

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
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. 128/SRT/2023** (AY 2012-13)
(Physical court hearing)

Jignesh Sukhdevbhai Patel 43, Ashutosh Nagri, Jahangirpura, Olpad Road, Surat-395 005 [PAN : AJAPP 1141 J]	बनाम Vs	Income Tax Officer, Ward-2(3)(6), Surat, Room No.606, Aaykar Bhavan, Opp. New Civil Hospital, Majura Gate, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Mehul Shah, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	27.12.2024
उद्घोषणा की तारीख/Date of pronouncement	19.02.2025

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 National Faceless Appeal Centre, Delhi/Commissioner of Income tax (Appeals) [for short to as "NFAC/Ld.CIT(A)] dated 20.12.2022 for assessment year (AY) 2012-13, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 26.03.2015. The assessee has raised the following grounds of appeal:-

"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 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 of making addition u/s 50C of the Act by adopting FMV of land situated at

R.S.No.195, 196, Block No.440 situated at Bhatha village at Rs.86,41,500/- instead of Rs.15,50,000/- which is the sales consideration as per sale deed.

3. Without prejudice to above, the Assessing Officer ought to have taken the value of land at Rs.55,13,000/- considering the valuation report submitted by AVO (Departmental Valuation Officer).

4. It is therefore prayed that addition made by the Assessing Officer and confirmed by the CIT(A) may please be deleted or re-assessment may please be quashed.

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

2. The assessee vide application undated, filed on 27th December 2024 has raised following additional grounds of appeal:

"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 assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.

3. The assessee in the same undated application submitted that in his application dated 17.09.2023 has raised following additional grounds of appeal:

- On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) failed to appreciate that the DVO had statutory duty to submit a valuation report within six months from the end of the month when reference was made by the AO as mandated by the Section 142A(6). The reference was made to the Valuation Officer u/s 142A(1) vide letter dated 17.03.2015 and consequently the Valuation Officer should have sent a copy of the report of estimate made under sub-section (4) or sub-section (5) within the period of 6 months from the end of the month when reference was made. However, the same was furnished on 11.12.2018 i.e. after a period of more than 42 months. **The same may be treated as not pressed.**"*

4. Rival submissions of both the parties have been heard and record perused.

The Ld. Authorized Representative (Ld.AR) of the assessee submits that he

has raised additional grounds of appeal vide his application / letter dated 17.09.2023 for challenging the reference to Departmental Valuation Officer ('DVO' for short) made under section 142A(6), however, he is not pressing such additional ground of appeal. Though the assessee while filing appeal has raised ground of appeal relating to validity of assessment under section 147 and issuance of notice under section 148 of the Act. As such grounds of appeal were not raised before Ld. CIT(A), therefore, the assessee is seeking permission to raise this additional ground of appeal. The additional ground of appeal is purely legal. The facts for adjudication of additional grounds of appeal are emanating from the order of lower authorities and no new facts are required for adjudicating the additional grounds of appeal. To support his submission, Ld. AR of the assessee relied upon the decisions of Hon'ble Supreme Court in the case of NTPC vs. CIT (1998) 229 ITR 383 (SC) and Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688 (SC).

In support of additional grounds of appeal, Ld. AR of the assessee submits that case of assessee for assessment year 2012-13 was reopened by recording reasons dated 21.10.2013. In the reasons recorded, Assessing Officer noted that during survey under section 133A in case of Shri Babubhai L Boghra, PAN AENPB 7379A and certain loose papers and purchase deed of immovable property was found and impounded. The impounded document is in respect of sale of agricultural land ad measuring 8863 square meters of Revenue Survey No.195 and 196, Block No. 440 of Bhatha village, showing sale consideration at Rs.1.55 lakh. The land was valued by Stamp Duty Valuation Authorities at Rs.1.50 crores by registered sale deed dated

30.05.2011. The Assessing Officer further recorded that land in question is a capital asset, as the agricultural land falls within 8.00 kilometres of Surat Municipality Corporation limit. The assessee was liable to pay capital gains of deemed sale value of Rs.1.50 crores, which assessee failed to pay. On the basis of such material, Assessing Officer recorded that it is a fit case for issuance of notice under section 148 of the Act. There is no independent satisfaction of Assessing Officer. The Assessing Officer relied on third party information without making independent verification of fact and case was reopened after four years from the end of relevant assessment year. There is no assertion in the reasons recorded that there was any failure on the part of assessee in not disclosing fully and truly all the materials necessary for assessment. The assessee disclosed all the details while filing return of income. To support such contention, Ld. AR of the assessee relied upon the decision of Hon'ble Supreme Court in the case of Dhari Construction 197 Taxman 202 (SC) and decisions of Hon'ble jurisdictional High Court in case of Mumtaz Haji Mohmad Memon vs. ITO in Special Civil Application No.21030 of 2017 dated 21.03.2018; Sagar Enterprises vs. ACIT (2002) 124 Taxman 641 (Guj); Dr. Ajit Gupta vs. ACIT (2017) 79 taxmann.com 316 (Del); Tata Sons Ltd. vs. DCIT (2022) 137 taxmann.com 414 (Bom) and Arvind Sahdeo Gupta vs. ITO (2023) 153 taxmann.com 244 (Bom).

5. On merit that is against ground No.2, the Ld. AR of the assessee submits that during re-assessment proceedings, Assessing Officer made a reference for estimation of Fair Market Value ('FMV' for short) of land on the date of sale on 30.05.2011. The DVO/AVO furnished his report dated 11.03.2015

and estimated the FMV of land at Rs.55,13,000/-. However, the report of DVO was not accepted by Assessing Officer. The Assessing Officer disregarded the DVO's report made addition under section 50C of the Act on the basis of valued determined by Stamp Valuation Authority. The Assessing Officer has not given any benefit of indexation or set off of cost of acquisition. Aggrieved by the addition made in the assessment order, assessee filed appeal before Ld.CIT(A). Before Ld. CIT(A) assessee filed detailed written submission and also furnished valuation of property by Government Registered Valuer as on 30.05.2021, who valued the property at Rs.40.00 lakh. During pendency of second report of DVO was received, *wherein* the FMV the land was considered at Rs.86,41,500/-. The Ld.CIT(A) simply accepted the second valuation report of DVO and directed the Assessing Officer to determine long term capital gains after allowing deduction of cost and deduction under section 54, if any. The Ld. AR of the assessee submits that Government Registered Valuer valued the property @ 450/- per square meter. As per first report of DVO, value was estimated at Rs.625/- per square meter and as per second report of DVO, the same property was valued @ 975/- per square meter. However, as per Stamp Valuation report, the jantry value of land as on 30.05.2011 was Rs.2350/- per square meter. The Ld. AR of the assessee submits that second report of DVO is based on inspection carried out in the December, 2018 though the transaction of land took place in May, 2011. Thus, there was substantial change in the locality due to rapid development in Surat Municipality Corporation area. The Ld. AR of the assessee submits that Government

Registered Valuer has considered all the relevant factor affecting the value of land. The approach road to the land was only 8.00 feet wide that too there was a kachha road and there was no power supply, it was in a low land area. However, at the time of second valuation report dated 11.12.2018 substantial change took place in the locality. The DVO in para-5.8 of his report recorded that there was 10 feet wide road, developed on the contribution of land by farmers. By that time impugned land was converted in to NA land. Though at the time of sale of land, it was an agricultural land. The Ld. AR of the assessee submits that either report of Government Registered Valuer or the report of first DVO may be accepted. To support such submission, Ld. AR of the assessee relied upon the following case law:

- PCIT vs. Ravjibhai Nagjibhai Thesia (2016) 76 taxmann.com 76 (Guj)
- CIT vs. Dr. Indra Swaroop Bhatnagar (2013) 30 taxmann.com 293 (All)
- Smt. Bharti Jayesh Sangani vs. ITO (2011) 9 taxmann.com 91 (Mumbai)
- Puran Pradhan vs. ITO (2023) 150 taxmann.com 17 (Kolkata-Trib.)
- Manilal Dasbhai Makwana vs. ITO (2018) 96 taxmann.com 219 (AhmTrib.)
- Shri Zulfi Revdjee vs. ACIT ITA No.2415/Hyd/2018 dated 05.09.2019
- Kay Jay Projects Pvt. Ltd. vs. DCIT ITA No.s 2421-2423/dEl/2018 dated 10.05.2023

6. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. Ld. Sr-DR for the Revenue submits that at the time of reopening assessment, Assessing Officer has received fresh tangible material which was sufficient for recording reasons that income of assessment has escaped from assessment. There is no dispute that assessee has sold the impugned land on the sale consideration which is far below to jantry rate determined

by State Government. This fact was sufficient for recording the believe that income has escaped assessment. On the second ground, the Ld. Sr-DR for the Revenue supported the order of Ld. CIT(A).

7. We have considered the rival submission of both the parties and have gone through the orders of lower authorities. We have also deliberated the case law relied upon by Ld. AR for the assessee. First we are considering the additional grounds of appeal raised by Ld. AR of the assessee. We find that though this ground of appeal was raised by assessee along with Form-36, however, as this ground of appeal was not raised before First Appellate Authority. Therefore, assessee filed additional grounds of appeal. The Ld. AR of the assessee while making his submission submitted that no new fact is required for admission of additional grounds of appeal and that all fact relating to adjudication of the grounds of appeal are emanating from the order of lower authorities. On considering the submissions of Id AR of the assessee and the material before us, we find that before Assessing Officer, the assessee has not raised any objection against the reopening nor raised such ground of appeal while filing first appeal. Before us, Ld. AR of the assessee has taken shelter of legal angle that this issue is purely legal in nature, however, on consideration of facts of the present case, we find that this is not pure question of law, rather mixed question of fact and law, as the assessee has not raised this plea either before Assessing Office or Ld. CIT(A), admittedly there is no finding of lower authorities on such issue. Still, keeping in view the cause of substantial justice, the additional ground of appeal is allowed for adjudication. On considering the facts and material

available on record, we find that the assessee has not placed on record copy of returned income, computation of total income or other materials to show whether all such facts were disclosed fully and or truly at the time of filing return of income. In our view, the fresh tangible material came to the notice of Assessing Officer and only on the basis of information received from ITO Ward-3(3), Surat that a survey action under section 133A was carried out in case of Shri Babubhai L Boghra, who is one of the purchaser of land. In our view the information from ITO Ward-3(3), Surat is fresh tangible material for making belief that income of assessee has escaped assessment. Therefore, we do not find any merit in additional grounds of appeal, which we dismissed.

8. So far as addition under section 50C is concerned we find that during assessment proceedings, Assessing Officer made a reference to DVO for estimation of FMV as on 30.05.2011. We find that DVO in his report dated 11.03.2015 determined FMV of land at Rs.55,13,000/- which is @ Rs.622/- per square meter. However, such report was not accepted by Assessing Officer. No specific reason for disregarding such report was mentioned in the assessment order. The Assessing Officer requested to the Chief Engineer (valuation), New Delhi for review of the order of DVO. We further find that a revised report of DVO was received during pendency of first appeal. In the second report/revised report, DVO determined/estimated FMV @ Rs. 975/- per square meter. We have compared the comparable instances in first report of DVO as well as second report of DVO. In the first report of DVO, there are comparable ranging @ Rs.265 to 1008/- per square meter.

However, in the second report there are sale instances ranging from Rs.701 to 1008/- per square meter. Similarly, in the Government Registered Valuer, he valued @ 450/- per square meter. The jantri value, on the basis of which the Stamp Valuation authorities valued that transaction was Rs. 2350/-per square meter. Thus, there is huge variation in various report i.e. in Government Registered valuer, First report of DVO and in second report of DVO. We find that Government registered valuer hand not mentioned any comparable of sale instances of relevant period in his report. Hence, the report of Government registered valuer is rejected. However, in both the report of DVO's there are references of various comparable sale instances as recorded in this para (supra). On consideration of all the comparable, in both reports of DVO's, we find that all comparable instances are related with the same locality, therefore, the Assessing Officer is directed to take average value estimated in in first DVO report as well as in second DVO report. i.e. average of Rs. 622/- and Rs. 975/-, which comes to Rs.798/- per square meter and compute capital gain. The Assessing Officer is also directed to allow opportunity to the assessee, before giving order effect of this order. In the result, this ground of appeal is partly allowed.

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

Order pronounced in the open court on 19/02/2025.

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

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

सूरत / Surat Dated: 19/02/2025

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,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत