

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.224/SRT/2023** (AY 2014-15)

(Hearing in Physical Court)

Chhitubhai Jagubhai Patel Kanbi Faliya, AT & PO Kholwad, Taluka, Kamrej, Surat-394109 <b>PAN No. BRLPP 7388 D</b>	Vs	Income Tax Officer, Ward- 1(2)(1), Surat, Aaykar Bhavan, Room No.121, 1 <sup>st</sup> Floor, Nr. Majura Gate, Opp. New Civil Hospital, Surat- 395001
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Written Submission
राजस्व की ओर से /Revenue by	Shri Vinod Kumar Sr-DR
अपील पंजीकरण/Appeal instituted on	03.04.2023
सुनवाई की तारीख/Date of hearing	31.08.2023
उद्घोषणा की तारीख/Date of pronouncement	12.10.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld. CIT(A)”] dated 20.03.2023 for the assessment year 2014-15, which in turn arises out of assessment order passed by National Faceless Assessment Centre, Delhi / Assessing Officer under section 147 r.w.s. 144B of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 29.09.2021. The assessee has raised following grounds of appeal:

*“1. The learned CIT(Appeals) order is contradictory to law and facts of the case and therefore, the addition made by the Assessing Office as well as confirmed by CIT(A) to the extent of Rs.11,28,000/- on the basis of DVO’s Report may please be deleted.*

*2. The learned CIT(Appeals) did not consider the Surat Tribunal's as well other number of Tribunal's judgments mentioned that the difference may kindly be ignored where difference is less than 10%, between Actual Sale Deed and DVO's Report. There is a difference of only 7.52% in appellant's case.*

*3. The learned CIT(Appeals) did not appreciate the fact that the value determined by the DVO in the appellant's case on the basis of actual sale deed executed, where value considered in that sale deeds were less than Circle Rate (Jantri Value), and all that places are better located than appellants land, proved with pictures and Google maps.*

*4. In view of all these and other grounds which may be produced during the hearing of appeal, the appeal may please be allowed and justice rendered.*

*5. The appellant craves leave to add, to alter, amend, modify, substitute, delete and or rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises."*

2. Brief facts of the case are that no return of income filed by the assessee for the assessment year 2014-15. The case of assessee was re-opened on the basis of information that assessee has entered into a high value transaction for sale of immovable property for Rs.1.50 crores. The Assessing Officer on perusal of sale deed noted that Stamp Valuation Authority, valued the said property at Rs.1.85 crores for, the purpose of collection of stamp. Thus, there was difference of Rs. 35.52 lakh in sale consideration shown by assessee vis-à-vis the value determined by Stamp Valuation Authority. The Assessing Officer also noted that assessee made cash deposit of Rs.20.38 lakh in his bank account. On the basis of such information, case of assessee was re-opened under section 147 of the Act. Notice under section 148 dated 30.03.2020 was issued. In response to notice under section 148, the assessee filed return of income on 13.06.2020 declaring income of Rs.81,10,510/-. The Assessing Officer after serving statutory notices under section

143(2) proceeded for assessment. The Assessing Officer noted that there was difference between sale value declared by assessee and the value determined by Stamp Valuation Authority of Rs.35.52 lakhs that provision of Section 50C is applicable on such transaction. The Assessing Officer issued show cause as to why the difference of Rs.35.52 lakhs may not be added to the income of assessee. The Assessing Officer recorded that no reply was furnished on the part of assessee and Assessing Officer added such difference to the income of assessee on account of Long Term Capital Gains.

3. Aggrieved by the addition made in the assessment order, assessee filed appeal before Ld. CIT(A). The case of assessee migrated to NFAC/Ld.CIT(A). Before Ld. CIT(A) the assessee filed detailed statement of facts and written submission. The assessee in his statement of fact submitted that assessee is a purely agriculturist and having earned agricultural income only. The assessee has sold agricultural land at Revenue Survey No.272, Block No.315, Moje Kholwad, Taluka Kamrej, District Surat. The population of village is not more than 10,000 where land was situated and land in question is not non-agricultural asset as per Section 2(14) of the Act. There is few change in Income Tax Act from financial year 2013-14 due to which assessee was liable to file return of income for assessment year 2014-15. The assessee submitted that he has sold 2.60 vighas of land which is 150 feet away from Small Dammar Road. It is difficult to reach on the land in rainy season and there are no irrigation facilities and assessee was dependent either on

rain or other water for cultivation. There were other issues connected with the land. The assessee sold the said land at Rs.1.50 crores though Circle rate of jantri rate was at Rs.1.85 crores. During assessment, assessee requested to make the reference to District Valuation Officer (DVO). The Assessing Officer referred the case to DVO and passed assessment order on 29.09.2021 without considering the report of DVO.

4. The Ld. CIT(A) after considering the submission of assessee held that report of DVO was received on 20.09.2021 and as per report of DVO, the value of property was assessed / estimated at Rs.1.61 crores. The Ld. CITA after considering the DVO's report directed the Assessing Officer to restrict the addition to the extent difference between sale value declared by assessee and the value estimated by DVO, thereby partly allowed the appeal of assessee. Further, aggrieved assessee has filed present appeal before the Tribunal.
5. Notice of appeal was served upon the assessee more than three occasions. On service of notice, assessee filed his written submission vide application dated 29.08.2023 and submitted that his case is covered by various decisions of Tribunal and may be decided on the basis of his written submission. Considering such fact, we decide to hear the submission of Ld. Senior Departmental Representative for the Revenue and to consider the written submission filed by assessee and to decide the appeal on the basis of materials available on record.

6. The Ld. Sr-DR for the Revenue supported the order of Ld. CIT(A) and submits that report of DVO was received on 20.09.2019. the assessee has not raised objection, rather assessee before Ld. CIT(A) accepted the report of DVO. The Ld. CIT(A) on the basis of admission of assessee directed the Assessing Officer to restrict the addition to the extent difference between the value declared by the assessee and value determined by DVO.
7. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by assessee in his written submission. We find that there is very limited dispute before us. The assessee has shown value of land at Rs.1.50 crores as sale consideration of the impugned land. However, the Stamp Valuation Authority determined the value at Rs.1.85 crores for the purpose of collection of stamp duty. We further find that on reference to DVO, the DVO estimated the value of impugned land at Rs.1.61 crores. Admittedly, the difference between the value determined by DVO and the value declared by the assessee is less than 10%. We find that in a series of decisions the co-ordinate Benches of various Tribunals held that no addition can be made if the margin between the value determined by DVO is less than 10% and further held that 3<sup>rd</sup> proviso to Section 50(1) of the Act, inserted with effect from 01.04.2021 is a creative in nature and shall apply from the insertion of Section 50C. Such view was taken by Bangalore Bench in ITA No.94/Beng/2019 in

Sandeep Patil vs. ITO dated 09.09.2021. Further, similar view is taken in a recent decision by Chandigarh Tribunal in Charu Aggarwal vs. DCIT ITANo.310/Chd/2021 dated 25.03.2022. Thus, in view of aforesaid factual and legal view taken by various Benches of Tribunal, the Assessing Officer is directed to delete the addition of Rs.11.28 lakhs

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

Order pronounced in the open court on 12/10/2023.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**[लेखा सदस्य/ACCOUNTANT MEMBER]**

**Sd/-**  
**(PAWAN SINGH)**  
**[न्यायिक सदस्य JUDICIAL MEMBER]**

Surat, Dated: /10/2023  
*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

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