

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

BEFORE S/SHRI SANJAY GARG, JUDICIAL MEMBER
AND
NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No.561/Ahd/2025
Assessment Year : 2017-18

Deepakkumar Chandulal Shah 1, Maniratna Bungalows B/H, Abhishree-1, Party Plot Ahmedabad 380 058 PAN : ACLPS 2478 P	Vs	ITO, Ward-4(1)(1) Vejalpur Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Shri Rupesh R. Shah, AR
Revenue by :	Shri Abhijit, Sr.DR

सुनवाई की तारीख /Date of Hearing : 04/06/2025
घोषणा की तारीख /Date of Pronouncement: 04/06/2025

आदेश/ORDER

Per Sanjay Garg, Judicial Member

The above appeal has been preferred by the assessee against order passed by the Ld.Commissioner of Income-Tax(Appeals), ADDL/JCIT(A), Jodhpur [hereinafter referred to as “ld.CIT(A)"] dated 28.1.2025 under section 250 of the Income Tax Act, 1961 ("the Act" for short) arising out of the order of passed by the Assessing Officer (hereinafter referred to as “AO”) under section 143(3) of the Act pertaining to Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. That action of ADDL/JCIT (A) JODHPUR in upholding the addition of Rs.16,12,245 made under 8.143(3) dated 16-12-2019 on difference of Sale value as per registered deed and Value as per circle rate (Stamp duty

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Valuation) prevailing on the date of registry without appreciating that the said land was disputed land and possession was in third party (Confirming party) and purchased from the Confirming party and further difference value less than 5% therefore action of both the lower authorities is unjust, illegal, arbitrary, illusory and deserves to be deleted.

2. That action of ADDL/JCIT (A) JODHPUR in upholding the further addition of Rs. 21,82,255 made under 154 r.w.s 8.143(3) dated 12-02-2021 on difference of Sale value as per registered deed and Market Value as per DVO Report dated 12-10-2020 without appreciating that DVO Valuation cannot be made more than Value as per circle rate (Stamp duty Valuation) prevailing on the date of registry therefore action of both the lower authorities is unjust, illegal, arbitrary, illusory and deserves to be deleted.”

3. The sole issue involved in this appeal is relating to the addition of Rs.16,12,245/- made under section 56(2)(x) of the Act, on account of difference in sale value of the property as per the registered deed as compared to the circulate rate (stamp duty valuation) prevailing on the date of sale deed in respect of the property purchased by the assessee. The AO noticed that the sale consideration mentioned in the sale deed was less than the stamp duty value in respect of the property purchased by the assessee. He, therefore, invoked the provisions of section 56(2)(x) of the Act and made the impugned addition. The Id.CIT(A) confirmed the addition so made by the AO.

4. Before us, the Id.counsel for the assessee has made two fold submissions. Firstly, that the difference in the value mentioned in the registered sale deed, as compared to the stamp duty value was less than 5%, therefore, as per the provisions of section 56(2)(x)(B)(ii), the addition in respect of differential amount can be made only if difference is more than 5% of the consideration mentioned in the sale deed. Since in the case in hand, the difference was less than 5%, therefore, the addition was not warranted. The alternate submission made by the Id.counsel for the assessee is that, at the time of sale deed, there was a dispute relating to title of the property of the seller and therefore, the property was sold by the seller to the assessee at a

lesser rate. He, in this respect has relied upon page no.96 to 101 of the paper book, which is the copy of the order of the Hon'ble Gujarat High Court dated 21.6.2018 passed in R/First Appeal No.2119 of 2016 with Civil Application No.1 of 2016. A perusal of the said order of the Hon'ble High Court reveals that one Shri Haresh Babulal Shah, in the capacity of power of attorney holder of the original owner of the property namely, Chanchalben Bakorbhai Patel, had entered into an agreement to sell of the property in question on 24.5.2004 with other person namely Jayeshkumar Chakkaddas Shah. However, on the death of original owner, Chanchalben Bakorbhai Patel in the year 1997, the said property was inherited by the seller of the assessee namely, Sudhakarbai Bakorbhai Patel and others. The said property was subsequently sold jointly by them to Mineshbhai Bhogilal Patel and Dipakbhai Chandulal Shah (assessee) by sale deed dated 16.8.2016 registered with sub-Registrar on 19.8.2016 with Registration No.11940. The Hon'ble Gujarat High Court held that plaintiff Jayeshkumar Chakkaddas Shah could not legally enforce the agreement to sell executed by Haresh Babulal Shah on 24.05.2004, as the original owner of the property who had executed the power of attorney in favour of Haresh Babulal Shah had already died in the year 1997. The Hon'ble High Court upheld the order of the Trial Court, and rejected the Civil Suit No.213 of 2007 vide order dated 13.6.2016.

5. A perusal of the order of the Hon'ble High Court reveals that the litigation relating to the title as well as specific performance of the agreement to sell was going on, on the date of sale deed, and under the circumstances, it is quite natural that the property might have been sold at a lesser rate than the circle rate/market rate of the property on the said date. Even otherwise, admittedly, the difference

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between the sale consideration, as compared to the stamp duty value, is less than 5%. Therefore, the impugned addition is not sustainable under section 56(2)(x), and the same is directed to be deleted.

6. In the result, the appeal of the assessee stands allowed.

Order pronounced on 4th June, 2025.

Sd/-
(Narendra Prasad Sinha)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Ahmedabad,dated 04/06/2025