be chargeable under the said Act. The property was initially allotted to Jerambhai Patel by Tarjan Cooperative Housing Society who signed as a confirming party, therefore, the double stamp duty was charged by Stamp Valuation Authority. The Id. AR of the assessee submits that he has not received considering in addition to the agreed consideration of Rs. 57,16,300/- only as shown on the sale deed. The value of sale consideration shown on the instrument of sale was determined by stamp valuation authority at Rs. 57,16,300/-. The Id. Pr.CIT failed to appreciate the payment of double stamp duty on the same instrument. The transaction of sale was made at the Jantri rate applicable on the area. The Assessing Officer accepted the explanation during the assessment and passed the assessment order in accepting the explanation furnished by the assessee, thus the assessment order passed by the Assessing Officer is not erroneous and cannot be a subject matter of revision unless twin condition of Section 263 i.e. order is erroneous and in so far as it is prejudicial to the interests of revenue. The assessing officer passed the assessment order which is plausible and reasonable sustainable order. The consideration shown in the sale deed is the actual sale consideration and there is no difference on the value shown on the sale of instrument or the amount

of consideration received by the assessee, therefore, provisions of Section 50C is not applicable. The Id. AR submits that he has already filed copy of valuation report issued by Sub-Registrar, Surat in determining the fair market value of asset/property sold by assessee.

4. The Id AR for the assessee submits that he has already filed copy of his bank statement to show the fact that he has not received any other amount except the sale consideration shown on the instrument of sale.

To support such submission, the Id. AR of the assessee relied upon the following decisions:

- Greenworld Corporation (2009) 181 Taxman 111 (SC),
 - CIT Vs Vodafone Essar South Ltd. (2012) 28 taxmann.com 273 (Delhi),
 - CIT Vs Anil Kumar Sharma (2010) 194 Taxman 504 (Delhi),
 - Braham Dev Gupta Vs PCIT (2017) 88 taxmann.com 831 (Delhi ITAT),
 - CIT Vs Nirav Modi (2016) 71 taxmann.com 272 (Bom) (SLP dismissed),
 - Antala Sanjaykumar Ravjibhai Vs CIT (2012) 135 ITD 506 (Rajkot),
 - Roshal Lal Vegetable Products (P) Ltd. Vs ITO (2012) 51 SOT 1 (URO) (Asr Trib),
 - Fine Jewellery (India) Ltd. Vs ACIT (2012) 19 ITR 746 (Mum Trib)
5. In the alternative and without prejudice submission, the Id. AR of the

assessee submits that his father late Jerambhai Padamsibhai Patel also sold similar size of flat bearing C-101 in the same society, during the same period. The assessment order of his father was completed under section 143(3) on 29.09.2017 in accepting his returned income. Subsequently, assessment order of his father also revised by the Id. Pr. CIT vide order dated 19.03.2020, on the similar allegation that

- provisions of Section 50C of the Act is applicable on such transaction. However, the order giving effect of 263 order, the Assessing Officer made no addition under Section 50C of the Act in assessment order dated 08/02/2022, copy of such assessment order is also filed.
6. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. Pr.CIT. The Id. CIT-DR submits that the Assessing Officer has not discussed the issue in detail and the Id. Pr.CIT while revising the assessment order has given detailed reasoning thus he supports the order of Id. Pr.CIT.
 7. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the Assessing Officer during the assessment, issued notice under Section 142(1) of the Act dated 19/07/2017, 24/08/2017, 13/10/2017 and 27/10/2017 and in such notices, the Assessing Officer required details of the sale consideration and the capital gain and examined the issue on which the assessment was selected for scrutiny. Admittedly, there is no detail discussions of such issue in the assessment order. We further find that the Id. Pr.CIT set aside the assessment order by taking a view that that the assessee failed to explain as for which Section of Stamp Duty Act, the assessee was liable to pay duty on behalf of confirming party. The transaction made by assessee for sale of property is treated as single transaction and not double transaction,

therefore, paying total amount of duty on behalf of confirming party is not a valid contention of assessee. The stamp duty paid by assessee @ 4.9% of purchase value and as per value of Stamp duty paid by assessee, the value of consideration comes to Rs. 1.14 crore which is higher by Rs. 57.17 lacs than the registered value, therefore, provisions of Section 50C of the Act is applicable and transaction is required to be taxed as per Section 50C of the Act. Before us, the Id. AR of the assessee made two folds submission viz, (i) that the issue was thoroughly examined by the assessing Officer during the assessment and he has taken reasonable, plausible sustainable view and that the Id. Pr.CIT failed to appreciate that the property was initially allotted to Jerambhai Patel by Tarjan Cooperative Housing Society who signed as a confirming party and as per provisions of Bombay Stamp Act, double of the stamp value was charged by Stamp valuation Authority. We have perused the copy of sale deed dated 25.06.2014, wherein the assessee has shown sale consideration of Rs. 57,16,300/-. Thus, the payment of double stamp duty was for the reasons that the property was not registered in the name of original owner who was allotted flat from the cooperative society and the assessee was the second purchaser/ party. The first party signed the sale instrument as confirming party. Thus, the double stamp duty was charged by the Stamp Valuation Authority. On considering such fact,

we find that the Assessing Officer during the assessment on examining the issue has accepted the explanation of assessee which is not erroneous, thus the assessment order cannot be revised in absence of twin condition as prescribed under Section 263 of the Act.

8. We further find merit in the alternative submission of Id. AR of the assessee that the assessment order of father of assessee was revised his assessment order on similar issue wherein his father has also sold similar situated flat on the similar sale consideration. The Assessing Officer in his assessment order dated 08/02/2022 passed in order giving effect obtained the report of DVO. The DVO furnished his report dated 12/10/2021 in respect of Flat No. C-101, Krish Enclave Umra, Surat, which was sold by the father of assessee, wherein the value of the said flat having admeasuring area of 161 Square meter was determined at Rs. 57,82,000/-. Copy of report of DVO is filed on record. After considering the report of DVO no addition under section 50C was made by the assessing officer in the assessment order passed under section 254 rws 263 dated 08.02.2022.
9. Thus, in view of the aforesaid factual and legal discussions, we find that the assessment order passed by assessing officer dated 19.12.2017 was not erroneous. Therefore, in our view, the Id. Pr.CIT was not justified in revising the assessment order dated 19/12/2017. Hence, the revision order by the Id. Pr. CIT vide order dated

19/03/2020 under Section 263 of the Act is quashed/set aside. In the result, grounds of appeal raised by the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced on 12/04/2023 in open court and result was placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 12/04/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By Order

Sr. Private Secretary, ITAT Surat