आयकर अपील य अ धकरण, अहमदाबाद यायपीठ **'A'** अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD
(Conducted through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI AMARJIT SINH, ACCOUNTANT MEMBER

ITA No.427/Ahd/2018
नधा रण वष / Asstt.Year : 2012-13

Ashok Vadilal Patel B-404, Devpuja Apartment Nr.Rose Wood Towers B/h. Prerarna Tirth Derasar Satellite Ahmedabad 380 015. PAN : ASHPP 5597 K	Vs.	ITO, ward-3(3)(1) Ahmedabad.

(Applicant)		(Responent)

Assessee by	:	Shri Tushar P. Hemani, AR
Revenue by	:	Shri S.S. Shikla, Sr.DR

सनवार्इु क तार ख/ **Dat e of H ea rin g :15/12/2020**
घोषणा क तार ख /**Da t e of Pr on ou n ce me n t : 29/ 01/2 02 1**

आदेश/**O R D E R**

PER RAJPAL YADAV, VICE-PRESIDENT:

Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-3, Ahmedabad dated 16.1.2018 passed for the Asstt.Year 2012-13.

2. Assessee has as many as nine grounds of appeal. In ground no.1 to 4, the assessee has challenged determination of long term capital gain from sale of land at Rs.3,86,58,478/- by taking *jantri* value at Rs.618/- instead of Rs.140/-.

3. Brief facts of the case are that the assessee has filed his return of income on 29.3.2014 declaring total income at Rs.7,18,775/-, which

was processed under section 143(1) of the Income Tax Act, 1961. The return of the assessee was selected for scrutiny assessment, and notice under section 143(2) was issued and served upon the assessee. As per the information received by the Department, the assessee has sold an immovable property admeasuring 23270 sq.meters of land at Village Rethal, Nr. Sanand in Survey Block No.973, Khata No.618, Dist: Ahmedabad for a consideration of Rs.3,88,60,900/-, while as per the registered sale deed, the sale consideration has been shown at Rs.46,54,000/-. Thus, according to the AO, the assessee has shown sale value less by Rs.3,42,06,900/- with an intent to evade taxes. The ld.AO thus worked out net capital gain of Rs.3,86,58,478/- after indexation and other expenses. A show cause notice was issued to the assessee as to why net capital gain worked out by the AO of Rs.3,86,58,478/- should not be added to the income of the assessee. It was explained by the assessee that Government of Gujarat has changed *jantri* rate of the land from time to time; that the assessee had agreed to sell the land on 30.12.2010 at Rs.140/- per sq.meter; that the assessee executed the sale deed at the rate of Rs.200/-, which was more than the Government rate, at which rate nearby land owners of Rethal village executed their sale deed. This rate has been accepted by the collector of stamp. It was further explained by the assessee there are two *jantri* rates were prevailing on 18.4.2011 i.e. rate of Rs.1670/- per meter which was subsequently revised to Rs.618/-. The AO should take actual sale consideration received by the assessee as per the agreement to sell i.e. at Rs.140/- per sq.meter, and the assessee has executed the sale deed at Rs.200/- per square meter as per the requirement of stamp valuation authority, and not on the basis actual sale consideration received by the assessee, therefore, capital gain

should be calculated at the rate of Rs.140/-. The ld.AO did not accept this contention of the assessee, and held that since assessee himself was not sure about the correct amount of capital gain, *jantri* rate received by the Department has to be accepted. He accordingly made an addition of Rs.3,86,58,478/- and after giving deduction of Rs.14,567/-, net assessed income worked out at Rs.3,86,81,425/-. Dissatisfied with action of the AO, assessee challenged the addition on account of calculation of capital gain and denial of expenses before the ld.first appellate authority. However, the assessee could not get any relief from the ld.CIT(A). Aggrieved assessee is now before the Tribunal.

4. Before us, the ld.counsel for the assessee submitted that different rates of *jantri* were applicable at the relevant time, which were subsequently revised and/or challenged. Since the assessee has disputed and objected to determination of the sale consideration at different rates, the ld.AO ought to have referred the matter to the DVO in terms of provisions of section 50C of the Act. It is further submitted that date of agreement i.e. 30.12.2010 should be considered for the purpose of section 50C of the Act and the rate prevailing at that time should be taken for working out full value of the consideration received.He further submitted that payments were received by the vendor through account payee cheque/banking channel. The ld.counsel for the assessee relied upon decisions in the case of Dharmashibhai Sonai Vs. ACT, 161 ITD 627 (Ahd-Trib), Narendra Dahyabhai Patel Vs. ITO, ITA No.2087/Ahd/2013 dated 31.08.2016 and Tarun Manmohan Garg Vs. DCIT, ITA No.3208/Ahd/2015 dated 22.08.2017 to support his case and submitted that sale value on the

date of agreement ought to be taken for the purpose of section 50C. The break-up of cheques including their number and date of payment etc. has been given in the written submissions in tabular form.

5. The ld.DR on the other hand relied upon order of the ld.CIT(A). He contended that sale deed was registered on 31.12.2010, and therefore, the AO has rightly adopted the *jantri* value for the purpose of computing the long term capital gain on the date when sale deed was registered.

6. We have duly considered rival contentions and gone through the record carefully. The case of the assessee is that he has entered into an agreement to sell the land admeasuring 23270 sq.meters comprising in survey no.973 of Village Rethal, Ta. Sanand, Dist. Ahmedabad with Infinity Infra Projects P.Ltd. This agreement was executed on 30.12.2010 and consideration was settled at Rs.46,54,000/-. On 31.12.2010 the value of the land for the purpose of stamp duty was fixed at Rs.140/- per sq.meter by the stamp valuation authority. The assessee has agreed to sell at the rate of Rs.200/- per sq.meter. According to the assessee, he received Rs.5.00 lakhs as token consideration and Rs.41,54,000/- on 26.4.2011. The sale deed was registered on 23.11.2011 bearing no.7606. The State of Gujarat for the purpose of charging stamp duty has re-determined the value of the property in this year, and new rates were notified on 18.4.2011. Since the assessee presented the sale deed on 24.5.2011 for registration before the sub-Registrar, Sanand, but was not registered on account of insufficiency of stamps put on it. The purchaser has paid stamp duty at Rs.200/- per sq.meter whereas

according to the stamp duty valuation officer rates have been revised to Rs.1670/- per sq.meter. This rate was erroneously fixed, and it was revised subsequently by reducing it Rs.618/- per sq.meter. In other words, on the date when sale deed was presented for registration i.e. 24.5.2011, jantri rate for the purpose of payment of stamp duty was Rs.618/- per sq.meter.

7. The dispute between the assessee and the Revenue is, for the purpose of section 50C, which rate is to be deemed as full consideration for the sale of this property for purpose of section 48 of the Act ? According to the assessee, the rate should be adopted at Rs.200/- per sq.meter, which was settled between him and the vendee on the date of agreement i.e. 30.12.2010. On this day, even the stamp duty valuation authority has also fixed rate of Rs.140/-. Had the sale deed been executed on this date for the purpose of section 50C no other consideration could be deemed because the sale consideration disclosed by the assessee at the rate of Rs.200/- per sq.meter was far higher than Rs.140/- per sq.meter. It is pertinent to observe that the assessee has entered into an agreement to sale on 30.12.2010. Had the assessee not executed the sale deed, then time limit for filing a suit for specific performance under the Specific Relief Act has been provided in the Limitation Act, and this limitation is three years from the date of the agreement. In case vendee refused to get the sale deed registered, then the assessee can only sue for specific performance persuading the vendee to purchase land. In that circumstance, the assessee would not get anything more than the amount agreed in the agreement. Similarly, there can be a time gap between the date of agreement vis-à-vis ultimate registration of sale deed. There can be an

appreciation or depreciation in the value of the property. In other words, at the time of execution of agreement in respect of an immovable property, the *right in persona* is created in favour of the transferee/vendee. When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone-else, because vendee in whose favour the *right in persona* is created has legitimate right to enforce specific performance of the agreement, if vendor for some reason is not executing the sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. It is an encumbrance on the property and considering this aspect, one has to adopt the rate for the purpose of section 50C on the date on which agreement was executed. In the present case, the payments have been made through account payee cheque, and time gap between the presentation of the sale deed for registration vis-à-vis revision of rates for the purpose of charging higher stamp duty is not substantive and considerable. The sale deed was presented on 24.5.2011 where as the rates were revised on 18.4.2011. The time gap between the agreement vis-à-vis sale deed is also not substantive. Agreement is dated 31.12.2010 and sale deed was presented for registration on 24.5.2011. Considering this hardship for the vendors, section 50C was amended and second proviso has been brought on the statute book, which authorized an assessee to argue that where the amount of consideration or part thereof has been received by way of account payee cheque, then the appointing day for the purpose of valuation of the property for the purpose of section 50C is to be taken the date of agreement. This proviso has been held to be applicable with retrospective effect by the ITAT, Ahmedabad in the case of Dharamshibhai Sonani Vs. ACIT, 161 ID 627 (Ahd-Trib). It is also

pertinent to note that the assessee has submitted before the ld.CIT(A) that simultaneous sale deed was registered on survey no.932, 951, 899 and 894 where stamp duty valuation authority has also accepted the rate at Rs.200/- per sq.meter and the sale agreement were entered on 30.12.2010. The assessee has placed copies of the sale deed before the ld.Revenue authorities below, but in spite of that even under section 50C(2), this aspect was not appreciated. Taking into consideration all the facts and circumstances, we are satisfied that for the purpose of computation of long term capital gain on sale of land, the value shown by the assessee at the rate of Rs.200/- per sq.meter is to be adopted. We accordingly direct the AO to take value disclosed at the rate of Rs.200/- per sq.meter, and thereafter calculate the long term/short term capital gain, if any, leviable in the hands of the assessee. First ground of appeal is accordingly allowed.

8. So far as ground nos.5 to 7 with regard to disallowance expenditure on account of *banakhat* agreement, land leveling and its fencing on the ground that the same are excessive, it is contended by the ld.counsel for the assessee that before making any disallowance, no details have been sought by the Revenue from the assessee to explain the same. Therefore, the impugned additions have been made without giving any opportunity to the assessee. Therefore, the issue may be remitted back to the file of the AO with direction to give opportunity to the assessee and to verify the impugned expenses on the basis of details furnished by the assessee.

9. After going through the record, we find that disallowance of expenditure in respect of land leveling, fencing and *banakhat*

expenses totaling to Rs.37,55,750/- a meager amount of Rs.34,567/- has been allowed by the Revenue, without any realistic consideration. Even before making such disallowance no explanation was called for by the Revenue, and the assessee was not given any opportunity to furnish the details of the expenses. It is not the case of the Revenue that the expenses incurred by the assessee were not related to the land or the expenses incurred for any other purposes, as he has not called for any details from the assessee. It seems that the disallowance has been made simply on the basis of some surmises that the assessee fabricated the expenses to reduce the tax effect, such assumption of the AO is not tenable. We, therefore, in the interest of justice and fair play remit the issue of disallowance back to the file of the AO for re-adjudication and to decide the issue on the basis of details furnished/to be furnished by the assessee.

10. As far as charging of interest under section 234A/VB/C/D as raised in ground no.8 is concerned, the same being consequential and mandatory, stands disposed of accordingly.

11. Ground no.9 regarding initiation of penalty under section 271(1)(c) of the Act, the same is premature at this stage, and stands dismissed accordingly.

12. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Court on 29th January, 2021 at Ahmedabad.

Sd/-	Sd/-
(AMARJIT SINGH)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	VICE-PRESIDENT

Ahmedabad; Dated 29/01/2021