

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.535/Ahd/2017
Assessment Year: 2008-09**

Shri Neerav Shailesh Parekh, Paritosh, Krishna Society, Ellis Bridge, Ahmedabad – 380 006. . [PAN – AAVPP 9727 C]	Vs.	The Deputy Commissioner of Income Tax, Circle – II, Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Bandish Soparkar, AR & Parin Shah, AR	
Revenue by	Ms. Saumya Pandey Jain, Sr. DR	
Date of Hearing	18.10.2023	
Date of Pronouncement	03.01.2024	

ORDER

This appeal is filed by the assessee against order dated 09.01.2017, passed by the CIT(A), Ahmedabad for the Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal :-

The Commissioner of Income Tax (A), Ahmedabad-5 (hereinafter referred to as the CIT(A)) has erred both on facts and in law in passing order on the following amongst the other Grounds :

“1. *The CIT(A) has erred in confirming selling price of 201 shares of Chamanlal Mehta & Co. (Pvt.) Ltd. (CMPL) at Rs.14,616/- per share estimated by the AO as against the full value of consideration received at Rs.8,512/- per share while working out Long Term Capital Gains.*

It is submitted that as per the provisions of Section 48 and judgements of various Hon. Courts, full value of consideration denotes the actual amount received which is Rs.8,512/- per share and not Rs.14,616/- as estimated by the AO and therefore, the CIT(A) ought to have accepted Rs.8,512./- per share as the full value of consideration.

2. *The CIT(A) has erred in confirming disallowance of deduction of rent paid Rs.1,86,400/- against HRA received as a part of salary.*

It is submitted that in view of Form 16, working of HRA, copies of relevant ledger accounts, proof of rent paid, copy of Income Tax return of the recipient of the rent and bills and receipts of Municipal Corporation, the CIT(A) ought to have deleted disallowance of Rs.1,86,400/- being rent paid against HRA.

3. The return of income was filed on 27.10.2008 by the assessee declaring total income of Rs.10,35,280/- after claiming deduction under Chapter VI-A at Rs.1,15,000/-. The said return was duly processed under Section 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny under CASS and notices under Section 143(2) and 142(1) were issued on 27.08.2009 and duly served on the assessee. In response to the said notices, the Chartered Accountant of the assessee attended the proceedings from time to time and furnished the details. The Assessing Officer observed that the assessee is deriving income from salary, house property, capital gain and from other sources. The Assessing Officer further observed that in the statement of total income the assessee has offered Long Term Capital Gain (LTCG)/loss to the extent of Rs.15,98,578/-. The Assessing Officer further observed that the assessee purchased 36 shares on 08.06.2001 for a consideration of Rs.2000/- per share and 165 shares purchased on 20.09.2005 for a consideration of Rs.105/- per share. The Assessing Officer observed that the shares are held by the descendent of Late Shri Chamanlal Girdharlal Parekh who has got this company incorporated. The company being closely held, the shares are neither listed nor its price quoted in the open market. The transfer of shares and its price is mutually decided among family members as per family arrangement and there was restriction on sale of shares. All the shares of Chamanlal Mehta & Co. Pvt. Ltd. has been taken over by Victoria Capital Venture Limited. The Assessing Officer observed that the index value of each share has to be taken at Rs.107.45 and thus the cost of 200 shares comes to Rs.21,490/-, whereas sale price is taken at Rs.14,616/- instead of Rs.8,605/- disclosed by the assessee. Thus, the LTCG worked out at Rs.29,01,710/- instead of Rs.15,98,578/- disclosed by the assessee. Therefore, the Assessing Officer made addition of Rs.29,01,710/- as LTCG. The Assessing Officer also made addition of Rs.1,72,635/- towards income from other sources and disallowance of claim of deduction under Section

54F amounting to Rs.15,98,578/- was also calculated by the Assessing Officer. The Assessing Officer further made disallowance of Rs.1,86,400/- towards claim of payment of rent to HUF and also disclosed Rs.1,67,064/- towards unsecured loans.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As relates to ground no.1, the Ld. AR submitted that the Assessing Officer could not have substituted the sale consideration in as much as there are no provisions in the Income Tax Act for the relevant point in time which allowed the Assessing Officer to substitute the sale consideration for transfer of unquoted shares. What was allowed to be substituted was only the cost of acquisition under Section 48 read with Section 55A of the Act. The Ld. AR relied upon the following decisions :-

- a) *Gaurangiaben S. Shodhan (2014) 45 Taxmann.com 356 (Guj)*
- b) *Hiaben Jayantilal Shah, 310 ITR 31*
- c) *Akash Associatioan (2016) 76 Taxmann.com 344 (Ahd. Tribunal) which is confirmed by the Hon'ble Gujarat High Court in (2017) 87 Taxmann.com 84.*
- d) *Eldeco Infrastructure & Properties Limited (2012) 23 Taxmann.com 17 (Delhi)*

6. The Ld. AR further submitted that Section 50CA is the Section which allows the Assessing Officer to substitute the sale consideration with respect to the transfer of unquoted shares but the said Section has been inserted by Finance Act 2017 w.e.f. 01.04.2018 only. At the relevant point in time, the said Section could not have been invoked and is also not the case of Assessing Officer or CIT(A). Ld. AR relied upon the decision of Analjit Singh (2018) 92 Taxmann.com 310 (Delhi Tribunal). The Ld. AR further submitted that the Assessing Officer has correctly not invoked Section 50C in as much as what is transferred is neither land nor building, it is the shares of a private limited company. The Ld. AR submitted that the assessee has given reasonable justification in the sale consideration

received between two class of shareholders. One class of shareholders were also the tenants and occupants of the property and second class of shareholders, where the assessee falls, were only shareholders and were not occupants or tenants of the property. It is for this reason that the first class of shareholders were given greater consideration so that their shares are also transferred and they would give complete and peaceful possession of the property to the buyer. The CIT(A) has completely misunderstood the explanation of the assessee in holding that the said justification is not tenable. The Ld. AR further submitted that the decision of Tribunal in case of Shailesh Parekh (ITA No.1833/Ahd/2012) may not be followed in as much as the Tribunal has not taken note of the binding judgement of the Hon'ble Gujarat High Court.

7. As regards to ground no.2 related to disallowance of HRA under Section 10(13A) of the Act, the Ld. AR submitted that the assessee resides in the house that is in the name of the grandfather is owned by the HUF. The assessee has actually paid rent to the HUF and this fact is undisputed. The assessee therefore ought to have been granted the deduction of HRA under Section 10(13A) of the Act. The Ld. AR relied upon the following decisions:-

- a) *Abhay Kumar Mittal (2022) 136 Taxmann.com 78 (Delhi Tribunal)*
- b) *Bajrang Prasad Ramdharani (2013) 37 Taxman.com 186 (Ahd. Tribunal)*

8. The Ld. DR submitted that the CIT(A) was right in confirming the selling price of 201 shares of Chamanlal Mehta Pvt. Ltd. at Rs.14,615/- per share estimated by the Assessing Officer and the calculation was properly done. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). As regards to ground no.2, the Ld. DR submitted that the disallowance of deduction of rent paid at Rs.1,86,406/- against HRA received as part of salary and, therefore, rightly comes under the purview of taxation. The Ld. DR in respect of ground no.1 has filed the following submissions :-

- “1. In the instant case, the assessee individual sold 201 shares of Chamanlal Mehta and Co. during the AY under consideration and received Rs.8605/- per share, whereas another group of shareholders, on the same date, received Rs.14,616/- for the same shares. The Assessing Officer correctly invoking Section 48 decided that a price of Rs.14,616/- was the price that had **accrued** to the assessee and hence adopted that price to ascertain the full value of consideration.
2. There are several methods to evaluate the fair price of unlisted equity shares and irrespective of the method adopted to ascertain the value of unlisted equity shares, it is apparent that the method would yield a single amount i.e. a single price for every share of the company. In case of different classes of shares (which differ in the rights available to the shareholder), there is a possibility of variable pricing of shares, which is not the case of the assessee. The shares sold are identical and have been sold on the same day vide identically worded agreements. Consequently, the AO has taken the sale value to be Rs.14,616/- for all the shares sold by the assessee as the assessee has, without any cogent reason, sold his shares at a price lesser than what was available to him. Accordingly, the AO has recomputed the full value of consideration in case of the assessee and worked out the capital gains.
3. Pertinently, Section 48 of the Income Tax Act reads as follows-

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the **full value of the consideration received or accruing** as a result of the transfer of the capital asset the following amounts, namely :—

 - (i) expenditure incurred wholly and exclusively in connection with such transfer;
 - (ii) the cost of acquisition of the asset and the cost of any improvement thereto... (emphasis added)
4. Had there been no power before the AO to go into the correctness of the full value of consideration, the legislature would not have added the phrase "or accruing" to the section as seen above. Therefore, simply the full value of consideration received by the assessee would have been the basis for computing the capital gains. However because the AO, as per the above quoted section, has been given the power to get into whether some value still accrued to the assessee or not, the AO has duly applied his mind and given a reasoned order as to why another value for the sale price of shares ought to be adopted.
5. Significantly, in **CIT v. Salora International Ltd. [2016] 70 taxmann.com 92/386 ITR 580 (Delhi)**, the expression 'accruing' as

used in section 48 is discussed to be synonymous to entitlement. If the assessee is entitled to the consideration, then the same must be taken into account for the purposes of computation of capital gains in terms of section 48. In the instant case, the assessee has not been able to explain with any logic whatsoever why he was not entitled to the same sale price as the other groups of persons who have received a higher price for sale of their equity shares.

6. *It is important to note that the only asset of the private limited company (Chamanlal Mehta & Co.) is an immovable property by the name of CG Bungalow. The Assessing Officer has still not, and rightly so, invoked section 50C to value the equity shares as the said section would not be applicable.*
7. *Also, very importantly, the assessee's case is squarely covered by the Hon'ble ITAT's order in the case of his father Shailesh Parekh (ITA no.1833/A/2012) which had identical facts. The case of Shailesh Parekh has been decided against the assessee and even the MA filed by assessee to consider certain judgments of the Gujarat High Court was rejected in that case as it was found that the quoted judgments differed vastly on facts."*

9. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee sold 201 shares of Chamanlal Mehta & Co. Pvt. Ltd. during the A.Y. under consideration at Rs.8,605/- per share whereas another group of shareholders received Rs.14,616/- for the same shares but from the records it is seen that another group of shareholders were occupying the premises and, therefore, they have been granted much more higher price than those who were not occupying the premises and this was an internal arrangement for selling shares. The Ld. AR's contention that the class of shareholders who are tenants and occupants of the property for getting the peaceful and complete possession required higher consideration and, therefore, that cannot be treated at par with the shareholders who were not occupants or tenants of the premises appears to be justifiable. The contention of the Ld. AR that Section 50C will not be applicable in the present case as it is share of the Private Limited Company appears to be correct. The contention of the Ld. DR that invocation of Section 50C is applicable in the present case is not justified and as the asset of the Private Limited Company being immovable property has also given the share accordingly which cannot be treated at par as given under Section 50C to the value of equity share. Thus, the decision of CIT vs. Salora International Limited (supra) relied by the Ld. DR does not apply as here the assessee has explained

as to why he has not been given same consideration in two group of shareholders as there were distinguishing facts involved amongst these shareholders group. The Ld. DR relied upon the decision of the Tribunal in assessee's father's case in his written submission but has not filed copy of the same order. Therefore, at the time of hearing, the factual identification was not available in the present assessee's case. Ground no.1 is allowed.

10. As regards to ground no.2, the assessee stated that the assessee is residing in the house of his grandfather and paying rent to the HUF for which the assessee has submitted Bank statement in respect of A.Y. 2008-09 and from the perusal of the other details, it appears that the assessee is actually paying HRA and, therefore, in the light of the decisions taken by the Tribunal in case of Abhay Kumar Mittal (supra) and Bajrang Prasad Ramdharani (supra), the assessee is entitled for deduction of rent paid against HRA as part of salary. Ground no.2 is allowed.

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

Order pronounced in the open Court on this 3rd January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 3rd January, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad