

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. ITA No. 558/Srt/2023, (AY: 2014-15)

(Physical hearing)

Sarlaben Dahyabhai Patel, Patel Faliya, AT & PO-Abrama, Taluka, Kamrej, Surat-394150. PAN: CBWPP 3730 P	Vs.	I.T.O., Ward 2(4)(2), Aayakar Bhavan, Majura Gate, Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Sapnesh Sheth, C.A.
Department represented by	Shri Mukesh Jain, Sr.DR
Date of hearing	19/11/2024
Date of pronouncement	04/02/2025

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Commissioner (Appeals)/National Faceless Appeal Centre, New Delhi dated 14th July 2013 for assessment year (AY) 2014- 15. The assessee has raised following grounds of appeal;

- (1) *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner (Appeals) has erred in partly confirming the action of assessing officer in making addition towards long-term capital gain by sustaining the addition to the extent of ₹ 27,34,500/- as per report of departmental valuation officer as against addition of ₹ 65,91,837/-made by assessing officer under section 50C of Income tax Act.*
- (2) *On the facts and circumstances of the case as well as on the subject, learned Commissioner (Appeals) erred in confirming action of assessing officer in making reference to the valuation officer under section 55A of the act for valuing impugned property edge on 1st April 1981 without pointing out any defect whatsoever in the report of government approved value submitted by assessee in support of valuation of property.*
- (3) *On the facts and circumstances of the case as well as law on the subject, learned Commissioner (Appeals) has erred in confirming the action of assessing officer*

making addition of Rs. 66,97,418/-and further erred in making enhancement of Rs. 16,74,941/- as per report of DVO.

(4) On the facts and circumstances of the case as well as law on the subject, learned Commissioner (Appeals) has erred in confirming action of assessing officer in making disallowance of Rs. 8,96,000/- under section 54B of Income Tax Act/-.

(5) On the facts and circumstances of the case as well as law on the subject, learned Commissioner (Appeals) has erred in confirming action of assessing officer in making disallowance of Rs. 2,40,540 under section 54F of the Act.

(6) Appellant craves leaves to add, after a delete any grounds either before or in the course of hearing of the appeal.

2. Rival submission about the parties have been heard on record perused. The Id. authorised representative(AR) of the assessee submits that a very short relief is claimed in various grounds of appeal raised by the assessee.

3. Ground no.1 of the appeal relates to addition of Rs. 27,34,500/- under section 50C. The Id AR of the assessee submits that during the year under consideration the assessee has sold immovable properties/agricultural land situated at R.S. No.316 Block No.313 Khata No.76 ad measuring 14270 square meter in Moje Abrama, Taluka Kamraj, Surat along with her husband/co-owners on 17.10.2013. The assessee was having ½ share in the property. The assessee and his co-owners had sold the property at Rs.2.15 crores. The Stamp Valuation Authority at the time of registration of transaction of said land, valued the property at Rs.3.56 crores. During the assessment, the Assessing Officer made request for making reference for estimation of Fair Market Value ('FMV' in short) by District Valuation Officer ('DVO' in short) on the date of sale of said assets. Till passing of the assessment order, the report of DVO was not received. The Assessing Officer thus made addition of ½ share of difference vis-à-vis the sale consideration and the value determined by Stamp Valuation Authority. During

First Appeal, the report of DVO was received. The DVO estimated FMV of the land at Rs.2.79 crores i.e., at Rs.1960/- per square meter. The assessee furnished the report of Government Registered Valuer who has valued the land at Rs.2.25 crores i.e., at Rs.1600/- per square meter as on 17.10.2013. The Ld. CIT(A) on the basis of report of DVO directed the Assessing Officer to re-compute the addition. The comparable instances referred by DVO in his report are in respect of land having small area comparative to the land of assessee. The area of land of assessee was 14270 square meter but the area of comparable referred by DVO are ranging in and around 900 square meter to 2500 square meter. The smaller plat of land is usually sold at high price of rate. The value estimated by Government Register Valuer estimated at Rs.1600/- per square meter is more reasonable. The Ld. AR of the assessee submits that to avoid the further dispute, an average of value estimated by DVO as well as Government Registered Valuer may be considered for the purpose of addition u/s 50C of the Act. Before Ld. CIT(A) the assessee has filed detailed written submission explaining the fact that for valuation of agricultural land, the DVO is not qualified as per Rule 8A of Wealth Tax Rules. The assessee also raised objection that there is high tension passing over the land and there is no power supply in the nearby area. Such fact was not considered by Ld.CIT(A)

4. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld.SR-DR submits that report of Government Registered Valuer is a self-serving document. The Ld.CIT(A) has adopted the value estimated by DVO on the date of sale of land. The assessee has not filed any objection before DVO.

5. We have considered the submission of both the parties and have gone through the order of authorities below. We find that during assessment, Assessing Officer noted that assessee had sold agricultural land along with her co-owners by showing sale consideration of Rs.2.15 crores, however, the Stamp Valuation Authority valued the land at Rs.3.56 crores. The assessee was having 50% share in the said land. The Assessing Officer was of the view that provisions of Section 50C of the Act is applicable. The Assessing Officer made reference to DVO. The report of DVO was not received, the assessment was getting time barred thereby the Assessing Officer made addition of Rs.65,91,837/- being 50% of difference in jantry value valuation and the value shown by assessee. No benefit of indexation or cost of acquisition was considered or allowed by Assessing Officer. We find that before Ld.CIT(A) the report of DVO was received wherein he estimated the FMV of land at Rs.2.79 crores i.e., @ Rs.1960/- per square meter. The Ld. CIT(A) on the basis of DVO report directed the Assessing Officer to consider deemed sale consideration as per report of DVO. We find that before Ld. CIT(A), the assessee raised a specific plea that there is high tension electricity line is passing over the land and there are other factors affecting the potential market value of the land. Such facts are recorded on page No.3 and 4 of impugned order. The Ld.CIT(A) has not considered such relevant fact.
6. We have independently considered the report of DVO as well as the submission of assessee before Ld.CIT(A) and the report of Government Registered Valuer and the submissions made before us. The Government Registered Valuer has recorded that high tension electricity line is crossing through the land, which in

our view adversely affect the potential value of the land. Thus, considering the overall facts and circumstances of the case, in our view, the average of value of land estimated by DVO as well as Government Registered Valuer i.e., Rs.1600/- and Rs.1960/- per square meter, which comes to Rs.1780/- per square meter would be more reasonable and sufficient to meet the end of justice. The Assessing Officer is directed accordingly. To be more specific the addition under section 50C, if any, on the share of assessee's would be Rs.19,50,000/-.

7. Ground No.2 and 3 relate to value of land as on 01.04.1981. The Ld.AR of the assessee submits that the land was acquired prior to 01.04.1981. The assessee has considered the value as per report of Government Registered Valuer at Rs.150/- per square meter as per 01.04.1981. Initially, Assessing Officer adopted the value of land as on 01.04.1981 at Rs.50/- per square meter. However, the DVO estimated the value of land as on 01.04.1981 at Rs.25/- per square meter only. The report of DVO contents of comparable of land having in size of 83 to 181 square meter of land and rates of different comparable are varying from Rs.22/- per square meter to Rs.60/- per square meter, copy of which is available at page 29 of paper book. The estimation @ Rs. 25/- per square meter by DVO is no convincing. The assessee has adopted rate of land as on 01.04.1981 at Rs.150/- per square meter on the basis of Government registered valuer. The Ld. CIT(A) accepted the report of DVO without allowing the assessee to make his submissions on such reduced value of land suggested by DVO. The Commissioner (Appeals) made enhancement without giving any specific noting of enhancement. To support his submission, Ld. AR of the

assessee relied upon the decisions of (i) CIT vs. Hiraben Govindbhai Patel (2014) 44taxmann.com 29 (Guj) and (ii) Gunvantlal Maganlal Naik vs. ITO in ITA No.96/Srt/2018 dated 21.03.2023.

8. On the other hand, Ld. Sr-DR for the Revenue supported the order of Ld.CIT(A)
9. We have considered the submission of both the parties and have gone through the order of lower authorities carefully. We have also deliberated the case law relied upon by Ld. AR of the assessee. We find that while computing the cost of acquisition and indexation cost on the share of assessee, the Assessing Officer has considered the value of land as on 01.04.1981 at Rs.50/- per square meter. We find that Ld.CIT(A) adopted the value of land at Rs.25/- per square meter on the basis of report of DVO and thereby made the enhancement. No notice of enhancement is given to the assessee. We have carefully considered the report of DVO with regard to value of land as on 01.04.1981, which is based on comparable instances given on page No.29 of paper book (part of DVO report). The assessee has considered the value as per report of Government Registered Valuer at Rs.150/- per square meter as per 01.04.1981. Initially, Assessing Officer adopted the value of land as on 01.04.1981 at Rs.50/- per square meter. However, the DVO estimated the value of land as on 01.04.1981 at Rs.25/- per square meter only. The report of DVO contents of comparable of land having in size of 83 to 181 square meter of land and rates of different comparable are varying from Rs.22/- per square meter to Rs.60/- per square meter, copy of which is available at page 29 of paper book. In our view the estimation @ Rs. 25/- per square meter is no convincing. The assessee has adopted rate of land as on 01.04.1981 at Rs.150/- per square meter on the

basis of Government registered valuer. The Ld. CIT(A) accepted the report of DVO without allowing the assessee to make his submissions on such reduced value of land suggested by DVO. We find that in first comparable instances, the DVO has written rate ranging from Rs.22 to Rs.60/- per square meter. However, he has suggested rate of land at Rs.25/- per square meter. In our view, there is no such logic for reducing rate as on 01.04.1981. We find that assessee has taken value of land @ Rs.150/- per square meter. After considering overall facts that in one of the comparable instances, the DVO has mentioned rate of above Rs.60/- per square meter. Therefore, in our view, Rs.60/- per square meter would be reasonable to avoid the possibility of revenue leakage. The Assessing Officer is directed accordingly. Resultantly, the order of enhancement is set aside. In the result, Grounds No. 2 and 3 are partly allowed. The Assessing Officer is directed to re-compute capital gain by taking value of land as on 01.04.1981 @ Rs. 60/- per square meter and on the date of sale of land @ Rs. 1760/- per square meter. In the result, ground No. 1 to 3 are partly allowed.

10. Ground No.4 relates to deduction under Section 54B of the Act. The Id AR of the assessee submits that that assessee claimed deduction 54B of the Act against the purchase of another agricultural land. The assessee purchased agricultural land on 20.06.2023, out of the advances received against the sale of land which was transferred by sale deed dated 17.10.2013. The Assessing Officer disallowed the claim of assessee that assessee has purchased new agricultural land prior to sale of agricultural land. The Ld.CIT(A) upheld the action of Assessing Officer by taking view that assessee should have purchased agricultural land after two years from the date of sale. The Ld.CIT(A) also held

that assessee failed to prove nexus between the money received on sale of land with the purchase consideration of new agricultural land. The Ld. AR of the assessee submits that in the sale consideration of new agricultural land was paid by way of cheque dated 10.06.2013 of Rs.8,46,800/- which was issued after receipt of part of sale consideration of land sold by assessee in April and May, 2013 which is duly reflected in the bank statement of assessee, copy of which filed at page No.50 of paper book. To support his contention, Ld. AR of the assessee relied on the decision of Surat Tribunal in case of Smt. Nayanaben F. Patel vs. PCIT (2023) 152 taxmann.com 53 (Surat-Trib.).

11. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities.
12. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We have also deliberated the case law relied by Ld. AR of the assessee. We find that Assessing Officer disallowed deduction under section 54B of the Act by taking view that assessee had purchased new agricultural land prior to sale of agricultural land. The Ld. CIT(A) while confirming the action of Assessing Officer further held that assessee has not established the nexus between the money received on account of sale with the purchase consideration of new agricultural land. We find that assessee has placed on record, copy of his bank account showing the part of sale consideration received in April and May, 2013 and the cheque of Rs.8,46,800/- was cleared on 12.06.2013 against the part payment of new agricultural land. Thus, nexus of payment is clearly established. We find that

such fact is not verified by lower authorities, therefore, we direct the Assessing Officer to verify the facts about the nexus of payment received against the sale of agricultural land investment in new agricultural land and allow relief to assessee in accordance with law. In the result, Ground No.4 is allowed.

13. Ground No.5 relates to deduction under section 54F of the Act. The Ld. AR of the assessee submits that while making addition the Assessing Officer made addition of higher figure of long term capital gain than the capital gain claimed by assessee. The assessee made investment in construction of house of Rs.22,50,000/- However, the assessee claimed deduction under section 54F of Rs.2,40,540/- in the return income. Once the long term capital gain was increase on the basis of deeming fiction of Section 50C, the Assessing Officer ought to have allowed higher deduction under section 54F of the Act on proportionate basis due to increase in the figure of capital gain. The Assessing Officer disallowed deduction under section 54F by holding that assessee has not furnished confirmation of contractor and approval plan from local authority. The Ld. CIT(A) confirmed the action of Assessing Officer with similar view that assessee has not furnished approved plan from Municipal Authority. The assessee furnished the copy of agreement with the contractor, copy of which is filed at page No.85 to 89 of the paper book along with the receipt of payment made to contractor and building material.

14. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld. Sr-DR submits that assessee is relying upon self-serving document. No proof from sanction or approval plan from Surat Municipal Corporation. No proof of any kind of TDS deducted from payment made to

contractor is furnished by the assessee. The assessee is not eligible for any such deduction.

15. We have considered the rival submission of rival parties. We have also perused the materials available on record. We find that there is no dispute that initially assessee claimed deduction of Rs.2.40 lakh under section 54F of the Act. The Assessing Officer disallowed such deduction by taking view that before filing return of income, the assessee has not deposited capital gain in a bank account as per scheme of Central Government, no certificate of Municipal Authority is filed. The details of contractor or his PAN is not furnished. The Ld. CIT(A) confirmed the action of Assessing Officer that assessee has made self-made voucher and approval plan of Municipal Authority is not filed.

16. We find that before us the assessee has filed agreement with the contractor for construction of residential house along with certain receipt of building materials or payment to the contractor. The assessee has also furnished confirmation of contractor. The Id AR of the assessee has also furnished his certificate while filing all such documents that all such furnished before Assessing Office. We find that there is no condition prescribed in Section 54F for obtaining sanction plan from local authorities about construction of residential house. Rather Section 54F is speak about either to purchase a new residential house within two years after date of transfer of the original asset or the construction new residential house within three years, and that if net consideration is not appropriated towards purchase of new residential house or not utilized for the purpose of construction, is to be deposited in a bank as per scheme of Central Government. Therefore, considering the fact that all such

facts and the evidences furnished by assessee is not verified by Assessing Officer, thus, this issue is restored back to the file of Assessing Officer to pass the order afresh in accordance with law. It is also directed that in case the capital gain is increased due to deeming fiction of section 50C, the Assessing Officer shall consider revised claim of deduction under section 54F of the Act. Needless to direct that before passing the order, Assessing Office shall grant fair and reasonable opportunity of being heard to asses. In the result, this ground is allowed for statistical purposes

17. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 04/02/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 04/02/2025
Dkp Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत