



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपीलसं./ITA No.125/RJT/2024

Assessment Year: (2006-07)

(Hybrid Hearing)

Kalindi Jayendra Ranpara. Shrungar Jewellers, Soni Bazar Main Road, Rajkot-360001.	Vs.	The ITO Ward-2(1)(2), Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABGPR6315Q		
(Assessee)		(Respondent)

Assessee by : Shri D.M. Rindani, A.R.

Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR

Date of Hearing : 13/01/2025

Date of Pronouncement : 28/ 03/2025

Per, Dr. A. L. Saini, AM

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2006-07, is directed against the order passed by the Commissioner of Income Tax (Appeals), vide order dated 20/02/2024, which in turn arises, out of an order passed by the Assessing Officer, under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).



2. Grounds of appeal raised by the assessee, are as follows:

(1). The learned Commissioner of Income tax (appeals), national faceless appeal centre, Delhi has erred in confirming the action of the assessing officer in respect of pass the order u/s 143(3) rws 254 of the I.T. Act, whereby assessed the total income of Rs.32,66,990/- as against the returned income of Rs.4,888/-is unwarranted, unjustified and bad in law.

(2). The learned Commissioner of Income tax (appeals), national faceless appeal centre, Delhi has erred in confirming the action of the assessing officer in respect applied the section 50C of the I T Act for under valuation of the property and made the addition of Rs.32,62,100/- is unwarranted, unjustified and bad in law.

(3). The learned Commissioner of Income tax (appeals), national faceless appeal centre, Delhi has erred in confirming the action of the assessing officer in respect of passing the order totally on surmises and conjecture basis and mentioned the facts in body of order which is very far away from the truth and against the facts of the case and against the rule of natural justice is unwarranted, unjustified and bad in law.

(4). The learned Commissioner of Income tax (appeals), national faceless appeal centre, Delhi has erred in confirming the action of the assessing officer in respect of charging the interest u/s.234 A/B/C is totally wrong, unwarranted, unjustified and bad in law.

(5). The learned commissioner of Income tax (appeals), national faceless appeal centre, Delhi has erred in confirming the action of the assessing officer in respect of initiated the penalty proceedings u/s.274 rws 271(1)(c) is totally wrong, unwarranted, unjustified and bad in law.

6). Your assessee reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

3. The relevant material facts, as culled out from the material on record, are as follows. The case of the assessee was reopened u/s 147 of the Act and assessment was completed u/s 143(3) r.w.s. 147 of the Act on 19.12.2011 making addition of Rs. 32,66,990/-. The assessee's second assessment was framed u/s 143(3) r.w.s. 254 of the Act, dated 22.12.2017, wherein addition of Rs.32,62,100/- was made on sale of immovable property, by the assessing officer. The brief facts of the case are that the assessing officer was in possession of information that the assessee had sold an immovable property in FY 2005-06 for consideration of Rs.3,80,000/- whereas stamp duty valuation authority assessed the value of the property at Rs. 36,42,100/-. Therefore, the



case of the assessee was reopened u/s 147 of the Act and assessment was completed u/s 143(3) r.w.s. 147 of the Act on 19.12.2011 making addition of Rs. 32,66,990/-. The assessee filed an appeal against above said assessment order wherein CIT (Appeal)-2, Rajkot allowed the appeal of the assessee. Against the Order of CIT (Appeal), the department filed an appeal before the Hon'ble ITAT. The Hon'ble ITAT, Rajkot Bench passed an order on 14.07.2016 allowing the appeal of the Revenue for statistical purpose and setting aside the matter to the file of the assessing officer. Accordingly, assessment proceedings were initiated wherein the assessing officer categorically asked the assessee to furnish documentary evidences w.r.t. to the impugned transaction. The assessee stated that she had purchased the said immovable property on 01.11.1994 and sold it on 25.11.2005. The assessee claimed that she had never obtained physical possession of the property, as it was under litigation since acquisition till the date of disposal. Thus, provisions of section 50C of the Act are not applicable in her case as there was transfer of right only without actual possession. The assessing officer categorically called for documentary evidence relating to litigation matter of the property. However, the assessee failed to furnish the same. Thus, the assessing officer concluded that the claim of the assessee is not acceptable and completed assessment proceedings making addition of Rs. 32,62,100/-.

4. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id. CIT(A), who has dismissed the appeal of the assessee, in the second round, following the same facts. The Id.CIT(A) noticed that assessee has challenged the addition of Rs. 32,66,100/- made on account of Section 50C of the Act, stating that the assessing officer has recorded wrong facts in the body of the Order. The assessing officer invoked the provisions of Section 50C of the Act to make the addition on account of difference in sale value disclosed and value as per stamp duty valuation authority. The assessing officer has only followed the statute in doing so. While setting aside the case of



the assessee to the assessing officer for examination of the impugned transaction, the Hon'ble ITAT, Rajkot Bench vide Order in ITA No. 552/RJT/2012 dated 14.07.2016 in the assessee's own case for the AY 2006-07 held that -

“7. We have heard the rival contentions and perused the material on record. The solitary grievance of the Revenue is against the action of Id. CIT(A) deleting the addition of Rs.32,62,100/- made by Id. Assessing Officer on the basis of value adopted by Stamp Duty authority calculating the capital gain by applying the Stamp Value on sale consideration of Rs. 36,42,100/- at the place of Rs.3,80,000/- mentioned in the sale deed. We observe that for the purpose of calculating capital gain from sale of property. provisions of section 50C and section 142A of the Act are relevant with regard to the valuation of the property transferred. We observe that if the consideration received or accruing as a result of a transfer of capital asset being the land or building or both is less than the value adopted by authority (in the case of assessee it is the Sub-Registrar) for the purpose of payment of stamp duty then for the purpose of calculation of capital gain u/s 48 of the Act such higher value is to be adopted as per the provisions of sec. 50C of the Act. However, if the assessee claims before the Assessing Officer that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer the Assessing Officer may refer the valuation of the capital asset to the Valuation Officer.

8. Similarly, under the provisions of section 142A Assessing Officer may for the purpose of assessment and re-assessment make a reference to the Valuation Officer to estimate the value.

9. However, in the present case, we observe that there is complete disparity of facts as mentioned in the order framed by Id Assessing Officer and the submissions made by assessee before Id. CIT(A) so much so that during the course of assessment proceedings Id. Assessing Officer issued show cause notice dated 12.12.2011 of which para 2 is reproduced below-

2. In your case, reopened assessment proceedings u/s. 143(3) r.w.s. 147 of the IT. Act, for A.Y. 2006-07 is in progress. On verification of sale deed it is noticed that you have sold a property to Shri Bansidhar J. Rathi, at the cost of Rs. 3,80,000/-, were as on verification of valuation report of O/o. The Stamp Duty Valuation. Rajkot (City)-1, Rajkot, it is found that the authority of Stamp Duty has assessed the said property at the value of amounting to Rs. 36,42,100/-. The Stamp Duty Valuation Authority has assessed the said property as per the norms of Govt, of Gujarat, Considering the facts of the case it is found that there is a concealment of Rs. 32,62,100/- on account of under valuation of the property.

It is pertinent to note that assessee failed to comply to furnish necessary details with respect to show cause notice dated 12.12.2011 issued by Id. Assessing Officer. From going through the above para it is crystal clear that Assessing Officer issued show cause notice relating to sale of property of which consideration shown in the sale deed stood at Rs. 3,80,000/- whereas as per the Stamp Duty Valuation Officer stamp duty was calculated by adopting the valuation of property at Rs/ 36,42,100/- on the other hand during the appellate proceedings



before Id. CIT(A) assessee has submitted that the impugned transaction did not relate to sale of land or building but it was merely a transfer of right in property on which provisions of section 50C were not applicable as there was no transfer of land or building.

10. In the given circumstances wherein facts on which impugned addition was made by Id. Assessing Officer are different from the facts put forth by assessee before Id CIT(A), as Id. Assessing Officer made addition relating to a transaction U sale of property being a land or building whereas assessee is claiming that sale consideration related to mere selling of right in the property held by him without possession which is not covered under the provisions of section 50C of the Act. Also assessee did not reply to the show cause notice issued by Id. Assessing Officer during the course of assessment proceedings due to which true facts were not before the Id Assessing Officer. Therefore, we are of the view that the issue in this appeal to be set aside to the file of Id. Assessing Officer to examine the impugned transaction. Needless to mention, assessee will be given reasonable opportunity of being heard to produce necessary documents and evidence in support of his claim that the impugned transaction related to sale of right in property and there was no transfer of land or building to which section 50C is applicable. Further if Ld. Assessing Officer is satisfied that there was no actual transfer of land or building and it was a mere transfer of right in property then Ld. Assessing Officer will have to come with the logical conclusion if the fair market value of such right in property is assessed to be above the actual sale consideration received by the assessee. Accordingly, this ground of Revenue is allowed for statistical purposes

11. Other grounds are general in nature, which need no adjudication.

12. In the result, appeal of the Revenue is allowed for statistical"

5.The Hon'ble ITAT therefore, set aside the matter to the assessing officer to give the assessee an opportunity to produce documents and evidence in support of her claim that the impugned transaction related to sale of right in property and not actual transfer of property and if the assessing officer was satisfied that there was no actual transfer, then he would have to come to a logical conclusion regarding the fair market value of the property, vis a vis, sale consideration received by the assessee. As seen from the impugned Assessment Order, the assessing officer specifically asked the assessee more than once to produce documentary evidence in support of its claim that the said transaction related to sale of right in property and there was no transfer of land or building. However, the assessee merely cited case laws and general arguments in her favour and stated that she had not received clear cut possession of the land. No specific details regarding her claim of the matter being under litigation before Courts in Calcutta and Rajkot and the status of the same was produced despite



opportunities accorded. During appellate proceedings, in Second round, vide submission dated 14.04.2018 the assessee stated that-

"The Assessing Officer has grossly failed to appreciate the fact that the market rates for the purpose of registration of an immovable property as noticed by the Sub Registrar can also have no application for determining the market value. It is limited only for payment of the stamp duty. As such the value notified for the purpose of registration cannot be a proper guide for valuation in respect of pre-emptive purchase Further the Assessing Officer has totally failed to discharge the onus of making the addition by bringing some cogent evidence on record. Reliance on stamp duty valuation was a mere suspicion, which was not sufficient. It is reiterated that the guideline values are fixed by the registering authorities for purposes of collection of stamp duty and that guideline values of land for the purposes of registration of an immovable property can have no application for determining the market value."

6. The Id. CIT(A) noticed that assessee has however brought no evidence on record in support of her claim that the property sold is not a piece of land but a disputed right in undivided land of joint family. Her contention that reliance on stamp duty valuation was a mere suspicion is not borne out from facts on record. Stamp duty valuation is a statutory yardstick for determining the value of a capital asset under transaction as per Section 50C(1) of the Act. In any case, the assessee failed to discharge the onus placed upon her by virtue of the directions contained in the Hon'ble ITAT's Order and brought nothing on record to show why and how the provisions of Section 50C of the Act are not applicable in her case. In case of dispute, the assessee should have produced cogent documentary evidence to establish her claim to the satisfaction of the assessing officer which she failed to do. The Id CIT(A) noted that as per Section 50C of the Act, the value taken by the stamp duty valuation authority is the value to be adopted in case the sale value shown in the transaction is lower. Section 50C (1) of the Act, is a deeming provision wherein the registration value fixed by the State Government under the Stamp Act is deemed to be full value of consideration. It reads as under:



"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."

7. Therefore, Ld. CIT(A) in view of the above factual matrix of the case, confirmed the findings of the assessing officer, in the Assessment Order and the grounds of appeals raised by the assessee were dismissed.

8. Aggrieved by the order of the ld. CIT(A), the assessee is in further appeal before us.

9. Shri D.M. Rindani, Learned Counsel for the assessee, vehemently argued that in the assessee`s case under consideration, title of purchase and title of sale, both are defective, therefore, sales deed is also defective, hence, provisions of section 50C of the Income Tax Act, 1961, will not be applicable to the assessee, and therefore addition made by the assessing officer may be deleted.

10. Without prejudice to the above, Shri D.M. Rindani, Learned Counsel for the assessee, again vehemently argued that either this Tribunal should allow the appeal of the assessee or remit the case back to the file of the assessing officer with the direction to the assessing officer, to get the report of valuation from the DVO and based on the report of the DVO, the assessing officer may adjudicate the issue, as per the provisions of the Act.

11. Learned DR, on behalf of the revenue, submitted that considering the facts of the assessee`s case, the appeal of the assessee should not be allowed. However, Ld. DR did not have any objection if the matter is remitted back to the file of the assessing officer, with the direction to the assessing officer, to adjudicate the matter based on the report of the DVO.



12. The Ld. DR for the revenue also submitted the written submission, before the Bench, which is reproduced below:

“2. We present this argument on behalf of the Revenue concerning the applicability of Section 50C of the Income Tax Act, 1961, in a case where an immovable property, classified as a capital asset, has been sold.

3. Section 50C mandates that if the consideration declared by the assessee for the transfer of a capital asset—being land or building, or both—is less than the value adopted or assessed (or assessable) by the stamp valuation authority for stamp duty purposes, then the value so adopted or assessed shall be deemed to be the full value of the consideration for computing capital gains.

4. In the present case, the assessee sold an immovable property, and the declared sale consideration is less than the stamp duty valuation. As per the explicit provisions of Section 50C, the stamp duty valuation must be adopted as the full value of consideration for calculating capital gains tax. This provision is mandatory and leaves no discretion to deviate based on individual circumstances.

5. The assessee may argue that the property was subject to a title dispute, which affected its market value and justified a lower sale consideration. However, it is important to note that when enacting Section 50C, the legislature considered various scenarios that could affect property values, including title disputes. Despite this, no exemptions were provided for such situations. This clearly indicates the legislative intent to apply Section 50C uniformly, regardless of any title disputes or other encumbrances affecting the property.

6. Allowing adjustments based on title disputes would undermine the objective of Section 50C, which is to prevent the understatement of sale consideration and curb tax evasion in real estate transactions. Accepting the assessee's argument would create a loophole contrary to the statute's purpose.

7. Furthermore, it is pertinent to highlight that both Section 50C of the Income Tax Act and the provisions establishing the Income Tax Appellate Tribunal (ITAT) are creations of the same legislature. The ITAT, being a statutory body formed under the Income Tax Act, is obligated to interpret and apply the law in accordance with the clear intention of the legislature. It is beyond the power of the ITAT to issue a mandate or judgment that contradicts the explicit provisions of the law or deviates from the legislative intent.

8. Judicial precedents have upheld the mandatory nature of Section 50C. Unless the assessee invokes the provisions of subsection (2) by challenging the stamp duty valuation and requesting a reference to the Departmental Valuation Officer (DVO), the value adopted by the stamp valuation authority must be accepted without alteration.

9. In conclusion, the Revenue submits that:



I. Section 50C is mandatory in requiring the adoption of the stamp duty valuation as the full value of consideration when it exceeds the declared

II. There is no legal alternative or discretion allowed under the Act to consider a lower sale consideration due to title disputes or similar issues.

III. Claims regarding title disputes are irrelevant for the application of Section 50C, as the legislature has not provided any exceptions for such circumstances.

IV. The ITAT must adhere to legislative intent, as both Section 50C and the provisions establishing the ITAT are enacted by the same legislative authority. Therefore, it is beyond the ITAT's power to render a judgment that does not conform to the clear intention of the legislature.

10. Therefore, we respectfully request that the capital gains tax be computed based on the stamp duty valuation in accordance with Section 50C, and that the assessee's contentions be dismissed.”

13. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee running in to 65 page. During the course of hearing Ld. Counsel of the assessee, submitted following documents and evidences, before the Bench, which are reproduced below:

- 1). Copy of acknowledgement and computation of return of income for A.Y. 2006-07 (Page: 1-3)*
- 2). Copy of purchase deed dated 01/11/1994. (Page: 4-20)*
- 3). Copy of sales deed dated 25/11/2005 (Page: 21-29)*
- 4). Copy of order u/s 143(3) r.w.s. 147 of the act dated 19/12/2011 for A.Y. 2006-07 in the case of assessee (Page: 30-33)*
- 5). Copy of CIT(A) order dated 06/07/2012 for A.Y. 2006-07 in case of assessee (1st round) (Page: 34-42)*
- 6). Copy of ITAT order dated 14/07/2016 for F.Y. 2006-07 in case of assessee (1st round) (Page: 43-50)*
- 7). Copy of replies dated 19/04/2017, 13/11/2017 and 11/12/2017 filed by the assessee before the assessing officer during proceedings u/s 143(3) r.w.s. 254 of the Act. (Page: 51-58)*
- 8). Copy of written submission before Commissioner (Appeals) dated 14/04/2018 during proceedings u/s 143(3) r.w.s. 254 of the Act. (Page: 59-65)*



14. We have gone through the above documents and evidences of the assessee, and we have also considered the submissions of Id. Counsel for the assessee and Id. DR for the revenue and we find merit in the alternative argument made by the of learned Counsel for the assessee to the effect that entire *lis* should be restored to the file of the assessing officer with the direction to the assessing officer, to get the report of valuation from the DVO and based on the report of the DVO, the assessing officer may adjudicate the issue, as per the provisions of the Act.

We accept the prayer of the assessee and therefore, set- aside the order of CIT(A) and remand the various issues raised by the assessee in the grounds of appeal before us, for fresh consideration by the assessing officer with a liberty to the assessee to prove his case by producing sufficient evidence/material to the satisfaction of the assessing officer. The assessing officer is also directed to obtain the report of valuation from the DVO and adjudicate the issue in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28/03/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot
दिनांक/ Date: 28 /03/2025

(True Copy)

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

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT

ITA No.125/Rjt/2024

A.Y 2006-

Kalindi J Ranpara

5. DR/AR, ITAT, Rajkot

6. Guard File



By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot

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