

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" SMC" BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**And**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 992/AHD/2019  
निर्धारण वर्ष/Asstt. Year: 2012-13

Nilesh Tanukumar Patel, 707, "Smruti", Mahavirnagar, India Colony Road, Thakkarbapanagar, Ahmedabad.  <b>PAN: AGCPP9236D</b>	Vs.	I.T.O., Ward-11(3), Ahmedabad.
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**And**

आयकर अपील सं./ITA No.993/AHD/2019  
निर्धारण वर्ष/Asstt. Year: 2012-13

Smita N. Patel, 707, "Smruti", Mahavirnagar, India Colony Road, Thakkarbapanagar, Ahmedabad.  <b>PAN: AJUPP1364P</b>	Vs.	I.T.O., Ward-11(3), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Hardik Vora, A.R
Revenue by :	Shri Kamlesh Makwana, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **11/11/2021**

घोषणा की तारीख / **Date of Pronouncement**: **25/11/2021**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeals have been filed at the instance of the different Assessee against the separate orders of the Learned Commissioner of Income Tax(Appeals)-5, Ahmedabad, arising in the matter of assessment order passed under s. 143 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

**First, we take up ITA No. 992/AHD/2019, an appeal by the assessee**

2. The only issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹ 5,77,000 in part instead of deleting the same in entirety.

3. The facts in brief are that the assessee in the present case is an individual and drawing income as share of profit from the partnership firm and other sources. The assessee in the year under consideration has sold the property jointly along with his wife for a consideration of ₹59 lakhs in aggregate. The share of the assessee in the impugned property was 50%, therefore the assessee has shown sale consideration at ₹ 29,50,000.00 only. The impugned property was purchased by the assessee at the price of ₹29,50,000 only. Thus the assessee has not shown any capital gain income against the sale of such property. It is for the reason that the assessee has sold the property at the same price at which he acquired. However, the AO found that the value of the property for the purpose of stamp duty was determined at ₹ 89,27,000 in which the share of the assessee comes out to ₹44,63,500.00 only. As per the AO the value determined for the purpose of stamp

duty should have been taken as the full value of consideration instead of ₹29,50,000 in pursuance to the provisions of section 50C of the Act.

3.1 On question, the assessee explained that the property was sold to the wife of his brother. Therefore, the excess stamp duty value should be treated as gift to the relative as per explanation (e) to section 56(2)(vii) of the Act. Hence, the excess value of the sale consideration determined for the purpose of stamp duty should not be considered as part of the sale consideration provided under section 48 of the Act.

3.2 However, the AO disregarded the contention of the assessee by observing that there is no scope of any adjustment for the gift under the provisions of section 50C of the Act while taking the stamp value as the full value of consideration. Accordingly, the AO has made the addition for ₹ 15,13,500.00 an amount representing the excess value of the sale consideration as per the provisions of section 50C of the Act under the head short-term capital gain.

4. Aggrieved assessee preferred an appeal to the learned CIT (A) who directed the AO to refer the matter to the DVO. The DVO in his report dated 1<sup>st</sup> February 2019 has determined the value at ₹ 70,54,000.00 only. Thus the share of the assessee in such property as per the DVO report stood at ₹35,27,000.00 only. However, the assessee before the learned CIT (A) reiterated the contention that the excess value of the sale consideration represents the gift to the wife of his brother being the relative. Therefore, there cannot be any addition to the total income of the assessee.

5. However, the learned CIT (A) disregarded the contention of the assessee and directed the AO to adopt the value determined by the DVO as sale consideration for computing the capital gain by observing as under:

*3.7. The appellant objected the valuation adopted by the AO and requested that the same may be referred to the DVO. Accordingly the matter was remanded to the AO. The AO*

*submitted remand report alongwith the DVO's report. As per the DVO's report, the valuation of the property comes to Rs.70,54,000/- against the value adopted by the AO of Rs.82,39,000/-. In the rejoinder the appellant accepted the valuation adopted by the DVO, but, submitted that the excess amount as per the DVOs report should be treated as gift given to the buyer who is dose relative. However the contention of the appellant is not tenable as the gift proposition is framed by the appellant after the issue was raised by the department, It is noted that no gift deed was made at the time of sale and also nowhere in the safe deed it was mentioned that the difference in the sale amount and jantri value will be treated as gift. In view of the above, the AO is directed to adopt the valuation given fay the DVO as safe consideration and recalculate the short term capital gain accordingly u/s.50C of the Act. Thus the grounds of appeal are partly allowed.*

6. Being aggrieved by the order of learned CIT (A), the assessee is in appeal before us.

7. The learned AR before us contended that the property in question was sold to the close relatives at the cost price and without charging any increment thereon. Therefore, the excess value determined by the DVO should be treated as gift and the same should not be treated as part of the sale consideration while determining the income under the head capital gain.

8. On the contrary, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The provisions of section 50C of the Act requires to adopt the value determined for the purpose of Stamp duty as the sale consideration on the transfer of capital asset being land and building if the consideration on the transfer of the capital asset is less than the value adopted or assessed or assessable for the purpose of stamp duty. In other words, the stamp value is deemed as the sale consideration under the provisions of section 50C of the Act. However, if the assessee disputes such stamp value than the matter can be referred to the DVO to determine the fair market value which shall be treated as sale consideration in pursuance to the provisions of subsection 2 of section 50 C of the Act. In the present case the reference to the DVO has been made who determined the value at

₹70,54,000.00 in which the share of the assessee stands at ₹35,27,000.00 only. Accordingly, the learned CIT (A) has directed to the AO to adopt the sale consideration at ₹35,27,000.00 only for the purpose of computing the short-term capital gain.

9.1 The provisions of section 50C of the Act was introduced in the Income-tax Act, 1961 by the Finance Act, 2002 with effect from 1-4-2003 for substituting valuation done for Stamp Valuation purposes as full value of consideration in place of apparent consideration shown by the transferor of capital asset, being land or building and, accordingly, calculating capital gains under section 48 of the Act. By the *Explanatory* notes to the amendment it was clarified that —

- (1) Section 50C of the Act is a special provision for determining the full value of consideration in cases of transfer of immovable property, being land or building or both;
- (2) Section 50C of the Act provides that where the consideration declared to be received or accruing as a result of transfer of land or building or both is less than the value adopted or assessed by the Stamp Valuation Authorities for the purpose of payment of stamp duty in respect of transfer, then value so adopted or assessed by them shall be deemed to be the full value of consideration;
- (3) It is also provided that where the assessee claims that the value adopted or assessed for stamp duty purposes is more than the fair market value of the property as on the date of transfer and he has not disputed this value before the appellate authorities or the Court under Stamp Duty Act then the Assessing Officer may refer the valuation of such property under transfer to the Valuation Officer in accordance with section 55A of the Income-tax Act, 1961. If the fair market value so determined by the Valuation Officer is less than the value adopted for stamp duty purposes the Assessing Officer may take such fair

market value to be the full value of consideration. On the other hand, if the fair market value determined by the Valuation Officer is more than the value adopted or assessed for stamp duty purposes the Assessing Officer shall adopt such fair market value determined by the Valuation Officer as full value of consideration and he shall not adopt the valuation done by the Stamp Valuation Authorities as full value consideration;

9.2 On perusal of the above provisions, we note that there is no scope for making any adjustment for the gift while determining the full value of consideration under the deeming provisions of section 50 C of the Act. Accordingly, we are not satisfied with the contention of the learned AR for the assessee. Thus, we have no alternative except to confirm the order of the authorities below. Hence the ground of appeal of the assessee is dismissed.

10. **Coming to ITA No. 993/Ahd/2019 for A.Y. 2012-13 in the case of Smt. Smita N. Patel.**

11. At the outset we note that the issues raised by the Assessee in her grounds of appeal bearing ITA No. 993/Ahd/2019 for the AY 2012-13 are identical to the issues raised by the Assessee in ITA No. 992/AHD/2019 for the assessment year 2012-13. Therefore, the findings given in ITA No. 992/AHD/2019 shall also be applicable to ITA No.993/Ahd/2018 for AY 2012-13. The appeal of the Assessee has been decided by us vide paragraph Nos. 9 to 9.2 of this order against the Assessee. For the detailed discussion, please refer the aforementioned paragraph. The learned AR and the DR also agreed that whatever will be the findings in the ITA No. 992/Ahd/2019 for the assessment year 2012-13 shall also be applied to the

ITA No. 993/Ahd/2019. Hence, the ground of appeal filed by the Assessee is dismissed.

12. In the result, both the appeals filed by the assessee are **dismissed**.

**Order pronounced in the Court on 25/11/2021 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
25/11/2021