

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA No.780/SRT/2023**

**(Assessment Year: 2013-14)**

**(Hybrid Hearing)**

|   |            |   |
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| Urmilaben Kanubhai Patel,<br>14, Tekra Falia, Near SMC<br>Office, Punagam, Surat-<br>395010 | <b>Vs.</b> | Income Tax Officer,<br>(International Taxation),<br>Surat, Income Tax Office, Anavil<br>Business Centre, Adajan Hazira<br>Road, Adajan-395007 |
| <b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BNFPP 1452 C</b>                                    |            |   |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>   |

|                              |                          |
|------------------------------|--------------------------|
| <b>Appellant by</b>          | Ms. Chaitali Shah, CA    |
| <b>Respondent by</b>         | Shri Vinod Kumar, Sr. DR |
| <b>Date of Hearing</b>       | 23/07/2024               |
| <b>Date of Pronouncement</b> | 03/09/2024               |

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee, emanates from the order passed under section 250 of the Income-tax Act [in short, 'the Act'] of the Learned Commissioner of Income-tax (Appeals) - 3, Ahmedabad [in short, 'the Ld. CIT(A)'], dated 03.10.2023 for the assessment year (AY) 2013-14.

2. The grounds of appeal raised by the assessee are as follow:

*"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in re-opening the assessment u/s 147 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 CIT(A) has erred in confirming the action of assessing officer in making the addition of Rs.48,28,583/- on account of difference in the indexed cost of acquisition on sale of land.*

*3. On facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in disallowing the deduction amounting to Rs.16,00,000/- claimed u/s 54EC of the Act.*

*4. On the facts and circumstances of the case as well as on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in disallowing the proportionate deduction amounting to Rs.82,371/- claimed u/s 54F of the Act.*

*5. It is therefore prayed that assessment framed u/s 143(3) r.w.s. 147 of the Act may kindly be quashed and/or addition made by assessing officer may please be deleted.*

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

3. Facts of the case in brief are that the assessee filed her return of income for the assessment year 2013-14 on 30.06.2013 declaring total income of Rs. 10,59,250/- including long-term capital gain of Rs.10,06,754/-. The return was processed u/s. 143(1) of the Act. The case of the assessee was reopened u/s. 147 and notice u/s.148 of the Act was issued on 08.08.2016. The assessee requested to consider the original return as the return of income filed in response to the notice u/s 148 of the Act. The reasons for re-opening has been reproduced in para-2 (page-1 & 2) of the assessment order. During the year under consideration the assessee along with other 6 co-owners had sold a land situated at R.S.No. 22, B.No. 36, Kosambaat a total sale consideration of Rs8,94,10,200/-; out of which 1/6<sup>th</sup> share of the assessee comes to Rs. 1,49,01,7007-. The assessee had claimed indexed cost of acquisition as on 01.04.1981 at Rs. 1,25,56,606/- relying on the valuation report of an Approved Government Valuer who valued the property as on

01.04.1981 at Rs. 88,42,700/-. However, in case of other co-owners, a reference for Fair Market Value (in short, 'FMV') as on 01.04.1981 was made to the Departmental Valuation Officer (DVO), Surat of the same land sold by them. According to the valuation report of the DVO, 1/6<sup>th</sup> share in the FMV as on 01.04.1981 comes to Rs.9,07,045/-. The indexed cost of acquisition on Rs.9,07,045/- comes to Rs.77,28,023/- as against Rs.1,25,56,606/- claimed by the assessee. Based on this information, the AO had reason to believe that the FMV determined by DVO suggested that there was a failure on the part of the assessee to declare the correct FMV as on 01.04.1981 and that income chargeable to income tax to that extent had escaped assessment within the meaning of provisions of section 147 of the Act. Accordingly, the case of assessee was reopened u/s. 147 of the Act after recording reasons for re-opening of assessment and notice u/s. 148 of the Act dated 08.08.2016 was issued to the assessee. After issuing statutory notices u/s 143(2) r.w.s. 142(1) and after considering the reply of the assessee assessment was made u/s 143(3) r.w.s 147 on 06.12.2017 by making various additions of Rs.48,28,583/-, Rs.16,00,000/-and Rs.82,371/- on account of difference in indexed cost of acquisition on sale of land, deduction u/s 54EC and deduction u/s 54F of the Act respectively. The total income was determined at Rs.75,70,210/-as against the returned income of Rs.10,59,250/-. Aggrieved by the above additions, assessee filed appeal before Ld.CIT(A) challenging the validity of re-opening of assessment u/s 147 of the Act as well as merits of various additions stated

above. The Ld.CIT(A) issued notices to the assessee and decided the appeal vide order dated 03.10.2023 wherein he has confirmed the validity of assessment as per his findings at para no. 6.4.1 6.4.2 of the appellate order (Page No. 3 to 5 of appellate order). He has relied on the decision in case of Maheshchandra Chimanlal Raval (HUF) v. ITO [2017] 249 Taxman 160 (Guj). He has also confirmed the other additions made by the AO and dismissed the appeal filed by the assessee. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal.

4. The Ld.AR of the assessee has strongly argued against validity of re-opening as well as merits of the additions. He has filed two paper books containing earlier written submissions, various documents and case laws. Regarding validity of re-opening of assessment, it was submitted that the assessment cannot be reopened on the basis of the report of DVO in as much as that reopening of assessment merely on the basis of opinion of District Valuation Officer's report is bad is law. Even valuation was not done in case of the assessee. Therefore, it is clear that the AO has not applied his own mind before reopening the assessment but he simply relied on the report of the DVO in case of other assessee. He submitted that assessee has filed the return of income u/s. 139(1) on 30.06.2013. The AO has to apply his mind and only on the basis of some fact, the reopening could be done. The opinion DVO alone is not sufficient for reopening. For this, the Ld. AR relied upon the

decisions of Hon'ble Supreme Court in the case of ACIT vs. Dhariya Construction Company, 328 ITR 515 (SC) and the decision of the Hon'ble Gujarat High Court in case of Munirismail Voraji vs. ITO - 404 ITR 696 (Guj.). He also relied on the following decisions: (i) Prakash Chand vs. DCIT - 269 ITR 260 (MP); (ii) CIT vs. Smt. Meena Devi Mansighka - 303 ITR 351 (Raj.) (iii) Rasalika Trading and Investment Co. Pvt. Ltd. vs. DCIT - 365 ITR 447(Del.) and (iv) CIT vs. SFIL Stock Broking Ltd. - 325 ITR 285 (Del.). The Ld. AR of the assessee submitted that the case law relied by the CIT(A) in case of Maheschandra Chimanlal Raval (HUF) (supra) is not applicable in assessee's case as in that case the writ was filed when the order of assessment was already passed and therefore, the Hon'ble High Court refused to entertain the petition challenging the order u/s, 147 of the Act and relegated the petitioner to prefer the appeal before the CIT[A] against the order of assessment u/s 147 of the Act and held that all the contentions/defence would be available to the parties; more particularly available to the appellant-assessee.

4.1 It is further submitted by Ld.AR that AO has not given the copy of the approval obtained from the JCIT along with the copy of the reasons recorded for re-opening. Such action of the AO is not in accordance with the spirit of the law and hence, the reassessment is required to be quashed. The Ld.AR for the assessee relied on the following decisions: (i) Sabh Infrastructure Ltd. v/s. ACIT- W.P.(C) 1357/2016 (Del.); (ii) Micro Marbles (P.) Ltd. v/s. ITO - 149

taxmann.com 387 (Raj.) and (iii) Sri Laxmi Narayan Agency v/s. ITO - 148 taxmann.com 373 (Orissa).

5. On the other hand, Ld.CIT-DR for the Revenue relied on the order of CIT(A) for validity of re-opening, which is at para-6.4.1 and 6.4.2 of the appellate order. He submitted that the CIT(A) has given a clear finding that AO has considered and analyzed the information about the report of the DVO of the co-owners in whose case reference was made to the DVO who ascertained the FMV on 01.04.1981. The CIT(A) has rightly held that AO had definite and tangible information in his possession and that he has applied his mind thereupon before issuing notice u/s 148 of the Act. The CIT(A) also relied on the decisions in case of Maheshchandra Chimanlal Raval (HUF) (supra) and held that under similar facts, the Hon'ble High Court has decided the issue in favour of Revenue. In view of the above facts, he dismissed the ground on validity of re-opening.

6. We have heard both parties and perused the materials on record. We have also deliberated the decisions relied upon by both the parties. In this case, assessee had filed return of income u/s 139(1) on 30.06.2013 which was processed u/s 143(1) of the Act. No regular assessment order u/s 143(3) was passed in this case. The case was subsequently re-opened u/s 147 of the Act after prior approval of the JCIT and notice u/s 148 was issued on 16.08.2017. The reasons recorded for re-opening was as under:

*“The assessee has e-filed her return of income on 30.06.2013 declaring total income at Rs.10,59,250/- which includes LTCG of Rs.10,06,754/- in respect of her 1/6<sup>th</sup> share in sale of land owned by 6 co-owners including the assessee.*

*2. In the other co-owners cases a references for FMV as on 01.04.1981 was made to the Deptt. Valuation Officer, Surat. According to this valuation report, the assessee’s 1/6<sup>th</sup> share of indexed cost of acquisition comes to Rs.77,28,025/- as against Rs.1,25,56,606/- claimed in the return of income.*

*3. The FMV determined by the Deptt. Valuation Officer, as above, clearly suggest that there is a failure on the part of the assessee to declare FMV as on 01.04.1981 correctly and offer for taxation full and true capital gain on sale of immovable property for the year under reference. I have, therefore, reason to believe and am satisfied that the income chargeable to tax to the extent of capital gain on sale of immovable property has escaped assessment within the provisions of section 147 of the Act.*

*4. In view of this, I have reason to believe and am satisfied that the income chargeable to tax on LTCG on sale of land has escaped within the provisions of section 147 of the Act.”*

6.1 It is clear from the facts stated above that the case was re-opened based on valuation report of DVO in case of the other co-owners. No independent and separate reference has been made for valuation of the land of the assessee as on 01.04.1981 by the AO. The Ld.AR has relied on the decisions of Hon’ble Supreme Court in case of Dhariya Construction Co. (supra) and of Hon’ble Gujarat High Court in case of Munirismail Voraji (supra). The Hon’ble Supreme Court in case of Dhariya Construction Co. (supra) has dismissed the Civil Appeal of the Department under similar facts and situation. The decision is reproduced below for ready reference and clarity:

*“Having examined the record, we find that in this case, the Department sought re-opening of the assessment based on the opening given by the District Valuation Officer. The opinion of the DVO per se is not an information for the purposes of reopening assessment u/s 147 of the Act. The AO has to apply his mind to the information, if any, collected and must form a belief thereon. In the circumstances, there is no merit in the civil appeal. The Department was not entitled to reopen the assessment.”*

6.2 The Hon’ble jurisdictional High Court in case of Munirismail Voraji (supra) has followed the above decision of the Hon’ble Supreme Court and has quashed and set aside the re-opening of assessment. It held that where the DVO determined FMV of land sold by assessee mechanically based on rate in case of other property situated in the same town planning scheme, re-assessment solely on the basis of such report and without any further enquiry was unjustified. The relevant part of the decision is as under:

*“7.3 It appears from the DVO’s report that the AO has erred in relying upon DVO’s report to form an opinion that the income chargeable to tax has escaped assessment. The DVO has mechanically and on the basis of rate in the case of other two properties situated in the same Town Planning Scheme has determined the fair market value of the land. However, from the report, it does not appear that the DVO has applied his mind with respect to the location etc., of the land in question. As observed hereinabove, there is no further application of mind by the AO on the basis of the information received by him in the form of DVO’s report and has mechanically and solely relied upon the DVO’s report, formed an opinion that the income chargeable to tax has escaped. Thus, there was no tangible material available with the AO to form an opinion that the income chargeable to tax has escaped assessment.*

*8. Under the circumstances, on the aforesaid ground alone, the impugned noticed deserve to be quashed and set aside. Consequently, the impugned reopening of the assessment deserves to be quashed and set aside.”*

6.3 The facts of the instant case are similar to the facts of the above cases.

The AO, based on the DVO’s report in case of other co-owners, has initiated

the re-assessment proceedings. It is evident from the reasons recorded (*reproduced at para-6*) for re-opening that he has mechanically re-opened the case solely on the basis of DVO's report without independently applying his mind to the information to form a belief that the conditions for invoking provisions of section 147 of the Act are fulfilled. Hence, the re-opening is liable to be set aside.

6.4 We find that the CIT(A) has relied on the decision in case of Maheshchandra Chimanlal Raval (HUF) (*supra*) to sustain the re-opening of assessment by AO. The ratio of above decision is not applicable because in the said case, adoption of DVO's valuation was upheld by the CIT(A) in case of co-owners. The Hon'ble High Court did not express anything on merits in favour of either parties. In view of peculiar facts and circumstances, it relegated the petitioner to avail alternative statutory remedy available by way of appeal before CIT(A) against order of assessment u/s 147 of the Act. Since the facts and circumstances are different, the ratio of the above decision is not applicable to the case of the appellant. On the other hand, as discussed above, the ratio of the decisions in case of Dhariya Construction Co. (*supra*) and Munir Ismail Voraji (*supra*) are applicable to the facts of the present case. Respectfully, following the above two decisions, we allow the ground No.1 of assessee's appeal.

7. Since we have quashed and set aside the re-opening of assessment, the other grounds become academic in nature and do not require any adjudication.

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

Order pronounced on 03/09/2024 in the open court.

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

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 03/09/2024

*Dkp Outsourcing Sr.P.S*

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat