

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.501/Ahd/2024  
Assessment Year: 2012-13**

Hemina Sandipkumar Shah, Plot No.241/1, Sector-1, Gandhinagar – 382 001 <b>[PAN – AVEPS 1074 R]</b> (Appellant)	Vs.	The Income Tax Officer, Ward – 2, Gandhinagar. (Respondent)
Assessee by	Shri Mehul Thakkar, CA	
Revenue by	Shri Purushottam Kumar, Sr. DR	
Date of Hearing	10.06.2024	
Date of Pronouncement	20.06.2024	

**ORDER**

This appeal is filed by the assessee against order dated 19.01.2024 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

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

- The Id. A.O. has erred in law and on facts in invoking the provision of section 50C of the Income Tax Act and further erred in making addition based on the stamp duty valuation prevailing on the date of execution of sale deed.*
- The Ld. A.O. further failed to consider the effect of first proviso to section 50C of the Act despite the fact that the appellant duly demonstrated before him that her case clearly falls under the said proviso to section 50C of the Act.*
- Alternate Ground:** *The Ld. A.O. also failed to refer the valuation to Departmental Valuation Officer under section 50C(2) of the Act.”*

3. The assessee is an individual and filed return of income at Rs.7,12,160/- for which the income tax return was rejected. The case was reopened in respect of the observation that the assessee sold the immovable property in the Assessment Year 2012-13. The Assessing Officer issued notice under Section

148 of the Income Tax Act, 1961 on 28.03.2019. Notice under Section 142(1) of the Act was issued on 21.08.2019. In response to the notices, the assessee filed return of income declaring income of Rs.7,12,160/-. The Assessing Officer observed that the assessee derived income from partnership firm, sold immovable property and computed capital gain at Rs.3,49,150/-. The Assessing Officer, however, invoked provisions of Section 50C of the Act and recomputed capital gain at Rs.15,83,000/- and made addition of Rs.12,33,850/-.

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. The Ld. AR submitted that the assessee made Banakhat before the Jantri rate increased on 08.04.2011 and the assessee made Banakhat on 28.01.2011. In fact, the possession was also given on 28.01.2011 along with part payment received before 01.04.2011. As the Jantri value increased after finalisation of the Banakhat, so the sale consideration cannot increase because Banakhat already done and possession given at the Jantri valuation cannot be taken when it is prior to the hike for the Jantri valuation. The Government has amended the Act in Section 50C that if stamp duty valuation is revised after part payment is received and the Banakhat is done, then Banakhat value is to be taken and not the revised stamp duty valuation. The Ld. AR relied upon the decision of the Tribunal in the case of Rasilaben Yogeshbhai Patel vs. ITO (ITA No.631/Ahd/2019, order dated 07.10.2022).

6. The Ld. DR submitted that the stamp valuation should be taken into account and in fact the CIT(A) in paragraph no.5 has categorically mentioned that the Assessing Officer should restrict cost of acquisition/improvement to Rs.31,70,000/- against the assessee's claim of Rs.35,01,700/-. The assessee, in fact, has not given any documents related to the agreement before the CIT(A) and, therefore, the additional capital gain by invoking provisions of Section 50C of the Act applied by the Assessing Officer cannot be faulted.

7. Heard both the parties and perused all the relevant material available on record. From the perusal of the Banakhat/date of agreement as well as details

given for the Jantry value and the stamp value prior to revision in the Jantri value, it appears that the assessee has partly made payment and, therefore, the contention of the assessee that the effect of first proviso to Section 50C of the Act will be applicable in the assessee's case and, therefore, the stand taken by the Assessing Officer as well as the CIT(A) does not sustain. Thus, appeal of the assessee is allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 20<sup>th</sup> June, 2024.

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

**Ahmedabad, the 20<sup>th</sup> June, 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*