

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

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

**आयकर अपील सं./ITA No.30/SRT/2023**

**(निर्धारणवर्ष / Assessment Years: (2013-14)**

**(Physical Court Hearing)**

Harivadanbhai Maganlal Patel 1, Ratneshwar Mahadev Street Rander, Surat-395005	<b>Vs.</b>	Income Tax Officer, Ward- 1(3)(7), Adajan, Surat-395001
<b>स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AUEPP 2292 B</b>		
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Assessee by : Shri Sapnesh R Sheth, CA

राजस्व की ओर से/Revenue by : Shri Vinod Kumar, Sr- DR

सुनवाई की तारीख/ **Date of Hearing** : **20/04/2023**

घोषणा की तारीख/**Date of Pronouncement** : **08/05/2023**

**आदेश / O R D E R**

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

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2013-14, is directed against the order passed by the National Faceless Appeal Centre, Delhi (in short, NFAC/Ld. CIT(A) dated 04.11.2022, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 [hereinafter referred to as the "Act"] dated 22.12.2017.

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

*"1. On the facts and circumstances of the case as well as law on the subject, the Assessing Officer has erred in reopening assessment by issuing notice u/s 148 of the I.T Act 1961.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of Assessing Officer in making addition of Rs.55,50,250/- on account of long term capital gain u/s 50C of the I.T. Act.*

*3. On the facts and circumstances of the case as well as law on the subject, learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of the Assessing Officer has erred in not giving any deduction towards cost of acquisition of impugned land in respect of addition of Rs.62,40,000/- as long term capital gain.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. The appeal filed by the assessee for Assessment Year 2013-14, is barred by limitation by 15 days. The assessee has moved a petition requesting the Bench to condone the delay. We have heard both the parties on this preliminary issue. Learned Counsel for the assessee submitted that NFAC/Ld CIT(A) passed impugned order on 04.11.2022, and the appeal was required to be filed on or before 03.01.2023, however present appeal is filed on 18.01.2023 hence there is a delay in filing the said appeal for 15days. The Id Counsel explained the reasons of such delay stating that assessee could not file his appeal before the Tribunal as the physical copy of the impugned order was not received by assessee on time, and in this process 15 days delay has occurred, which may be condoned. However, Id DR for the Revenue opposed the prayer of the assessee for condonation of delay. We are aware of the famous judgment of the Hon'ble Apex Court in the case of Collector of Land Acquisition vs. Mst Khatiji reported in 167 ITR 471 (1988 SC 89), and we note that the power to condone the delay is a discretionary one. However, such discretionary power should be used with liberal approach to advance the justice. We note that reasons given by the assessee, in the affidavit are convincing and sufficient therefore, having regard to the reasons stated in the affidavit/petition, we condone the delay of 15 days in the assessee's appeal and admit the appeal for hearing.

4. Succinct facts *qua* the issue are that assessee before us is an individual. The four co-owners had sold immovable properties at Rs.3,14,17,500/- in which assessee's share is shown at Rs.62,83,500/-. On going through the sale deed, the assessing officer noted that stamp duty payment is shown at Rs.15,39,500/- which means that the property was valued at Rs.3,14,17,500/- by the Stamp Duty Value Authorities. The assessee was holding 1/5<sup>th</sup> share in the property and hence, the deemed sale consideration in the hands of assessee, as per the provisions of section 50C of the Act comes to Rs.62,83,500/- instead of Rs.32,00,100- shown by the assessee. Therefore, after recording reason for assessment and obtaining approval of Addl. CIT, Range-1(3), Surat, notice u/s 148 of the Act was issued on 06.05.2016 requesting assessee to file a return of income for A.Y 2013-14 within 30 days of receipt of the notice. The notice was duly served to the assessee.

5. In response to the notice issued u/s 148, the assessee has filed return of income on 31.05.2016 declaring total income at Rs.1,38,570/-. During the course of assessment proceedings, it was noticed that the assessee has entered into one more immovable property transaction during the year under consideration. On verification of return of income filed, it is noticed that the assessee has not considered the entire sale consideration for taxation purpose. Since the assessee failed to furnish the details/supporting evidences to prove his claim, a show cause notice was issued on 20.07.2017 and duly served upon the assessee. In compliance to the show cause notice, the assessee vide his letter dated 14.09.2017 furnished the submission before the assessing officer.

6. Further, it is pertinent to mention here that though the assessee has sold two properties during the year under consideration, but the assessee has shown only one sale consideration of the property while filing return of income. However, during the course of assessment proceedings, the assessee was asked to furnish the details of both transactions. On verification of the same, it was noticed that the assessee has made valuation of both properties from the valuer in the same manner but deliberately shown one property transaction in his return of income filed in response to notice u/s 148. In this regard, the assessee has stated that he and other co-owners are farmers and not doing any business activities and are uneducated persons. It was further stated by the assessee that there is no intention of the assessee to conceal the income but due to lack of knowledge of the laws, the same was not shown. The Assessing Officer observed that assessee's arguments have no force, as the assessee aware about the implication of law and therefore, before filing return of income he has completed the valuation proceedings of both the properties. Further, ignorance of law is not an excuse for furnishing inaccurate particulars or concealment of income. It is clear from the above that the assessee has deliberately avoided one property while computing taxable income to reduce the tax liability and again to reduce the taxable income, he has worked out the capital gain by not considering the jantri value/stamp value of the property under question. On verification of sale deed No, 12949/2012, it was noticed by AO that the sale consideration of the property was

shown at Rs.1,60,00,000/- and the market value/jantri value of the property decided by the government was Rs.3,14,17,500/-. Likewise, verification of sale deed no.4868/2012, it was noticed that the sale consideration of the property was shown at Rs.1,52,00,000/- as against the market value/jantri value of the property was Rs.2,75,33,750/-. The one fifth of Rs.2,75,33,750/- comes to Rs.55,06,750/-. The same was brought to the knowledge of the assessee. However, the assessee has pressed for valuation of the property only. In view of the above facts, considering the sale consideration of both the properties, an amount of Rs.1,17,90,250/- (62,83,500 + 55,06,750) was added to the total income of the assessee under the head "income from capital gains" u/s 50C of the Act.

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

*“6. In view thereof the appellant does not fulfill conditions as laid down under section 50C of the Act, 1961. The disallowance of 50C of the Act is held to be justified and the addition of Rs. 1,17,90,250/- on account of Long Term Capital Gain, in the hands of the assessee is hereby sustained and ground raised by appellant is **dismissed.**”*

8. Aggrieved by the order of NFAC/Ld. CIT(A) the assessee is in further appeal before us.

9. We have heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. Before us Ld. Counsel for assessee submitted the following documents and evidences viz: (i) Notice issued by DVO (pages 3-7 of PB); (ii) Reply of final show cause notice dated 12.12.2017 filed before Assessing Officer (pages 8-13 of PB); (iii) Letter filed before Assessing Officer dated 27.11.2017 (pages 14-16 of PB); (iv) Letter filed before Assessing Officer dated 10.11.2017 (pages 17-18 of PB); (v) Reply of show cause notice dated 20.07.2017 filed before AO dated 14.09.2017( pages 19-27 of PB); (vi) Valuation Report of Government approved Valuer of agricultural land situated at SR No.7/1, Block No.9B, Moje-Vihel, Tal-Choriyasi, Surat on 01.04.1981 (pages 28-36 of PB); (vii) Valuation report of Govt. approved Valuer of agricultural land situated at SR No.7/2 Block No.10/1 Moje-Vihel, Tal. Choriyasi, Surat on 01.04.1981 (pages 37-45 of PB);

(viii) Sale deed of agricultural land situated at SR No.7/1 Block No.9B, Moje Viihel, Tal.Choriyasi, Surat (pages 46-62 of PB); (ix) Sale Deed of agricultural land situated at SR No.7/2 Block No.10/1, Moje-Vihel, Tal.Choriyasi, Surat (pages 63-80 of PB)  
(x) Copy of acknowledgement of ITR and computation of income for A.Y 2013-14 (pages 81-83 of PB). Taking base of these documents and evidences, Id Counsel argued that assessee has not disputed the sale consideration determined by the DVO in case of these two properties (Land).

10. However, Id Counsel pointed out that in case of first property situated at R.S. No.7/2, Block No.10/paiki-1, Vihel, Choryasi, Surat, the sale consideration of the property was determined by DVO at Rs.38,75,600/-, which is acceptable to the assessee, however, the grievance of the assessee is that the DVO has taken indexed cost of acquisition at Rs. 31/- per square meter, as on 01.04.1981, which is very lower side. As per registered valuer of the assessee, the indexed cost of acquisition is at Rs. 80/- per square meter, as on 01.04.1981. The registered valuer of the assessee has considered entire facts and circumstances of the land to determine the value of the land as on 01.04.1981 at 80/- per square meter, and the same should be considered to compute the indexed cost of acquisition.

11. In case of second property situated at R.S. No.7/1, Block No.9/ Vihel, Choryasi, Surat, the Id Counsel pointed out that the sale consideration of the property was determined by the DVO at Rs.35,68,400/-, which is acceptable to the assessee, however, the grievance of the assessee is that the DVO has taken indexed cost of acquisition at Rs. 31/- per square meter, as on 01.04.1981, which is very lower side. As per registered valuer of the assessee, the indexed cost of acquisition is at Rs. 90/- per square meter, as on 01.04.1981. The registered valuer of the assessee has considered entire facts and circumstances of the land to determine the value of the land as on 01.04.1981 at 90/- per square meter, and the same should be considered to compute the indexed cost of acquisition.

12. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

13. We have gone through the valuation report of the DVO and noted that DVO has determined the sale consideration of these two properties as well as, indexed cost of acquisition of these two properties as on 01.04.1981. We observed that DVO has considered three sale instances viz: R.S.No.921, Variyav Rs. 65.00 per square meter, R.S.No.597, Variyav Rs. 81.00 per square meter and R.S.No.519, Variyav Rs.38.00 per square meter. Therefore, we note that as per the sale instances chosen by DVO, the price of Rs. 81.00 per square meter, as on 01.04.1981, should have been recommended by the DVO, considering the situation of the assessee's land. Hence, we note that there is arbitrariness and randomness in the report of DVO to determine the fair market value of both the properties as on 01.04.1981 for the purpose of indexed cost of acquisition. We note that considering the sale instances and taking into account all the factors which affect the land rates such as size, shape, situation, location, utility, future potentiality, time lag etc; and considering the rate determined by the registered valuer of the assessee, the rate should be at Rs. 85 per square meter,  $[(80+90)/2]$  as on 01.04.1981. The registered valuer of the assessee has taken into account all these facts and circumstances of the land to determine the fair value, therefore fair market value determined by the registered valuers should not be ignored. Based on this factual position, we are of the considered opinion that fair value as on 01.04.1981 of both the properties should be at the rate of Rs.80/- per square meter and that would meet the end of justice. Therefore, we direct the Assessing Officer to take Rs.80/- per square meter, as on 01.04.1981, for the purposes of computation of indexed cost of acquisition to determine the taxable long term capital gain. Thus, we partly allow the appeal of the assessee in above terms.

14. In the result, appeal filed by the assessee is partly allowed.

Order is pronounced on 08/05/2023 by placing result on notice board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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

सूत /Surat / दिनांक/ Date: 08/05/2023  
*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 //

By Order

Sr. Private Secretary/Private Secretary/  
Assistant Registrar, ITAT, Surat