



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**AND**

**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.154/RJT/2023

**Assessment Year: (2012-13)**

**(HybridHearing)**

Niranjan Bhaichand Vora. 402-Madhav Vrund Apartment, Opp. New Collector Office, Shroff Road, Rajkot-360001.	<b>Vs.</b>	The ITO,Ward-1(2)(4), Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AAUPV5497J</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

**Assessee by** : Shri Mehul Ranpura, Ld. A.R.

**Respondent by** : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

**Date of Hearing** : 07/01/2025

**Date of Pronouncement** : 24/03/2025

**आदेश / ORDER**

**Per, Dr. A. L. Saini, AM**

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), vide order dated 30.03.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3)r.w.s. 147 of the Income Tax Act, 1961, vide order dated 01.03.2022.



2. Grievances raised by the assessee, are as follows:

*1. The Ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [(hereinafter referred to as the CIT(A)], not deciding the ground of appeal related to validity of notice issued u/s 148 of the Income Tax Act, 1961. That on facts as also in law, the proceedings initiated u/s 147 of the Act is invalid and without jurisdiction and assessment finalized on such invalid notice deserves to be quashed.*

*2. The Ld. CIT(A) erred on facts as also in law in confirming addition of Rs. 32,43,743/- made u/s 50C of the Act on sale of plots at Survey no.420, Village hapa, Dist. Jamnagar in 1998 on alleged ground that assessee failed to substantiate his claim along with documentary evidence, through all the details were on record. The addition confirmed is unjustified and uncalled for and the same may kindly be deleted.*

*3. Your Honour's assessee craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. The additional grounds of appeal raised by the assessee are as follows:

*“(1). Ld. AO and Ld. CIT(A) erred in law and on facts of case in not following doctrine of Part Performance u/s 53A of the Transfer of Property Act, 1882, as the property under consideration was sold in the year 1998 and therefore making revaluation/alteration in the sale consideration u/s.50C of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] is invalid.*

*(2). Ld. AO and Ld. CIT(A) erred in law and on fact in not considering relevant provision Gujarat Sale of Stamp Paper Rules, 1987. As per the said Act there is no restriction or limitation mandating the purchase of stamp paper from a specific area. The AO's doubt regarding the genuineness of the stamp paper solely based on the place of purchase is without legal basis and contrary to the applicable rules.*

4. Succinctly, the factual panorama of the case is that assessee before us is an Individual and had not filed return of income u/s 139(1) of the Income Tax Act, 1961. The assessee's case was re-opened with the approval of the Jt, CIT, RR-1(2) Rajkot on the basis of the information in the possession of the Assessing Officer that the sale amount declared by the assessee in the sale deed



was on lower side as compared to the Jantri value of the property sold. Therefore, notice u/s 148 of the Act, dated 22-03-2016, was issued and dispatched by RPAD on the same day but it returned un-served by the postal authority. Thereafter, the same was served upon the assessee personally on 30-05-2016. In response to the same, the assessee, vide letter dated 11-08-2016, stated that the return of income filed originally on 04-02-2013, may be treated as filed in response to notice u/s 148 of the Act. Thereafter, notices u/s 143(2), 142(1) of the Act, along with questionnaire were issued on 12-08-2016, duly served upon the assessee on 16-08-2016. As per information available with assessing officer, the assessee and other co-owners had sold 15 Plots at Revenue Survey No. 420 paiki, TPS No. 3-A, O.P. 23, F.P. 52, Jamnagar, vide sale deed No. 95/2012 dated 05.01.2012, for a consideration of Rs. 9,75,000/-, as against Fair Market Value, that is, Jantri value of Rs. 1,14,34,660/-. As per the provisions of section 50C of the I.T. Act, 1961, in case the consideration mentioned in sale deed is less than the value adopted by Sub-registrar for registering the sale deed, the Jantri value will have to be adopted, as Full value of consideration. The assessee was having 1/3<sup>rd</sup> ownership in the said plots.

5. Therefore, the assessee was, vide, letter of assessing officer dated 20.10.2016 requested to show- cause, as to why the value adopted by the sub-registrar for registering the sale deed should not be adopted, as full value of consideration and accordingly an addition of Rs. 32,43,734/- should not be made being difference between the sale consideration and Jantri value, as long - term capital gain.

6. In response to the same, the assessee furnished written submission before the assessing officer along with documentary evidences, which is reproduced below:



3.2 In response to the same, the assessee vide reply dated 25.10.2016 furnished his objections against the proposed additions. His reply is reproduced hereunder,

"With reference to the above and in continuation of our earlier submission, we submit that, we are in receipt of show cause why the capital gain should not taken at Rs 32.43.734/- and added to the total income under the head capital gain We strongly object for the show cause for proposed addition of Rs. 32,43,734/- on the following grounds:

1.0 Our earlier submission of facts regarding the documents mentioned in the notice signed as property name shown in the Revenue record of the Gujarat State Govt registry authority clearly mentioned in the sale deed executed on 05.01.2012 and not liable for the capital gain since one person cannot be taxed twice as per the general law and also when confirming party already accepted the taxation of the said property before the Income Tax Officer, Intelligence & Criminal Investigation). Jamnagar office vide notice No. ITO / (I&CI)/JAM/AIR/2013-14 DATED 22.01.2014. This matter is still pending for the disposal which required to be first disposed of

2.0 We again reiterate the facts of the case that, we are not liable for capital.

a) Open plots of land situated at S. No. 420 Village Hapa, Dist. Jamnagar covered under the notice was an ancestral property jointly held with Shri Surendrabhai Bhaichandbhai Vora and Shri Shashikantbhai Bhaichandbhai Vora was sold on 16.07.1998 for consideration of Rs. 6,50,000/- to Shri Ghelabhai Chothabhai Zapada, vide aggrement No. Nil a copy of the same is attached at Page No. with full possession and with condition to execute the final document to be executed as per the mutual understanding of all the parties.

Thereafter, Shri Ghelabhai Chothabhai Zapada, filed a petition with civil court against the assessee and others for non-execution of the deed in the year 2002 as per the deed dated 16.07.1998.

However, the case being settled by Shri Ghelabhai Chothabhai Zapada and assessee and withdrawn the civil petition filed with the mutual understanding that, assessee will sign documents in the capacity of the name appearing on Revenue Record as per the terms of agreement entered into 16.07.0998 without further litigation.

b) Thereafter, Shri Ghelabhai Chothabhai Zapada, without executing the final deed, entered into agreement with Shri Rakeshbhai Khakhkhar and the deed registered with Registrar, by him as confirming party to agreement specifically mentioned in the said deed at Page No. He also confirmed before Income Tax Officer, Intelligence & Criminal (Investigation), Jamnagar, regarding the transaction. He confessed that, difference between original agreement with Sureshbhai Vora and others and with Shri Rakeshbhai Khakhkhar is his taxable Income in his reply to the Income Tax Officer and produced the copy of account also

c) This facts also examined by the Income Tax Officer, Intelligence & Criminal (Investigation), Jamnagar office vide notice No. ITO/(I & CI)/JAM/AIR/2013-14



DATED 22.01.2014 I have produced following documents/details which is attached for your kind consideration at Page No

i) A copy of letter submitted vide letter No. Nil dated 31.03.2014 with all enclosures/explanations.

ii) Explanatory statement regarding the taxation of capital gain.

iii) A copy of the letter submitted by Shri Ghelabhai Chothabhai Zapada, buyer of the said property confirming the purchase of said property and also confirmed that, he was engaged in the business of the land purchase and sale and said land shown in stock in trade. All documents attached at Page No.

d) A copy of valuation report submitted with Income Tax Officer, Intelligence & Criminal (Investigation), Jamnagar given by Govt. Approved valuer Shri Khimjibhai T. Shiyar as regards value of plots of land as on 01.04.1981, to work out the capital gain since property purchased in the year 1965.

In view of the above facts, capital gain was accrued and aroused in the A. Y. 1999-2000. Detailed working of the capital gain is given hereunder and there was no other income during the year under consideration ie. A. Y. 1999-2000, total income was only capital gain only. Since the information relates to more than 17 years back, I do not have any other documents on hand, I confirm and state that, this was the only income during the year A. Y. 1920-2000.

STATEMENT OF LONG TERM CAPITAL GAIN / LOSS						
Particular	Sales Price / Year	Indexed Cost / Year	Transfer Expenses	Indexed Cost of Improvement	Exempt	Capital Gain
LAND	216666.00	253889.00	0.00	0.00	0.00	-37223.00
	(16/07/1998)	(01/04/1981)				
Total	216666.00	253889.00	0.00	0.00	0.00	- 37223.00

LAND-Cost:  $72333 (351/100) = 253889$

NOTE: VALUE AS ON 01.04.1981 TAKEN AS PER VALUATION REPORT OF KHMJIBHAI T SHIYAR (GOVT. APPROVED VALUER) COPY ATTACHED AT PAGE NO.

