आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 892/Ahd/2013

निर्धारण वर्ष/ Assessment Year : 2009-10

Shri Dhansukhbhai Bhandari, 94, Shankar Nagar Society, Rander Road, Palanpur Patia, Surat – 395009 PAN : ARBPB 1901 F	Vs	Income Tax Officer, Ward – 3 (4), Surat
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Mehul Shah, AR
Revenue by :	Shri K. Madhusudhan, Sr DR

सुनवाई की तारीख/**Date of Hearing : 26/07/2016**
घोषणा की तारीख /**Date of Pronouncement: 27/07/2016**

आदेश/O R D E R

PER R.P. TOLANI, JUDICIAL MEMBER:-

This appeal by the assessee is directed against the order of the Commissioner of Income-Tax (Appeals)-IV, Surat dated 17.12.2012 for Assessment Year 2009-10.

2. The sole ground raised is as under:-

On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.10,57,460/- on account of capital gain from sale of land.

3. The brief facts are – the assessee filed his return of income without disclosing any income from Long Term Capital Gains (LTCG). The case was selected for scrutiny and it was found that assessee had not disclosed LTCG on the sale of immovable property whose stamp valuation was

registered at Rs.1,17,83,250/- and apparent consideration at Rs.80,00,000/-. On confrontation of these facts, the assessee, left with no choice, filed a revised return of income offering the LTCG thereon. However, a claim of Rs.20 lakhs was made towards cost of improvement on the reason that this to settle an alleged dispute with some relatives of vendor, the payment was made more than two years after the sale by an alleged notarized document. Ld. Assessing Officer examined the claim and found it to be devoid of any merit and was disallowed by following observations:-

> *"4.3 The submission of the assessee is examined. The assessee's contention that he had no other alternative but to make clear title of land does not hold water. If at all there was any dispute, the same should have been settled before the transaction of land made in 17.03.2009. The assessee had paid the so called settlement dispute payment on 07.06.2011, i.e. after more than two years of purchase of land. Therefore, the so called settlement dispute appears to be concocted and fictitious to reduce the tax liabilities of the assessee. The assessee has further stated that the 'he had paid taxes on market value of land and if the claim was fabricated and fictitious then he would have paid taxes on sale consideration of Rs.1,17,83,250/- but would have paid taxes on sale consideration of Rs.80,00,000/- which was the value of sale deed'. Here it would be pertinent to mention that the assessee has not shown the long term capital gain on sale of the said land. Therefore, the argument of the assessee that he had paid taxes on sale consideration does not hold any water."*

4. Aggrieved, the assessee preferred first appeal where the assessee's ground was dismissed by ld. CIT(A) by following observations:-

> *"4. I have considered the reasons given by assessing officer in the assessment order while disallowing the settlement payment & also the submissions of the appellant. After analyzing the facts of the case, it is seen that the amount of account of dispute settlement has been paid during financial year 2011-12 i.e. much after the execution of sale deed of land on 17.03.2009. Although, it is the contention of the appellant that the dispute relating to the title of land was existing since the land was purchased yet it is an undisputed fact that the land has been transferred by executing the sale deed on 17.03.2009 and till that date no amount had been paid on account of settlement of dispute. As per the provisions of IT Act, the capital gain has to be taxed in the year the land was transferred. Hence, the payment as per settlement deed executed in writing on 07.06.2011, even if genuine, cannot*

be taken into consideration for working out the capital gain arising on sale of land. There is no provision under the IT Act which provides for allowing deduction on account of expenditure which has been incurred subsequently, i.e. after the execution of sale deed and after the end of financial year in which the transaction of sale took place. Hence, the appellant's claim for allowing deduction on account of payment of dispute settlement is not tenable & this ground of appeal is dismissed."

5. Aggrieved, the assessee is in second appeal before us.

6. The ld. Counsel for the assessee contends that the settlement of dispute being after more than two years of sale deed is of no bar for allowability inasmuch as the existence of disputes existed prior to the date of sale of property. Therefore, the claim of the assessee should be allowed. Reliance is placed on Kolkota ITAT judgment dtd. 14-5-2013 in ITA No.1112/Kol/2011 in the case of Satyabrata Dey.

7. Ld. Departmental Representative, on the other hand, relied on the orders of the authorities below and contends that the liability for capital gains arises on the date of sale of the property; any subsequent claim is only application of income and cannot be called cost of improvement towards property which is sold two years prior to the date of the dispute. Therefore the claim of the assessee is worthless and rightly denied by ld. CIT(A). Ld. DR contends that the facts of Satyabrata Dey ITAT judgment are totally distinguishable.

8. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. We find considerable merit in the contention of the ld. DR. The alleged settlement of dispute after two years of the sale date cannot be held admissible to the assessee as the LTCG liability accrued on the date of sale. Besides, the assessee's claim has no credence and appears to be a make belief story for

self-serving object to get relief of tax. We find merit in the contention of ld. DR. that Satyabrata Dey ITAT judgment (supra) is totally distinguishable. In view thereof, we uphold the order of the ld. CIT(A).

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 27th July, 2016 at Ahmedabad.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(R.P. TOLANI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 27/07/2016
Biju T.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad