

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.101/Ahd/2023  
Assessment Year: 2009-10**

Shri Dilip Devjibhai Patel, 401, Bansi Apartment, A/43, Shreenagar Society, Akota, Vadodara (Gujarat). <b>[PAN - ADEPP 0069 P]</b>	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(2) (Now Deputy Commissioner of Income Tax, Central Circle – 2), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Ms. Urvashi Sodhan, AR	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	14.03.2024	
Date of Pronouncement	07.06.2024	

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER:**

This appeal is filed by the assessee against order dated 03.01.2023 passed by the CIT(A)-12, Ahmedabad for the Assessment Year 2009-10.

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

- “1. Ld. CIT (A) has erred in confirming the action of the Ld. A.O. that income from sale of land is taxable as “Income from Capital Gaiian” instead of “Income from Business” as offered by the appellant.
2. Ld. CIT(A) has erred in making an addition of Rs.48,00,940/- under Section 50C of the Act.”

3. The assessee filed return of income on 19.03.2010 declaring total income at Rs. 6,75,220/-. The return was processed u/s 143(1) of the Act. The Assessing Officer initiated Section 147 of the Income Tax Act, 1961 for A.Y. 2009-10 after recording reasons and taking necessary approval.

Notice u/s 148 dated 02.07.2014 was served upon the assessee through speed post. The copy of recording of reasons for action u/s 147 was also provided to the assessee. The assessee submitted a letter on 30.07.2014 confirming the service of notice u/s 148 dated 02.07.2014 and filed reply stating therein that return filed on 19.03.2010 should be considered in response to notice u/s 148 of the Act. Thereafter Notice u/s 143(2) dated 27.09.2014 was served upon the assessee on 29.09.2014. Notice u/s 142(1) were also served upon the assessee. In response to the notices, the authorized representative of the assessee represented the case and made submissions. The Assessing Officer observed that in the return of income, the assessee has shown income from business at Rs. 7,38,063/-, income from interest at Rs. 43,408/-. He has claimed deduction under Chapter – VIA of the Act at Rs. 1,06,250/-. The assessee had taken objection against the action taken u/s 147/148. The assessee's objection was rejected vide a separate order dated 23.02.2015. the assessee also took plea that the assessment may be abated in view of the provisions of Section 153A of the Act as search & seizure action u/s 132 was carried out on 22.09.2015. This plea was rejected by the Assessing Officer vide letter dated 01.01.2016 as the year of assessment under consideration i.e. A.Y. 2009-10 is beyond the time period of six years as prescribed in Section 153A of the Act. The Assessing Officer observed that as per information, the assessee had transferred immovable property on 03.03.2011 which was valued by the Stamp Valuation Authority at Rs. 4,49,76,000/- for Stamp Duty purposes. During the course of assessment proceedings for A.Y. 2011-12, the assessee had submitted that he had purchased a piece of NA land admeasuring 9510 sq. mtr. located at R S No. 52, Atladara, Baroda for Rs. 62,42,000/- on 07.03.2007 and the said property was transferred by him through an agreement of sale on 30.04.2008 for consideration of Rs. 75,00,000/- to one Shri Mansukh N Turakhiya handing over possession of the said property to Sri Mansukh N Turakhiya. The Agreement to Sale and the Development Agreement both were duly Notarized. During the course of assessment proceedings for the

A.Y. 2011-12, the assessee claimed that he has signed the Conveyance Deed dated 03.03.2011 as confirming party and the Stamp Valuation Authority had valued the said property at Rs. 4,49,76,000/- as on 03.03.2011. The assessee had further submitted that he had offered gain of Rs. 8,87,370/- to tax out of the transactions in the said land. The Jantri Value of the said land was same in the year 2008-09 i.e. Jantri Value of the said land was Rs. 4,49,76,000/- 30.04.2011. The assessee had not taken into account the Jantri Value while working of profit/gain on the said land while transferring it to Sri Mansukh N Turakhiya as on 30.04.2008. The Assessing Officer observed that provisions of Section 50C of the Act clearly attracts in assessee's hand in A.Y. 2009-10 on transfer of the said land by the assessee to Sri Mansukh N Turakhiya as on 30.04.2008. Thus, income had escaped assessment in the assessee's case for the A.Y. 2009-10 for which action u/s 147/148 was taken. The assessee filed detailed submissions. The matter of valuation of the said land as on 30.04.2008 was referred to the DVO on 15.02.2016. The DVO vide his report dated 22.03.2016 valued the said properties at Rs. 1,23,00,940/- as against Rs. 75,00,000/- claimed by the assessee and after taking cognizance of the same, the Assessing Officer held that in view of the provisions of Section 50C of the Act, the value determined by the DVO at Rs. 1,23,00,940/- has to be taken as full value of consideration for charging Short Term Capital Gains arising in the hands of the assessee. Thus, the differential amount of Rs. 48,00,940/- is brought to tax as suppressed Short Term Capital Gains.

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

5. The Ld. AR submitted that the assessee is engaged in the business of Real Estate since many years which is accepted fact. The assessee purchased the land with intention to develop the same. However, the assessee later found out that from the said land a road from its centre has been proposed, which will divide the land in two parts, which will not only

make land unviable for development and will also delay its development as the proposal will take years to finalize. Therefore, the assessee on distress sold the land vide Agreement of Sale dated 30.04.2008 for a total consideration of Rs.75,00,000/-. Hence, the income there of is taxable as “income from business” only. Since the subject land was “Stock-in-trade” the provisions of Section 50C of the Act is also not applicable as that provision of Section 50C is applicable only to “capital asset”. Similar provision applicable for transfer of “assets other than capital asset” is introduced by Section 43CA of the Act w.e.f. 01.04.2014. Hence, the Assessing Officer in order to justify the reopening of the case has taken erroneous contention that income arising from the subject land is taxable as “income from business”. The Ld. AR submitted that from the return of income filed by the assessee as well as the Profit and Loss account, the said income was offered as “Income from Business” only and relevant schedule i.e. Balance Sheet and Profit & Loss account shows the same. The Ld. AR submitted that the assessee has already submitted the following information during the course of assessment:

Particulars	Amount (Rs.)
Opening Stock	Nil
Less: Selling Price	75,00,000/-
Less: Cost of purchase	66,12,630/-
Less: Other Expenses	1,67,730/-
Net Profit	7,19,639/-

Thus, the said income was offered as business income by the assessee. The Ld. AR submitted that subject land was purchased by him on 07.05.2007 for Rs. 62,42,000/- and immediately thereafter on 30.04.2008, within less than one year, he had sold vide Agreement to Sale

dated 30.04.2008 and Development Agreement dated 30.04.2008, even as “adventure in the nature of trade” the same is taxable as “income from business” only. The Ld. AR further submitted that the comparison by the Assessing Officer with Agricultural land held by the assessee since 20.10.2016 where he is actually cultivating the land is not justifiable. The said land was sold after four years on 09.09.2010 and it was not capital asset therefore, exempt from tax purview. Without prejudice to the earlier contentions, the Ld. AR further submitted that the subject transaction has taken place i.e. F.Y. 2010-11 i.e. A.Y. 2011-12 and Assessment Year under consideration is 2009-10, so it is required past is to be seen and not a subsequent year. The Ld. AR relied upon the decision of Hon’ble Supreme Court in case of G. Venkataswamy Naidu & Co. vs. CIT 1959 Vol. XXXV 594 (SC) and CIT vs. Sulej Cotton 100 ITR 706. Further regarding addition u/s 50C of the Act, the Ld. AR submitted that without prejudice,/as alternate, value determined by Valuation Officer is not applicable in assessee’s case as the said report is u/s 50(c) of the Act and the provision of Section 50(c) of the Act is not applicable in assessee’s case as assessee has sold stock in trade and not a capital asset. The Ld. AR relied upon the decision of K. P. Varghese vs. ITO 131 ITR 597 (SC). The Ld. AR further submitted that the fair market value estimated by the valuation officer is more than the prevailing market value and filed the working of average sq.mt. rate based on comparable sales instances as well as by addition evidence placed valuation report of non-agricultural land located at Atladra, Vadodara.

6. The Ld. DR submitted that the land was sold and purchased without any plotting to a single person and sold on as was purchased so was sold basis. This clearly shows the purpose was to gain profit from investment. Thus, there is no inkling of any adventure in nature of the Trade. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has shown the balance sheet filed on 31.03.2008 showing the land in question as Current Assets valued at Rs. 66,10,630/-. But while describing it as stock in trade or investment, the claim of assessee adduced from a Balance Sheet for A.Y. 2008-09 showing the said land as stock in trade, the Profit & Loss account does not show any purchase of opening stock. Similarly, the accounts for A.Y. 2009-10 do not reflect any trading in land. In fact, the CIT(A) has given a finding that if the person was engaged in business of land dealing for A.Y. 2009-10 his accounts were liable to be audited as per Section 44AB of the Act as the land was sold for Rs.75,00,000/- which exceeded the limit for compulsory audit case of sale/turnover/gross receipt. Thus, the CIT(A) has rightly held that there is no adventure in nature of trade being indulged by the assessee to treat the income from sale of land as business income. Therefore, there is no need to interfere with the findings of the CIT(A). Ground No.1 is dismissed.

8. As regards Ground Nos.2 and 3 are concerned which are alternate grounds, the addition made u/s 50C of the Act, the comparison taken by the Assessing Officer will not be applicable as the land sold in question was not of agricultural land and there was no agricultural activity carried out by the assessee. In fact, the DVO's report taken by the Assessing Officer has overlooked the fact of the example given is not suitable in assessee's case for sale of non-agricultural land. The additional evidence filed by the assessee before us appears to have bearing on the value of the property/land and the same needs to be looked into. Thus, additional evidence is admitted. The working given by the Ld. AR at the time of hearing related to average sq. mtr. rate based on comparable sales instances also should be taken into account by the Assessing Officer. Therefore, this issue is remanded back to the file of the Assessing Officer for verifying the additional evidence and taking into account the DVO report filed by the Assessee and thereafter decide as per income tax

statute. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos.2 and 3 are partly allowed for statistical purpose.

9. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 7<sup>th</sup> June, 2024.

*Sd/-*  
**(WASEEM AHMED)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 7<sup>th</sup> June, 2024**

***PBN/\****

*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*