Again in support of my claim of the taxation of capital gain in the year 1999-2000, I produced hereunder the provisions of the Income Tax for kind consideration.

Title to immovable property can pass only on registration. The document requiring registration may be executed earlier than the date of registration. The normal rule is that registration dates back to the date of execution. These established rules of law regarding transfer of property underwent a radical change when the provisions of Section 53A of the Transfer of Property (ToP) Act, 1882 were incorporated into the Income Tax Act, 1961 w.e.f. April 1, 1988, by amending the definition of 'transfer under Section 2(47) of the Act so as to lay down that even part - performance of the sale agreement by handing over possession will result in the passing of title.

Transfer defined



*Under Section 2(14), transfer' includes not merely sale, exchange, relinquishment, etc. I also covers any transaction involving the allowing of the possession of any immovable property to be taken or retained in part-performance of a contract of the nature referred to in Section 53 A of the Top Act*

### *Capital Assets*

*The term Capital Asset in Section 2(14) refers to property of any kind held by an assessee There is no reference to 'owner' or 'owned. Section 53A of the ToP Act allows the doctrine of part performance to be applied to the agreement which, though required to be registered, is not registered.*

### *Section 53A*

*Section 53A applies to transfers not completed in the manner prescribed by the Registration Act. Where the transferor handed over the possession of the property pursuant an agreement for sale, the person receiving possession is entitled to receive the income from the property.*

### *Section 27*

*Section 27 of the Income Tax Act, 1961 was amended by the Finance Bill, 1987 so as to incorporate the new law about possession entitling the transferee to be deemed to be the owner of property for purposes of Section 22 in relation to income from property. This amendment is common to Section 2(47) also*

*In view of the above positions of the Income Tax Act, 1961, Capital gains will have to be assessed on the basis of the date of the agreement under which possession was handed over. This will apply to cases where possession was given even long before 1987.*

*Registration may take place long after. That will have no effect. More particularly define transfer within the meaning of Section 2(47), the minimum requirements are:*

*There as to be an agreement between the parties signed by them;*

*It should be in writing:*

*It should pertain to transfer of property, and*

*The transferee should have taken possession of the property.*

*The Madras High Court has clarified the law on the subject in the Madathil Brothers vs DCI*

*(301 ITR 345) case.*

*The case considered by the High Court related to the nature of the capital gains, that is whether long term or short term. The party was in possession of property under agreement of sale entered in 1976. Sale deed was executed in July 1986 and was registered in September 1986.*



*The High Court held that the property was held from 1976 onwards and gains on sale were assessable as long-term capital gains. Similar view was expressed by the Hon'ble Bombay High Court in the case of*

*CIT vs. Tata Services Ltd. reported in 122 ITR 0594.*

*CIT vs. Vijay Flexible Containers reported in 186 ITR 0693*

*Chatrabhuj Dwarkadas Kapadia Vs. CIT 260 ITR 491*

*Smt. Sapnaben D Patel Vs. ITO, Ward 10(1), Ahmedabad [ITA NO. 2414/AHD/2013] DATED 13.01.2016 [COPY OF THE SAME IS ATTACHED]*

*In view of the above, your honour is requested not to add the capital gain which is unjust and against law, humble requested to drop. However, your honour is requested to first dispose of the pending matter first and oblige."*

*3.3 The crux of the assessee's submission is based on his argument that 19 Plots were sold vide agreement to sale (Satakhat) dated 16.07.1998 for a consideration of Rs. 6,50,000/- and part payment of Rs.3,00,000/- was received from buyer and possession was handed over to the buyer. Thus, as per section 53A of Transfer of Properties Act the sale was effected in the year 1998-99. During the year under consideration, he had only executed sale deed at the instruction of buyer. Thus no sale can be said to have been effected during the year under consideration."*

7. However, the assessing officer, rejected the contention of the assessee and held that the sale was effected in the year 1998 and only sale deed was executed in the year 2012, is not believable and seems after thought. The assessee is grossly failed in justifying his stand, thus, it is conclusively proved that the sale is effected during F.Y. 2011-12 and provisions of section 50C of the Act is clearly attracted in the assessee's case. Thus, the capital gain in the assessee's case is worked out considering the value adopted by sub-registrar for registering sale deed, as Full value of consideration. Accordingly, an addition of Rs.32,43,734/- was made by the assessing officer to the total income under the head income from long term capital gain.

8. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal, before the Commissioner of Income Tax (Appeals), who has dismissed the appeal of the assessee. The assessee contested before the learned



CIT(A) that the original sale had happened in financial year (FY) 98-99. However, the deed for sale was not registered/executed at that point of time and the same was entered into year under consideration, therefore, the underlined income pertains to assessment year (AY) 1999-2000 and not for the year under consideration. The assessee also submitted that it had offered capital gain in assessment year (AY) 1999-2000 and at that point of time, section 50C was not applicable. However, Id CIT(A) observed that the assessee could not submit any supporting evidence to demonstrate the same that it had offered capital gain in assessment year (AY) 1999-2000, because these were more than seventeen years old documents, therefore, the addition made by the assessing officer for sum of Rs.32,43,743/- was upheld by Id CIT(A).

9. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee is in appeal before us.

10. Shri Mehul Ranpura, Learned Counsel for the assessee, argued that Ld. CIT(A) erred in law and on facts of case in not following doctrine of Part Performance u/s 53A of the Transfer of Property Act, 1882, as the property under consideration was sold in the year 1998 and therefore making revaluation/alteration in the sale consideration u/s 50C of the Income-tax Act, 1961 is invalid. The assessing officer did not consider the implication of the Transfer of Property Act, 1882 in applying provision of section 50C of the Act. The assessing officer ought to have considered the facts that unregistered agreement of 1998 is not subjected to mandatory registration under section 17(1A) of the Registration Act, 1908, as the said provision came into effect only from 24.09.2001. The assessee has honored the sale transaction by fulfilling the terms and consideration as per Indian Contract Act, 1872, and consideration as agreed upon and thereby applying provisions of section 50C of the Act, in contravention of Contract Act, 1961, is not permissible. The parties of this



transaction also governed by Specific Relief Act, 1963, which obligates specific performance of transactions of sale when the seller has received the consideration and delivered the possession, notwithstanding the adequacy of the consideration in the eyes of law and transaction should be recognized as completed as per the law. To apply provision of section 50C of the Act, based on current valuation and not considering the historical context of transaction as submitted before them and thereby violating the principles laid down in the Indian Contract Act. The Id. Counsel also relied on the judgement of Hon`ble Supreme Court in Nathulal vs. Phoolchand [(1969) 3 SCC 120], which upholds the applicability of the doctrine of part performance u/s.53A of the Transfer of Property Act. Besides, as per the Gujarat Sale of Stamp Paper Rules, 1987 there is no restriction or limitation mandating the purchase of stamp paper from a specific area. The AO's doubt regarding the genuineness of the stamp paper solely based on the place of purchase is without legal basis and contrary to the applicable rules.

11. Learned Counsel for the assessee, submitted that two sons of the assessee sold the respective shares, in the property purchased in 1998, and in the hands of two sons, the assessing officer accepted the sale transaction, therefore, the property should be treated genuine in the hands of the assessee( third son) under consideration.

12. On the other hand, Learned DR, on behalf of the revenue, argued that there was no any part performance u/s 53A of the Transfer of Property Act,1882,in the year 1998. Moreover, in the year 1998, the stamp paper used by the assessee for the purpose of making agreement is not a valid stamp paper. Hence, there is no any agreement in the year 1998 which can be tenable as per



law. The registration was made in assessment year 2012-13, therefore, the assessee has to pay capital gains tax in the assessment year 2012-13, for that ld. DR relied on the judgement of Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana &Anr. (Special Leave Petition (C) No. 13917 of 2009).

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We note that assessee is having 1/3<sup>rd</sup> ownership in the said plots. The assessee's Brother Siri Mehul Shirishbhai Vohra sold the property, (his respective share), and his assessment was finalized, under section 143(3) r.w.s. 147 of the Act, (vide assessment order dated 26.11. 2019), by the assessing officer, accepting the genuine sale (vide paper book page No. 130).

*“In reply to the above notice, the A.R. of the assessee, Shri Vipul Dattani, CA attended and filed requisite details which were kept on record. The case was discussed with him. During the year under consideration, the assessee has earned income from salary and business Income. The assessee denied to have sold any such immovable property during the year under consideration and clarified that the said property as mentioned in the reason recorded was sold during the F.Y. 1998 by his late father Shri Shirishbhai Bhaichand Vora along with his two brothers to Shri Ghelabhai Chothabhai Zapda. His father was having 33.33% share in the said property.”*

Assessing officer did not make any addition

14. In case of assessee's second brother Shri Surendra Bhaichand Vora, assessment order was finalized by the assessing officer under section 143(3) r.w.s. 147 of the Act, (vide assessment order dated 18.07.2019), by the assessing officer, accepting the genuine sale (vide paper book page No. 133), the findings of the assessing officer is reproduced below.



*“The assessee did not file return of income for the year under consideration under the provisions of the section 139 of the Income-tax Act, 1961. As per ITS data (which is based on information provided by other agencies through which alleged transactions are carried out), the assessee sold immovable properties for a consideration of Rs.9,75,000/- and the stamp duty valuation authority adopted/assessed the value of the property at Rs.1,14,34,660/- for the purpose of payment of stamp duty. Therefore there was prima facie violation of provisions of section 50C of the Income-tax Act, 1961. Since the assessee did not file return of income, this case was reopened u/s 147 of the Income-tax Act, 1961 after getting approval of the Pr. CIT, Jamnagar vide his letter dated 14-03-2019. Accordingly, a notice u/s 148 of the Income-tax Act, 1961 dated 26-03-2019 was issued and duly served upon the assessee,*

*In response to this notice, Shri Vipul Dattani, CA and duly authorized representative of the assessee attended on 10-04-2019 and submitted copy of return filed in response to the notice u/s 148 of the Income-tax Act, 1961 which placed on record. He sought for reasons recorded for reopening which were duly provided to him. Thereafter, a notice u/s 143(2) of the Income-tax Act, 1961 dated 10-04-2019 was issued and duly served upon the AR of the assessee.*

*In response to this notice, the AR of the assessee made written submission dated 15-04-2019 which was received in this office on 16-04-2019 along with copy of sale agreement dated 16-07-1998, sale deed bearing no. 95 dated 05-01-2012, confirmation letter dated 10-03-2014 of Shri Rakeshbhai Mukeshbhai Khakhar, purchase of property and letter dated 05-03-2014 of Shri Ghelabhai C. Zapda and balance sheet for the year under consideration which were verified and kept on record. The case was discussed at length with the AR of the assessee.*

*Subject to the above discussion and materials made available on record, the total income is assessed as under.*

<i>Total income as per ROI..</i>	<i>Rs.17,840/-</i>
<i>Total income assessed...</i>	<i>Rs.17,840/”</i>

Since, the assessing officer accepted the Sales of in the hands of two brothers in respect of the said property, on identical and similar matter, therefore addition should not be made in the hands of the third brother (assessee under consideration).The assessment order of the assessee`s two brothers are placed at paper book page nos. 130 and 133 respectively and we have gone through the same and noted that assessing officer has accepted the sale, as genuine. Therefore, if the assessing officer did not make addition in the hands



of the two brothers, and accepted the sale, as genuine, therefore, based on the same property, having similar facts and circumstances, the addition should not be made in the hands of the third brother (assessee under consideration), that is, there should not be different standard for third brother (the assessee under consideration). That is, when the transaction is accepted by the assessing officer, as genuine in the hands of two brothers, then it should be genuine in the hands of the third brother also, as the property (land) and facts are same. For that, we rely on the judgement of the Coordinate Bench of ITAT Surat in the case of Late Shri Mohanlal Ambelal Desai, I.T.A No.1870/AHD/2015, for Assessment Year: 2009-10, order dated 07.01.2021, wherein the Tribunal held as follows:

*“7We have considered the submission of both the parties and gone through the orders of Lower Authorities carefully. We have also deliberated on various case laws relied by the AR of the assessee. Before us, the AR of the assessee vehemently submitted that in assessee’s co-owner case, the revenue has accepted similar Long Term Capital Gain in the scrutiny assessment. Copy of the assessment order in respect of two co-owners is placed on record. We have noted that no counter to the submission of the assessee, was made by DR that similar Long Term Capital Gain was accepted in case of co-owner.*

*8.The Hon'ble Madras High Court in ICT vs. Kumararani Meenakshi Achi (supra) held that during the same assessment year same quantity of wealth in possession of co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned it would militate against the principle of equality of laws enshrined in Article 14 of the Constitution. By following the same principle, the Co-ordinate Bench of this Tribunal in ChetanbhaiPrahlabdbhai Gami vs. ITO in ITA No.2082/AHD/2013 dated 19.07.2019, the Tribunal granted relief to the assessee holding that while making the assessment of the same property the similar treatment should be granted.*

*9.We have noted that in assessee’s co-owner’s case with respect to the property against the sale of which the assessee claimed Long Term Capital Gain, the AO in assessee’s co-owner case in PrabhodhchandraAmbelal Desai allowed the similar Long Term Capital Gain by passing the following order :*

*“3On perusal of records and details submitted by the assessee it was found that the assessee was co-owner having share of 6.25% in the property sold for Rs.2,00,00,001/- on 19.01.2009 situated at Survey No.86, Lunsikui, Navsari. Value of property as per stamp duty valuation was determined at Rs.4,09,01,000/-. The*



*assessee has not declared capital gain as he has not filed Return of Income for AY 2009-10 . The said property was inherited by the assessee. The assessee has submitted valuation report of the property from Govt. Approved Valuer who has arrived value of property at Rs.66,61,020 as on 01.04.1981. The value of the assessee's share comes to Rs. 4,16,314. Indexed cost as per section 48 of the Act is worked out at Rs.24,22,947/-. As per stamp duty authority the assessee's share being 6.25% of sale value in the property comes to Rs.25,56,310/-. Thus capital gain comes to Rs. 1,33,363/-, which was taxable in the hands of the assessee. The capital gain of Rs.1,33,363 has now been shown by the assessee in the Return of Income filed in response to notice u/s 148 of the Act. However, the assessee has not declared suo moto Long Term Capital Gain as he has not filed return of Income. The assessee has consciously not filed return of income to avoid payment of tax. Therefore, Penalty proceedings u/s. 271(1)(c) of the Act are initiated on this issue for concealment of income.”*

*10.We have noted that identical worded assessment order was passed in other co-owner case i.e. Smt. PrabhabeHarshadrai Desai, relevant part of the assessment order is extracted below;:*

*“3. On perusal of records and details submitted by the assessee it was found that the assessee was co-owner having share of 6.25% in the property sold for Rs.2,00,00,001/- on 19.01.2009 situated at Survey No.86, Lunsikui, Navsari. Value of property as per stamp duty valuation was determined at Rs.4,09,01,000/-. The assessee has not declared capital gain as he has not filed Return of Income for AY 2009-10. The said property was inherited by the assessee. The assessee has submitted valuation report of the property from Govt. Approved Valuer who has arrived value of property at Rs.66,61,020 as on 01.04.1981. The value of the assessee's share comes to Rs. 4,16,314. Indexed cost as per section 48 of the Act is worked out at Rs.24,22,947/-. As per stamp duty authority the assessee's share being 6.25% of sale value in the property comes to Rs.25,56,310/-. Thus capital gain comes to Rs. 1,33,363/-, which was taxable in the hands of the assessee. The capital gain of Rs.1,33,363 has now been shown by the assessee in the Return of Income filed in response to notice u/s 148 of the Act. However, the assessee has not declared suo moto Long Term Capital Gain as he has not filed return of Income. The assessee has consciously not filed return of income to avoid payment of tax. Therefore, Penalty proceedings u/s. 271(1)(c) of the Act are initiated on this issue for concealment of income.”*

*11.In view of the above aforesaid factual and legal discussion and respectfully following the decision of Madras High Court in Kumararani Meenakshi Achi (supra) and decision of Co-ordinate Bench in PrabhodhchandraAmbelal Desai (supra), the revenue cannot treat the assessee in different way, therefore, the addition to the Long Term Capital Gain added by the AO, confirmed by Id.CIT(A) is deleted. In the result the grounds of appeal raised by the assessee are allowed.”*

14. Based on these facts and circumstances, we delete the addition in the hands of the assessee and allow the appeal of the assessee.



15. Since we have deleted the addition based on the fact that the transaction was accepted in the hands of two brothers and no addition was made by the assessing officer in the hands of two brothers of assessee, therefore, on the same and identical facts, the addition should not be made in the hands of the third brother(assessee under consideration), based on identical and similar facts and circumstances. Therefore, other grounds and additional grounds raised by the assessee, on merit, do not require adjudication, as they have become infructitious.

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

**Order pronounced in the open court on 24/03/2025.**

Sd/-  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

Sd/-  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

Rajkot  
दिनांक/ Date: 24 /03/2025

(True Copy)

**Copy of the Order forwarded to**

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot