

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 838/Ahd/2024
(Assessment Year: 2012-13)

Jivabhai Madhabhai Desai, 25, Kangana Co. Operative Housing Society, Isanpurgam Ahmedabad, Gujarat-382443 [PAN : ARHPD 8125 F]	Vs.	The Income-Tax Officer, Ward 1(3)(2), Ahmedabad Present Jurisdiction The Income-Tax Officer, Ward 1(2)(3), Ahmedabad
(Appellant)	..	(Respondent)
Appellant by :	Shri Pritesh Shah, CA	
Respondent by:	Shri Kavan Limbasiya, Sr DR	
Date of Hearing	10.03.2025	
Date of Pronouncement	09.04.2025	

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal has been filed by the Assessee against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (in short 'the CIT(A)') dated 21.03.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2012-13.

2. The Assessee has taken following grounds of appeal:-

"1. The learned CIT(A) erred in law and on facts in confirming the addition made by Assessing Officer of Rs.1,18,33,400/- being the

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amount of Sale Consideration of Land, such addition is requested to be deleted.

2. The learned CIT(A) erred in law and on facts in confirming the Act of AO of applying Section 50C of the Income of Income Tax Act, 1961, such application of Section 50C is requested to be quashed.

Additional Ground:

The learned AO erred in not granting the deduction of cost of acquisition and indexation thereof from the sale price of the land while calculating the Long Term Capital Gain and learned CIT(A) erred in confirming such action of AO, such cost of acquisition and indexation thereof is requested to be granted.”

3. The brief facts of the case are that the assessee, who is an individual, did not file any return of income for the year under consideration. The Assessing Officer received information that the assessee along with 2 other co-owners sold a land property for Rs. 1,20,00,000/- in the impugned year. As the assessee did not offer any capital gains on the transaction to tax, the Assessing Officer re-opened the case by issuing notice u/s. 148 of the Act. Subsequently, the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act on 18.12.2019, by invoking provisions of section 50C of the Act and adopted the stamp duty value of Rs. 3,55,00,200/- assessed by the registration authorities in the sale deed as full value of consideration. The Assessing Officer accordingly computed assessee's one-third share of Rs. 1,18,33,400/- as long-term capital gains and added the same to the income of the assessee under the head “income from other sources”.

4. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of the assessee.

5. Aggrieved, the assessee is now in appeal before the Tribunal.

6. Before us, Ld. AR submitted that the Assessing Officer had wrongly made addition of Rs. 1,18,33,400/- u/s 50C of the Act being difference of sale consideration as per Jantri Rate and actual sale deed without considering the facts and evidences of the case. The Ld. AR contended that the Assessing Officer has erred in taking the full value of consideration for transfer at Rs. 3,55,00,200/- u/s 50C of the Act and the consideration for transfer was already fixed at Rs 1,20,00,000/- as per the sale agreement prior to the execution of the sale deed. The Ld. AR accordingly submitted that the amount of Rs.1,20,00,000/- shall be treated as full value of consideration as against Rs.3,55,00,200/- based on the revised stamp duty levied in the sale deed. In short, the Ld. AR pleaded that first proviso to Section 50C(1) of the Act in the case of assessee be applied to take the value as per the sale agreement of Rs. 1,20,00,000/- and not the inflated post-registration stamp duty value.

7. The Ld. DR, on the other hand, supported the orders of the authorities below and submitted that the claim of assessee, based on

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the unregistered agreement, does not satisfy the legal requirements set forth under Section 50C and its provisos.

8. Having considered the rival contentions and perused the material available on record, we find that the capital asset was transferred through a deed of registration on 27.12.2011. Prior to the sale deed, the assessee executed two sale agreements; first one dated 02.09.2010 was unregistered one, fixing the total sale consideration at Rs 1,20,00,000/- wherein a part payment of Rs 5,00,000 was made in cash and the second one was executed through a Registered Deed on 24.05.2011, which also fixed the consideration for the transfer at Rs 1,20,00,000, whereby the assessee, along with co-owners, received Rs 1,05,00,000/- via cheques over several dates starting from 07.09.2010. The stamp duty rates were revised starting from 14.04.2011, resulting in a higher value being applicable from that date. The sale deed was finally executed on 27.12.2011, and the remaining balance of Rs 15,00,000/- was received through cheques. There is no dispute regarding the fact that the property sold was a capital asset and attracted levy of capital gains. The only dispute is the quantum of full value of consideration to be adopted for computing the long-term capital gains. As already discussed above, the Assessing Officer invoked section 50C and adopted Rs 3,55,00,200/- as full value of consideration based on the sale deed. The assessee, on the other hand, argued that the full value of consideration should be restricted to Rs 1,20,00,000 as per the agreement executed prior to registration

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of the property in terms of first and second proviso to section 50C. Now, the main issue for adjudication is to determine whether the full value of consideration should be adopted at Rs 3,55,00,200/- or at Rs 1,20,00,000/-.

9. Provisions of Section 50C relevant to the assessment year are 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 [or assessable] 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 ⁵¹[or assessable] 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.

The abridged version of the Section is as under:-

50C. (1) Where the consideration received as a result of the transfer by an assessee of a capital asset, being land, is less than the value by any authority of a State Government 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.

This provision came into effect from 01.04.2003.

The Finance Act, w.e.f. 01.04.2017, inserted a provision:-

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the

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stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer:

And this provision has always been treated as curative in nature and operates retrospectively.

10. The Act provided consideration of date of agreement for determination of stamp duty value and compared to the value of the SRO as on the date of registration. However, the Act also laid down a condition that these provisions will apply in cases only in which where the part of the consideration has been received by account payee cheque.

The following facts emanate:

- (i) Date of Banakhat - 02.09.2010
- (ii) Date of sale agreement - 24.05.2011
- (iii) New effective date of new Jantri Rate - 01.04.2011
- (iv) Date of registration - 27.12.2012 - Value as per deed Rs.1.20 Cr.
- (v) Value as per SRO - 27.12.2012 - Value Rs.3.55 Cr.
- (vi) Payments received by the assessee - 26.10.2010, 21.10.2010, 10.02.2011, 22.03.2011

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11. It is clear that the assessee has received payments by cheques even before the effective date of new Jantri rate i.e. 01.04.2011. Hence, the assessee is saved by the provision to Section 50C(1) of the Act.

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

The order is pronounced in the open Court on 09.04.2025

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

**(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

Ahmedabad; Dated 09/04/2025

btk

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**