

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Makarnad Vasant Mahadeokar, Accountant Member**

**ITA No. 1215/Ahd/2024
Assessment Year 2013-14**

Niket Ravibhai Patel 4, Patel Square, Arunachal Society Road Subhanpura, Vadodara-390023 PAN: ASAPP6109K (Appellant)	Vs	The DCIT, Circle-1(1)(1), Vadodara (Respondent)
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**Assessee Represented: Shri Hemant Suthar, A.R.
Revenue Represented: Smt. Bhavna Gupta Singh, Sr.D.R.**

Date of hearing : 26-09-2024
Date of pronouncement : 10-12-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 28.05.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. Brief facts of the case is that the assessee is an individual filed his Return of Income for the Asst. Yea 2013-14 declaring total income of Rs.10,98,540/-. The return was taken for scrutiny assessment as low capital gains shown comparison to the sale consideration received on sale immovable properties. The assessee along with other co-owners sold two immovable properties on 26-02-2013 measuring 9038 Sq. Mt. and 13913 Sq. Mt. for a consideration of Rs.1,20,60,000/- and Rs.1,85,40,000/-. Assessee's share in both the properties is 5%, accordingly the assessee shown his share as Rs.6,03,000/- and Rs.9,27,000/- on sale of the immovable properties in his Return of Income. However the stamp duty value of the above mentioned properties were Rs.3,34,40,600/- and Rs.5,14,78,100/- respectively. Accordingly the A.O. issued a show cause notice as to why not assessee's share to be determined at Rs.16,72,030/- and Rs.25,73,905/- respectively as per the provisions of Section 50C of the Act.

2.1. In reply, the assessee submitted that he sold agricultural lands and offered the consideration for taxation. However the buyer insisted conversion into Non-Agricultural land, thereby the difference in the Jantri value. However when the possession of the properties were given on 04-12-2012, the land was agricultural in nature and converted into Non-Agricultural land vide Collector's order dated 26-12-2012 and the Sale Deed was registered on 25-02-2013. Since on the date of handing over of possession of land, being agricultural in nature, the value as mentioned in the Banakhat is to be taken into consideration and no question of invoking provisions of Section 50C in the above transaction. The Ld. A.O. rejected the above contention

and thereby made addition of Rs. 27,15,935/- as per the provisions of Section 50C of the and demanded tax thereon.

3. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A) and contended that in other Co-owner's case, the respective Assessing Officer referred the matter to District Valuation Officer. Hence that value is to be adopted in assessee's case being other Co-owner. However this submission was not considered by Ld. CIT(A) and confirmed the addition of Rs.27,15,935/- made by the A.O. and dismissed the appeal filed by the assessee.

4. Aggrieve against the appellate order, assessee is in appeal before us raising the following Grounds of Appeal:

1. The Ld. CIT(A) has erred in law and in facts in not granting proper opportunity of being heard and passing the order without considering the submission of the appellant. The order so passed is prayed to be quashed and set aside.

2 The Ld. CIT(A) has erred in law and in facts in passing the order by considering the submission of the appellant partially. The Ld. CIT(A) ought to have considered and adjudicate the appeal by considering the submission of the appellant in full.

3. The Ld. CIT(A) has erred in law and in facts in confirming the action of the Ld. AO in making the addition on account of difference in the value of the stamp duty valuation and the actual amount of Sale Consideration of Rs. 27,15,935/-. The addition so made / confirmed without considering the objections raised by the appellant before the Ld. AO and Ld. CIT(A) is bad in law and is prayed to be deleted.

4. The Ld. CIT(A) ought to have considered the valuation report obtained from the Ld. DVO In the case of the Co-owner of the Property in question which is submitted during the course of appellate proceedings and thereby the Ld. CIT(A) should have deleted the addition made in the case of the appellant.

5. Your appellant craves liberty to add, alter, amend substitute or withdraw any of the grounds of appeal hereinabove contained.

5. Ld. Counsel appearing for the assessee submitted a Paper Book running to 116 pages wherein valuation made by the District Valuation Officer the above properties at Rs.1,93,11,000/- and Rs.1,25,44,000/- respectively in the case of a Co-owner Shri Ravibhai Kanjibhai Patel. Based on this Valuation Report, the Assessing Officer determined difference in value at Rs.65,18,244/- u/s. 50C. Similar valuation is to be adopted in the case of assessee whose share is 5% in the above properties. Further Ld. Counsel relied upon decisions of the Tribunal when Fair Market Value of land determined by DVO was within 10% of purchase price, showing no significant difference from purchase consideration, no addition under section 56(2)(x) was warranted in such cases. Thus Ld. Counsel pleaded to allow the appeal.

6. Per contra The Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Lower Authorities.

7. Heard rival submissions. We have given our thoughtful consideration and perused the materials available on record. It is seen from the records in the case of the assessee, the A.O. has not referred the case to District Valuation Officer for determining the value u/s. 50C of the Act. Whereas in the case of Co-owner namely Shri Ravibhai Kanjibhai Patel (whose holding 12% share) the case was referred to DVO and he determined the value of above two lands vide his Valuation Report dated 18-04-2016 as follows:

12.0 VALUATION:

Having considered the evidences produced by the assessee and having taken into consideration all relevant material gathered by the undersigned,

the Fair Market Value of the property as under is considered just fair and reasonable.

Sr. No.	Property address and location	Date of Valuation	Declared value in Rs. (for whole property)	Assessed value in Rs. (for whole property)
1	NA land, R.S. No. 624 and 617, Block No. 646 at .Village- Chansad, Tal- Padra, Distt. Vadodara.	26.02.2013	1,85,40,000/-	1,93,11,000/-
2	NA land, R.S. No. 623 and 618, Block No. 647 at Village- Chansad, Tal- Padra, Distt Vadodara.	26.02.2013	1,20,60,000/-	1,25,44,000/-

8. This valuation report was not there before the A.O. while passing the assessment order. However, when the same placed before Ld. CIT(A), he ought to have considered the DVO's report as well as the assessment order passed in the case of Co-owner, but failed to consider the same. Therefore in the interest of justice, the orders passed by the Lower Authorities are hereby set aside with a direction to consider the valuation report dated 18-04-2016 made by DVO and pass fresh assessment order in accordance with the provisions of law and by giving reasonable opportunity of hearing to the assessee.

9. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 10 -12-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 10/12/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee

2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद