

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, AHMEDABAD
(BEFORE SHRI MUKUL KR.SHRAWAT JM & SHRI ANIL CHATURVEDI A.M.)**

I.T.A. No.372/AHD/2010.
(Assessment Year: 2006-07)

The Deputy Commissioner of
IncomeTax, Circle-9,
Room No.429,
Aayakar Bhavan,
Majura Gate, Surat.
(Appellant)

Vs. Shri Virjibhai Kalyanbhai
Kukadia, Shivam Bungalows,
Opp. Saifee Society,
L. H. Road,
Surat.
(Respondent)

PAN: AFDPK 7412B

Appellant by : Mr. D. P. Gupta, CIT (DR)
Respondent by : Mr. R.N. Vepari.

(आदेश)/ORDER

Date of hearing : 3-7-2012

Date of Pronouncement : 31-8-2012

PER: SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER.

This appeal is filed by the Revenue against the order of CIT (A)-V, Surat dated 12-10-2009 for the assessment year 2006-07.

2. The Revenue has raised following grounds:

"1. The Ld. CIT (A)-V, Surat has erred in facts and in law in deleting the addition made by the A.O. at Rs.2,56,26,205/- u/s. 69B despite the fact that all evidences collected by the A.O. proved unaccounted investment by the assessee."

2. The Ld. CIT (A) has erred in facts and in law in deleting the addition made by the A.O. Rs.2,56,25,205/- u/s. 69B despite the fact

that comparable sale instances by a state body like SUDDA (Surat Urban Development Authority) also showed rates higher than that paid by the assessee.”

3. Since ground No.1 and 2 are interconnected the same are disposed of together for the sake of convenience.

4. Assessee is an individual engaged in the business of diamond manufacturing and its import and export. The assessee filed his return of income on 26-2-2007 declaring total income of Rs.77,63,910/-.The case was selected for scrutiny. During the course of assessment from the particulars furnished by the assessee the A.O. noticed that assessee had acquired following properties:

Property Name	Area	Value Rs.	Rate per Sq. Mtr Rs..	Rate as per old jantry price	Rate as per new jantry. Rs.
Agricultural land 112 Althan	13182 Sq. Mtr.	47,18,936	357/ sq.mtr.	Rs.1500/- sq.mtr.	7500/ sq.mtr.
Agri. land 121 Bharthana	8802 Sq. Mtr.	31,58,160	358/sq. mtr.	Rs.600/- Sq.Mtr.	4500/- Sq.Mtr.
Agri. land 115 Bharthana	5716 Sq. Mtr.	18,50,899	323/sq.mtr.	Rs.600/- sq.mtr.	4500/ Sq.mtr.
Agri. land 24 Rundh	9713	9,00,000	92/sq.mtr.	Rs. 800/- sq.mtr.	8000/- Sq.mtr.

The A.O. was of the view that there was lot of variation between the purchase price shown by the assessee and the jantry price and therefore the purchase price as shown by the assessee was quite low. The A.O.

observed that the assessee had paid additional stamp duty on the land acquired. The assessee was asked to clarify and show cause as to why not the investment of land be estimated at the prevailing jantry rates and treated as undisclosed investments. The assessee interalia submitted that jantri price cannot be used as a measure to work out estimated investment in the absence of corroborative evidence. It was further submitted that though the purchase was executed much earlier (in the F.Y. 2000-2001) at the then prevailing price, the assessee could not execute the documents at that time. It was further submitted that there were certain adverse peculiar facts like disputed property, dispute about reservation for University etc., which had impact on the purchase price. The assessee also submitted that provision of section 50C cannot be invoked to make addition u/s.69B and the ingredients for invoking section 69B were absent. The assessee also relied on a number of judgments. The contentions of the assessee were not found acceptable by the A.O. The A. O. after considering the prevailing jantry rates and proposed jantry rates (effective from 1-4-2008) and after considering certain instances of market price concluded that the price at which the sale deed were executed were quite low. In order to determine the correct value of the properties, the A.O. referred the matter to DVO. Since the case was getting time barred and report from DVO was still pending, he went ahead and estimated the value of land after considering the prevailing jantry price of land as on 31-3-2005 and worked out the net undisclosed investment at Rs.2,56,26,205/-. Aggrieved by the action of the A.O., the assessee carried the matter before CIT (A).

4. Before CIT (A) it was submitted by the assessee that the deeming provisions as contained in section 50C cannot be applied while invoking

Sec. 69B. It was further submitted the addition u/s. 50C can only be made in the hands of the seller and no provisions of the Act permits the A.O. to estimate transaction price and add the difference in the hands of purchaser. CIT (A) agreed with the contentions of the assessee and deleted the addition by holding as under:

“10. I have carefully considered the assessment order and submission made by the A.R. and case laws before me. I have gone through the paper book produced before me. The short issue is regarding invoking of section 69B with regard to investments made by the assessee in purchase of land. Section 69B provides:

“Where in any financial year the assessee has made investments or is found to be owner of any bullion, jewellery or other valuable articles and [assessing] office finds that the amount expended on making such investment or acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the [assessing] officer, satisfactory, the excess amount may be deemed to be the income of the Assessee for such financial year”.

11. It is clear from the aforesaid provision that there has to be a finding of fact that the assessee has expended investment more than what is recorded in the books and for such excess investment the assessee has no explanation or the explanation given is not found satisfactory by the assessing officer. In such a case the excess investment can be considered as unexplained and added u/s.69 of the Act. In this case undisputedly the appellant had under taken purchase of land and the purchase prices as shown in the sale deeds are recorded in the books of accounts. The Assessing Officer estimated the purchase price higher than what is shown by the appellant in the books of accounts. While estimating the purchase

price, the assessing officer has relied on jantry price prevailing in that year.

12. In my view, the burden is on the assessing officer to prove that the amount expended in making investment in the property exceeds the amount recorded in the books. The Assessing Officer relied on the jantry and on that basis presumed that the amount expended is more than the amount recorded in the books. Such presumption can not be the basis for making the addition as the Assessing Officer has not made any independent enquiry or collected corroborative evidences to justify the addition. The Assessing Officer has failed to bring on record any relevant material to support his estimated transaction price. The jantry price can be treated as an evidence for the limited purpose of section 50C. The same can be construed as guide to indicate that investment recorded in books is under estimated. But this fact alone is not good enough to justify the addition on account of undisclosed investment in the property. Much more was required to be done by Assessing Officer by way of adducing supporting evidences to sustain the addition u/s. 69B, which has not been done nor brought out in the assessment order.

13. The only provision under the Act where recourse to the value adopted by the State Valuation authorities can be taken is section 50C. There is no other section in the Act which authorizes the Assessing Officer to take any action particularly under section 69B by placing reliance on the value adopted by the State Valuation authority commonly known as jantry price. Here also, section 50C is very specific and contains a deeming provision whereunder the value as per jantry price is treated as full value of consideration for the purpose of computing capital gain under section 48. This provision is applicable in the case of a seller of property and cannot be invoked in the case of purchaser of property for the purpose of section 69B. This has been held by the Ahmedabad Bench of ITAT in ITA No.1749/Ahd/2008 dated 29-8-2008 in the case of Bharatkumar N. Patel. In view of this and in the absence of fulfilling the basic requirements of section 69B I am inclined not to agree with the addition made by the Assessing Officer. The Assessing Officer, is therefore directed to delete RS.2,56,26,205/- made under section 69B of the Act.”

5. Aggrieved by the action of CIT (A), the Revenue is now in appeal before us.

6. Before us the Ld. D.R. submitted that the assessee had not submitted any documentary evidence to prove that the deal for purchase of land had taken place in F.Y. 2000-01. The Ld. D.R. further submitted that the price at which the assessee had shown the purchase of land is far below the market rates and the government rates. He further submitted that the market rate, revised jantry rates of the price of lands and the jantry price of land for F.Y. 2005-06 give the idea of market rate prevailing in F.Y. 2005-06. The contention of the assessee that the land is different from the land sold by Surat Urban Development Authority (SUDA) through auction is not supported by any documentary evidence. He thus submitted that the order of the Assessing Officer be upheld.

7. On the other hand the Ld. A.R. submitted and placed on record the copies of the agreements and its English translation and from it he pointed out to the fact that the payment for the land have been made in F.Y. 2000-01 and the enjoyment of the property was transferred in F.Y. 2005-06 at the prevailing market price. In such case the question of considering the jantri rates or comparable rates of subsequent period cannot be applied. The land that was purchased was on the outskirts of the city and was not developed at the time of its purchase. It was further submitted that provisions of section 50C cannot be applied while making addition u/s. 69B. He thus urged that the order of CIT (A) be upheld. The Ld. A.R. also relied on the decisions in the case of CIT vs. Naresh Khattar 261 ITR 664

(Del.),Amar Kumari Surana vs. CIT (1997) 226 ITR 344 (Raj.), ITO vs. Harley Street Pharma (2010) 38 SOT 486 (Ahd.) and various Other decisions.

8. We have heard the rival submissions and perused the material on record. In the present case before us, the issue is applicability of provisions of section 69B. Section 69B reads as under:

“Amount of investments, etc., not fully disclosed in books of account – Where in any financial year the assessee had made investments or is found to be the owner of any bullion, jewellery, or other valuable article, and the A.O. finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the A.O., satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.”

When we examine the provisions of Sec.69B, we find that section 69B is a deeming fiction. It is provided that addition can be made by the A.O. when the following three conditions are satisfied:

- (1) If it is found that the assessee has made investment or the assessee is found to be the owner of any bullion, jewellery or other valuable article, and
- (2) If it is found that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in that behalf in the books of account maintained by the assessee, and

- (3) Either the assessee offers no explanation about such extra amount or the explanation offered by him is not satisfactory.

9. The above conditions are cumulative. If all these circumstances exist, the excess amount may be deemed to be the income of the assessee for the financial year in which the said investment was made or the assessee became the owner of bullion etc.

10. The factual position is that during the year the assessee had acquired land. It has been submitted by the assessee that it had paid the consideration for purchase of land in F.Y. 2000-01 and got the possession of land in F.Y. 2000-01 but the documents could not be executed in F.Y. 2000-01 and were therefore executed in the F.Y. 2005-06 relevant to A.Y. 2006-07. The assessee had also brought on record the copies of the agreement. The Ld. D.R. could not controvert this fact by bringing any material to the contrary on record. A.O. was of the view that market rate during the period cannot be less than the jantri price of land. He accordingly, taking into consideration the prevailing jantri price of land, estimated the undisclosed investment at Rs.3,62,54,200/-. After adjusting for the value disclosed in the books of accounts of Rs.1,06,27,995/- considered Rs.2,56,26,205/- as the net undisclosed income. The A.O. has thus relied on the jantri price and on that basis presumed that the amount expended is more than the amount recorded in the books. The A.O. has failed to bring on record any material to support his estimated price.

11. Section 50C is a deeming provision where under the stamp duty rate is treated as full value of consideration for the purpose of computing capital

gain under section 48. It is applicable to the seller of property and therefore cannot be invoked in case of purchaser of property for the purpose of section 69B. CIT (A) has given a finding that the A.O. has not made any independent enquiry or collected corroborative evidence to justify the addition.

12. In the case of CIT vs. Naresh Khattar (HUF) (2003) 261 ITR 664 (Del) the Hon'ble Delhi High Court has held that to invoke the provisions of Sec.69B, the burden is on the Revenue to prove that the real investment exceeds the investment shown in the books of accounts of the assessee.

13. In the case of Smt. Amar Kumari Surana vs. CIT (1997) 226 ITR 344 (Raj.) the Hon'ble High Court has observed as under:

“10. It is true that merely on the basis of fair market value no addition can be made u/s. 69B of the Act, 1961, but on the basis of sufficient material on record some reasonable inference can be drawn that petitioner has invested more amount than the shown in account books, then only the addition u/s. 69B can be made. The burden is on the Revenue to prove that real investment exceeds the investment shown in account books of the assessee.”

14. In the case of ITO vs. Harley Street Pharmaceuticals Ltd. (2010) 38 SOT 486 (Ahd) it has been held that provisions of Sec.50C are applicable only for computation of capital gains in real estate transaction in respect of seller only and not for the purchaser. Legal fiction cannot be extended any further and has to be limited to the area for which it is created. Section 50C creates a legal fiction for taxing capital gains in the hands of the seller and

it cannot be extended for taxing the difference between apparent consideration and valuation done by Stamp Valuation Authorities as undisclosed investment u/s. 69.

15. In view of the totality of aforesaid facts and relying on the decisions of the Hon'ble High Courts and of the co-ordinate Bench, we are of the view that provisions of Sec.50C cannot be applied for making addition u/s. 69B. In the present case, since the A.O. has relied on the jantry rates without bringing any material on record to prove that assessee has in fact made investments over and above than that recorded in the books, no addition can be made in the present case and therefore no interference is called for to the order of CIT (A). We thus uphold the order of CIT (A). In the result the appeal of the Revenue is dismissed

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in Open Court on 31 -8 - 2012.

Sd/-
(MUKUL KUMAR SHRAWAT)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Ahmedabad.

S.A.Patki.

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals)-V, Surat.
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad.

- 1.Date of dictation 9 - 8 -2012
- 2.Date on which the typed draft is placed before the Dictating Member.....Other Member..... 21,27 / 8 / 2012
- 3.Date on which the approved draft comes to the Sr.P.S./P.S - -2012.
- 4.Date on which the fair order is placed before the Dictating Member for pronouncement - -2012
- 5.Date on which the fair order comes back to the Sr.P.S./P.S - -2012
- 6.Date on which the file goes to the Bench Clerk - -2012.
- 7.Date on which the file goes to the Head Clerk.....
- 8.The date on which the file goes to the Asstt. Registrar for signature on the order.....
- 9.Date of Despatch of the Order.....