

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

**ITA No.348/SRT/2019 (AY 2014-15)**

(Hearing in Virtual Court)

Mansukhbhai Nanjibhai Bhimani, Block No.4, Krishna Park Society, Shyam Dham Road, Nan Varachha, Surat – 395006. PAN: ACHPB 9761 A	Vs	The Income Tax Officer, Ward-3(1)(5), Surat.
Assessee / appellant		Revenue / respondent

Assessee by	Shri Hiren R. Vepari – CA
Revenue by	Mrs. Anupama Singla – Sr. DR
Date of hearing	04/10/2021
Date of pronouncement	13/12/2021

**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 Id. Commissioner of Income Tax (Appeals)-3, Surat dated 01.03.2019 for the Assessment Year

2014-15. The assessee raised the following grounds of appeal:

- “(1) On the facts and circumstances of the case, the learned CIT(A) was not justified in retaining the addition on account of difference between the sales consideration and the valuation done by the DVO.*
- (2) Without prejudice to the above, the learned CIT(A) ought to have deleted addition in respect of those properties where difference in value between that of the DVO and the registered sales deed was less than 15%.*
- (3) The appellant craves leave to add, alter or vary any of the grounds of appeal.*

2. Brief facts of the case as extracted from the orders of lower authorities are that during the assessment, the Assessing Officer (AO) noted that assessee has purchased four pieces of land during the financial year under consideration for

a total consideration of Rs.1.94 crore. However, as per Jantri Rate Value of these lands as determined by Stamp Valuation Authority comes to Rs.3.72 crore. On the basis of aforesaid difference, the AO issued show cause notice dated 18.11.2016 as to why difference of Rs.1.78 crore between the sale consideration and Jantri Value determined by Stamp Valuation Authority should not be added to the income of assessee under section 56(vii)(b) of the Act. The assessee replied the said notice vide his reply dated 18.11.2016. In the reply, the assessee contended that he had purchased all the properties at Market Value, hence, no addition under section 56(vii)(b) of the Act is required. The assessee in alternative submission contended that if AO is not satisfied with the reply, the matter may be referred to the District Valuation Officer (DVO) for determining of fair market value. The AO made reference for valuation of land to DVO for valuation of fair market value to respective DVO's at Ahmedabad and Vadodara wherever the property purchased by the assessee is situated. The DVO of Vadodara vide his report dated 20.12.2016, which was received by the AO on 26.12.2016, assessed the value of property purchase by assessee at Prathampura (Shilor), Taluka – Savli as on 04.05.2016 at Rs.17,79,531/-. However, the Valuation Report in respect of remaining Three (03) lands was not received by the AO. The AO recorded that the case was getting time barred on 31.12.2015. Therefore, he left no other option,

except to decide the case on merit. The AO on the basis of report in respect of property at Prathampura, Tal – Savli from DVO, Vadodara and in respect of remaining Three (03) properties on the basis of Jantri Rate recorded on purchase deed, made total addition of Rs.1.64 crore to the income of the assessee.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). The assessee filed detailed written submissions before the Id. CIT(A), as recorded in para 5 of his order. In the written submission, the assessee stated that during the assessment, references were made to DVO for determination of fair market value of all the plots of lands. Before passing the assessment order, the report of valuation was received in respect of one property only. The report of valuation in respect of remaining properties was received on 31.03.2017. The tabulated details of all properties showing the cost of property shown on the documents amount as per document executed as well as the fair market value determined as per report of DVO in the following manner:

Sr.No.	Property Registration No.	Property Reference	Amount (Rs.) In Dastavej	As per the valuation as per as per report of the DVO (Rs.)
1	691/2013	R.S.114, 159, 160, 161 Block No.156/A, Khata No.1326, Moje-Sarthana, Tal. Kamrej, Dist. Surat	41,00,000	43,51,000
2	923/2013	R.S. 114, 159, 160, 161 Block No.156/A, Khata	41,00,000	45,43,000

		No.1326, Moje-Sarthana, Tal. Kamrej, Dist. Surat		
3	94/2014	Khata No.704 and 705, R.SN No.43/1, Block N.70/3 and 70/4, TPS No.38, OP No.32/3 and 32/4 FP No.32/1/2 & 32/1/3, Moje Nan Varachha, Surat	97,01,250	1,13,82,000
4	675/2013	R.S.No.286/6//2/p & 675, Prathampura (Shilor), Tq. Savli	15,20,000	17,79,531

4. The assessee on the basis of tabulated details explained that the property shown at Sl. No.1 and 2 are similar as the same was sold in two parts. However, the DVO determined the different value. For property shown at Sl.No.3 contended that he had only ½ share in the property, the AO considered the full consideration in the hand of assessee to substantiate his contention, the assessee furnished copy of sale deed showing ½ share. For property shown at serial No. 4 the assessee has 1/4<sup>th</sup> share in the property. To substantiate, his contention the assessee placed on record the sale deed showing his share of as 1/4<sup>th</sup>. The assessee also explained that the fact that assessee was having ½ and 1/4<sup>th</sup> share in property shown at Sl.No.3 and 4 respectively, was brought to the notice of AO vide letter dated 23.01.2017.
5. The Id.CIT(A), after considering the contention of assessee, accepted that property shown at Sl.No.1 and 2 are similar which were sold in two parts, but Valuation Officer has taken different value of the same plot, therefore, the valuation of property shown at Sl.No.2 is to be taken at par with the property

shown at Sl.No.1. The Id.CIT(A), further noticed that as per sale deed of property no.3, the assessee is having 50% share, this fact was brought to the notice of AO vide letter dated 23.01.2017, but the AO made addition on entire amount. Similarly, for property shown at Sl.No.4, the Id.CIT(A) noted that assessee was having only 1/4<sup>th</sup> share as per the sale deed, this fact was brought to the notice of the AO, but, despite the AO added the entire amount in the hand of assessee. Thus, on the aforesaid observation, the Id.CIT(A) directed to treat the valuation of property at Sl.No.1 and 2 at Rs.43,51,000/- each. Similarly, in respect of property no.3 and 4 of the table, the assessee is having only share of 50%, 25% respectively and directed the AO to re-calculate additions as per Valuation Officer, thereby granted partial relief. Further aggrieved, the assessee has filed present appeal before this Tribunal.

6. We have heard the submission of Id. Authorised Representative (Id.AR) of the assessee and the learned senior departmental representative (Sr DR) for the revenue. The Id AR for the assessee submits that he a very short issue remains for consideration of the Tribunal is that when variation in valuation as sustained by the Id.CIT(A), against the value as per registered deed is less than or only 15% whether the additions is still sustainable. The Id.AR for the assessee submits that the variation in value as per the sale deed and the value and Fair Market Value(FMV) determined by the DVO with regard to property

shown at Sl.No.1 and 2 is only 5.77%, thus, the assessee is entitled to the benefit of Proviso to section 50C(1) inserted w.e.f 01.04.2019, which enhanced the tolerance bent in valuation from 5% to 10%, which has been held to be retrospectively by the decision of Mumbai Tribunal in Maria Fernandes Cheryl [2021] (123 taxmann.com 252, Mumbai) decision of Delhi Tribunal in Amrapali Cinema [2021] 127 taxmann.com 376 (Delhi).

7. The ld.AR for the assessee further submits that the fair market value (FMV) determined by DVO is based on estimation and the Co-ordinate Bench of Tribunal in Rahul Construction (38 DTR 19 Pune) held that difference between the sale consideration of property shown by the assessee and FMV determined by the DVO being less than 10% the AO was not justified in substituting the value determined by the DVO for sale consideration disclosed by assessee. In Smt Sita Bai Khetan 181 TTJ 549 (JP), the Tribunal held that difference between the valuation property adopted by the Stamp Valuation Authority and the consideration declared by the assessee being less than 10%, and the AO was directed to adopt the value declared by the assessee for computation of Capital Gain. Similar view was taken in Krishna Enterprises 146 DTR 73, Mumbai.
8. For property mentioned at Sl. No. 3 and 4, the ld.AR of the assessee submits that there is a difference of 14.77% and 14.58% in value shown in the

documents and the fair market value determined by DVO. The ld AR for the assessee submits that various benches of Tribunal in following cases held that difference up to 15% estimate needs to be ignored against the declared value.

- C.B.Gautam Vs UOI (65 Taxman 440 (SC),
- Smt. Vimlaben Bhagwandas Patel Vs CIT [1979] 118 ITR 134 (Guj HC) and
- Bimla Singh Vs CIT [2009] 308 ITR 71 (Pat).

9. The ld.AR for the assessee accordingly submits that by taking a broad view, the assessee may be allowed relief. The ld AR for the assessee furnished chart showing percentage of difference in the value shown by the assessee and the value accepted by ld CIT(A).

10. On the other hand, the ld. Sr. DR for the Revenue supported the order of ld. CIT(A). The ld. Sr. DR submits that whatever relief was claimed before the ld. CIT(A) was granted to the assessee. The assessee has now raised an additional plea about the tolerance range of 10% or 15% with regard to properties shown at Sl.No.1, 2 & 3, 4 respectively. The case laws relied by the assessee with regards to the property shown at S. No. 3 & 4 are based on different set of fact and are not applicable on the facts of the present case. The ld. Sr. DR for the Revenue prays for dismissal of appeal.

11. We have considered the submission of both the parties and have gone through the orders of authorities below. We find that there is no mush dispute on the facts of the case. During the hearing tje ld AR for the assessee furnished a

chart showing the details of difference in % of value declared by the assessee and value accepted by the Id CIT(A), the relevant part of which is recorded below;

	Property No.	Value as per document	Share of assessee	Value accepted by CIT(A)	Difference in %
1	Property at Sr No.1	41,00,000	100%	43,51,000	5.77
2	Property at Sr No.2	41,00,000	100%	43,51,000	5.77
3	Property at Sr No.3	97,01,250	50%	56,91,000	14.77
4	Property at Sr No.4	15,20,000	25%	4,44,883	14.58

12. We find that with regard to properties shown at Sl.No.1 and 2 in the table mentioned in para no.11 there is no difference of 5.7% between the value declared by assessee and the value determined by the DVO. Therefore, we find convincing force in the submission of Id.AR of the assessee that the assessee is eligible of benefit of amendment made in section 50C(1) by inserting 3<sup>rd</sup> Proviso for enhancing tolerance bend for variation between declared value vis-à-vis stamp valuation from 5% to 10% was held to be retrospective from the date when section 50C was inserted w.e.f 01.04.2003. It has been held so by Co-ordinate Bench of Mumbai Tribunal in Maria Fernandes Cheryl (supra). Similar view was reiterated by Delhi Tribunal in Amrapali Cinema (supra), therefore, respectfully following the decision of Co-ordinate Benches as referred above and considering the fact that the difference between the declared value and the value determined by the DVO is only

5.77%. Thus, we direct the AO to delete the addition qua property mentioned at Sl.No.1 and 2.

13. So far as the property mentioned Sl.No.3 and 4 are concerned, we find that there is a difference of 14.77% and 14.58% between the value declared by assessee and the fair market value determined by DVO which is beyond the maximum tolerance band of 10% as per the proviso to section 50C(1) of the Act. Therefore, the benefit of said proviso cannot be extended to the assessee. The reliance on various case laws by the Id.AR of the assessee, as mentioned in para – 8 (supra), we find that these case laws are not applicable on the facts of the present case as all those case laws relates to addition in different chapter of Income Tax Act and facts of all those cases are altogether different and the ratio of all those cases are not applicable on the facts of the present case. Therefore, in our considered view, the assessee is not entitled for the benefit of proviso to section 50C(1) qua property shown at S No 3 & 4 and accordingly, the addition with regard to property mentioned at Sl.No.3 and 4 are upheld.

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

Order announced on 13 December, 2021 in open court and result was also placed on the notice board.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**  
Surat, Dated: 13/12/2021 /SGR\*

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

*ITA No.348/SRT/2019 (AY 2014-15)*  
*Shri MansukhbhaiNanubhaiBhimani, Surat.*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
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By order

Sr.Pvt. Secretary, ITAT, Surat