

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI JASON P. BOAZ, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 1272/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2008-09)

Pratap Ratan Das Room No.203, Earnest House, Nariman Point, Mumbai-400 021.	बनाम/ Vs.	Income Tax Officer 14(1)(4) 17, Ground Floor, Phophal Wadi, Opp: Cotton Exchange, Kalbadevi (w) Mumbai-400 002.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AACPD 0156A
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri Mohammed Rizwan

सुनवाई की तारीख / Date of Hearing	:	03/02/2016
घोषणा की तारीख / Date of Pronouncement	:	21/09/2016

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)- 25, dated 27.12.2011 on the grounds of appeal mentioned herein below.

- “1. *The learned Commissioner of Income Tax (Appeals) XXIV, has erred on facts and in law by upholding the addition of Rs.2039230/- made by the ld AO as Long Term Capital Gain of income of the appellant.*
2. *The learned Commissioner of Income Tax (Appeals) XXIV, Mumbai, has erred on facts and in law by Upholding the assessment made by the ld AO, mainly on the grounds of the appellant without considering the fact that the appellant was taken as a agreement price at the time of considering the valuation of property instead of prevailing in the market .*
3. *The learned Commissioner of Income Tax (Appeals) XXIV, Mumbai , has erred on facts and in law upholding the assessment order passed by the ld AO without giving reasons for his decision.*
4. *The learned Commissioner of Income Tax (Appeals) XXIV, Mumbai, has erred on facts and in law by upholding the assessment made by the ld AO where the AO has failed to determine the undisclosed income in accordance with the provisions section 50C of the Income Tax 1961.*
5. *The learned Commissioner of Income Tax (Appeals) XXIV, Mumbai , has erred on facts and in law by upholding The assessment made by the ld AO as Agricultural Income ,which was made without revealing the recording of subjective satisfaction Enunciated under the relevant provisions, where material found at the time of assessment was used against the appellant.*
6. *The learned Commissioner of Income Tax (Appeals) XXIV, Mumbai, has erred on facts and in law by upholding the addition as undisclosed income without considering the judicially and not applying the natural justice.*
7. *The learned Commissioner of Income Tax (Appeals) XXIV, has erred on facts and in law by Penalty u/s271(1)(c) made b the ld AO as justifying in penalty on certain issue of the appellant.*
8. *The order of the ld Commissioner of Income Tax (Appeals) XXIV, Mumbai is bad in law.*
9. *The appellant craves leave to amend/alter any of the ground or grounds and / or add fresh ground or grounds as may be necessary at the time of hearing.”*

2. The brief facts of the case are that assessee being an individual is a goldsmith carrying out labour job and derives income from business as well as capital gains. The return of income was filed on 06.03.2008 declaring total income of Rs.6,31,560/-. The same was processed u/s 143(1) of the Act and later on the

case was selected for scrutiny through CASS. After serving statutory notices and seeking reply from the assessee, order of assessment was passed by AO thereby making additions on account of long term capital gain, on account of sale of gold and sales of shop. However the additions u/s 68 were also made.

3. Aggrieved by the order of the AO, assessee filed the appeal before CIT(A) and the CIT(A) after considering the case of the assessee dismissed the appeal of the assessee vide order dated 27-12-2011.

4. Aggrieved by the order of CIT(A), the assessee filed the present appeal before us on the grounds mentioned herein above.

5. At the very outset, it is noticed that even in spite of several notices, none has appeared on behalf of assessee and on the perusal of order sheet we have noticed that nobody was appearing on behalf of assessee. Although the notices were also served upon the assessee for appearing before us, but even then the respondent has not preferred to appear and even no application for adjournment was moved. On the other hand Id. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the Id. DR and the material on record.

Ground No.1 to 4

5. Since all the grounds raised by the assessee are inter-connected and inter-related therefore we thought it fit to dispose off the same through the present

common order. The afore mentioned grounds relates to the applicability of section 50C of the Act in the case of assessee. We have heard ld. DR and we have also perused the material placed on record as well as the orders passed by the revenue authorities. Before we decide the merits of the case it is necessary to evaluate the orders passed by CIT(A) while dealing with the issue the operative para is reproduced below:

“4. During the course of appellate proceeding the Ld. AR vehemently protested the application of section 50C of the I.T. Act 1961 and argued that sale consideration shown in sale agreement should be accepted as true and fair consideration of the property.”

5. On careful consideration of the arguments of the Ld. A.R. viz-a-viz facts stated in the assessment order, it immensely transpires that there is no force in the arguments of Ld. A.R. The Section 50C of the Act states that value assessed by stamp duty Valuation Authority shall for the purpose of section 48 be deemed to be full value of consideration received or accruing as a result of such transfer. Thus by deeming provisions, sale consideration shall be deemed to be as value assessed by stamp duty valuation authority. The validity of this section was upheld by Hon'ble High Courts and in particular Hon'ble High Court of Madras and Hon'ble High Court of Bombay. Therefore, I am of the view that there is no substance in the argument of Ld.AR that section 50C is not applicable in the case of assessee. The non application of Section 50C in the case of assessee amounts to travesty of justice and the parliament. The legislative intention behind this provision is well explained in Finance Act as well as by Hon'ble high courts. While introducing section 50C in Finance Act 2002, it was mentioned that the bill proposes to insert a new section 50C in the I.T. Act to make a special provision for determining full value of consideration in case of transfer of immovable property. Further the heading of introduction of this clause in the Finance Bill 2002 was titled as "computation of capital gains in real estate transactions". Thus, the purpose of section 50C was to cover all types of transactions pertaining to immovable property with a view to substitute real market value fetched by a person.

The Hon'ble High Court of Madras in the case of V.R. Palani Swamy vs. Union of India (180 Taxman 2.e3) had held that section 48 provides for mode of computation of capital gains and section 50C has been introduced from 1.4.2003 by Finance Act. 2002. The conspectus of the provision is that it is a special provision for full value of consideration in certain cases. It applies to all cases of transfer of capital assets. The Hon'ble High Court of Madras further held in the same case that it is obvious from the reading of the provision of section 50C, rather it is not disputed that the same is inserted to prevent large scale under valuation of the real value of the in the sale deed so as to defraud revenue and the Govt. legitimately entitled tom by pumping in black money. The impugned provision has been incorporated to check such evasion of tax by under valuing the real properties. (180 Taxman 253 Mad).

The Hon'ble jurisdictional High Court of Mumbai in the case of Bhatia Nagar Premises Co operative Housing Society vs. UOI (Date of order 19.8.2ala) upheld applicability of section 50C in case of a development agreement for the development and sale of land in following words.

- (i) There is a distinction between the subject matter of a tax and the standard by which the amount of tax is measured. The subject matter of a tax is capital gains and the manner in which it should be computed is provided by section 50C Section 50C is only a measure of tax and not the subject matter of tax. The valuation rule of the Stamp Act is for the purpose of computation' of income. It is only a standard' of measure for imposing tax. (Principle laid down in A. Sanyasi Rao 219 ITR 330 (SC) followed;*
- (ii) Section 50C was introduced with a view to prevent evasion of tax and under- valuation of the transaction and must be read in that context. The classification made by section sac is in respect of an identifiable group of assesses and is not arbitrary, unreasonable or discriminatory. (K.R. Palanisamy vs. UOI 306 ITR 61 (Mad) followed.*

The Hon'ble Special Bench of Jurisdictional IT AT Mumbai, had also upheld the applicability of section 50C for depreciable assets/ business assets, in case of ITO vs. United Marine Academy (date of order 25.4.2011) in following words.

“There are two deeming fictions created in section 50 and section 50C for computing capital gains on building. While section 50 modifies the ‘cost of acquisition’ for purposes of section 48, section 50C modifies the term ‘full value of the consideration’ received or accruing as a result of transfer of the capital asset’. The two deeming fictions operate in different fields and there is no conflict between them. As section 50C was inserted to prevent

assessee's indulging in under-valuation, there is no logic why it should not be applied to a depreciable building;

(The full text of this judicial pronouncement is published in 54 DTR at page 177 of year 2011)

Accordingly, in view of facts and circumstances of the case it is held that section 50C is applicable in the case of assessee and A.O. is correct in applying section 50C subject to valuation by the DVO/VO. Accordingly action of the AO is upheld."

5.1 After hearing ld. DR and after perusal of the orders passed by revenue authorities, we are of the considered view that the ld. CIT(A) has rightly come to the conclusion that section 50C of the Act states that value assessed by stamp duty Valuation Authority shall for the purpose of section 48 be deemed to be full value of consideration received or accruing as a result of such transfer. Thus by deeming provisions, sale consideration shall be deemed to be as value assessed by stamp duty valuation authority. Ld. CIT(A) has also appreciated that the validity of this section 50C has already been upheld by Hon'ble High Courts including that of Hon'ble High Court of Madras and Hon'ble High Court of Bombay. Ld. CIT(A) has duly considered the submissions of assessee that section 50C is not applicable in the case of assessee and that the sale consideration shown in sale agreement should be accepted as true and fair consideration of the property. We have further noticed that Hon'ble High Court in the case of "Bhatia Nagar Premises Cooperative Housing Society" has already held that Sec-50C was introduced with a view to prevent evasion of tax and under valuation of the transactions and the applicability of said section 50C has been upheld by Hon'ble High Court and even

Jurisdictional High Court of Bombay in the case of Bhatia Nagar Premises Cooperative Housing Society vs. UOI has upheld the applicability of Section 50C in case of a development agreement for the development and sale of land in the following words.

- “(i) *There is a distinction between the subject matter of a tax and the standard by which the amount of tax is measured. The subject matter of a tax is capital gains and the manner in which it should be computed is provided by section 50C. Section 50C is only a measure of tax and not the subject matter of tax. The valuation rule of the Stamp Act is for the purpose of computation of income. It is only a standard of measure for imposing tax. (Principle laid down in A. Sanyasi Rao 219 ITR 330 (SC) followed;*
- (ii) *Section 50C was introduced with a view to prevent evasion of tax and under valuation of the transaction and must be read in that context. The classification made by section 50C is in respect of an identifiable group of assessee and is not arbitrary, unreasonable or discriminatory.(K.R. Palanisamy vs. UOI 306 ITR 61 (Mad) followed.”*

5.2 In addition the Hon’ble Special Bench of Jurisdictional ITAT Mumbai, has also upheld the applicability of section 50C for depreciable assets/business assets, in the case of ITO vs. United Marine Academy the operative para of the judgement is reproduced below:

“There are two deeming fictions created in section 50 and section 50C for computing capital gains on building. While section 50 modifies the ‘cost of acquisition’ for purposes of section 48, section 50C modifies the term ‘full value of the consideration’ received or accruing as a result of transfer of the capital asset’. The two deeming fictions operate in different fields and there is no conflict between them. As section 50C was inserted to prevent assessee’s indulging in under-valuation, there is no logic why it should not be applied to a depreciable building.”

6. We have duly considered the above cited judgments and therefore we are of the considered view that the AO as well as CIT(A) were correct in applying section 50C in the facts and circumstances of the present case. No new circumstance have been brought on record before us in order to controvert or rebut the findings recorded by learned CIT (A). Moreover, there are no reasons for us to deviate from the findings recorded by the learned CIT (A).

Therefore, we are of the considered view that the findings recoded by the learned CIT (A) are judicious and well reasoned. Accordingly, we uphold the same and dismiss this ground of appeal.

Ground No.5

7. The CIT(A) has dealt with this issue in its order and the operative para is reproduced below for the sake of reference:

“Ground No. 2: Addition on account of non genuine agricultural income of Rs.2,30,000/-. During the course of assessment proceeding the AO found that the assessee had shown agricultural income of Rs.2,30,000/ - in spite of the fact that the assessee was not in possession of any agricultural land. On being asked, the assessee submitted that the agricultural land was owned by his father who died in the year 2004 and the said land was inherited to him. He also submitted that agricultural income was regularly shown in earlier years which was accepted by the then A.O. in assessment u/ s 143(3) of the IT. Act 1961. However, he did not furnish any evidence as to holding of agricultural land etc. Accordingly the AO held that assessee had no genuine agricultural income and a sum of Rs.2,30,000/ - shown as an agricultural income represents undisclosed income of the assessee u/ s 68 of the I. T. Act 1961. Being agreed with the action of the AO., the assessee is in appeal before this forum.”

During the course of appellate proceeding the ld. AR reiterated the same arguments as made before the AO. However, he was given an opportunity to produce following evidences to establish genuineness of agricultural income.

- 1. Evidence as to ownership of land i. e. to say Farm No. 8A and 7/12.*
- 2. Income and expenditure account of agricultural produce.*
- 3. Sale bills of agricultural produce, bills for seed, fertilizer, labour expenses etc.*

For this purpose he was given time of one month. However, neither the assessee nor the AR. could furnish such vital evidences to establish the genuineness of agricultural income. In absence of such evidences it cannot be said that impugned income was an agricultural income. On the contrary it immensely establishes that impugned income in form of agricultural income was a money laundering device to camouflage unaccounted income of the assessee under the garb of agricultural income Regarding the argument that in earlier year the said income was accepted by the then AO in assessment u/ s 143(3) is of no consequence. If the concerned AO had not examined the claim properly, there is no bar against the revenue to examine the case a because each year of assessment is independent of the previous years. If it is established that the same facts existed in. preceding year, it is amenable to take remedial action as per law to safeguard the interest of revenue. Accordingly this ground of appeal is rejected and action of AO is upheld (332 ITR 471 Delhi High Court).”

8. After hearing ld. DR and perusal of the record we are of the considered view that although ld. CIT(A) while considering the said issue has granted sufficient time to the assessee to substantiate his arguments by supporting documentary evidence/proof but even inspite of availing opportunities the assessee could not furnish any vital evidences to establish the genuineness of the agricultural income. Therefore in absence of such evidences it cannot be held that the impugned income was an agricultural income. We have carefully gone through the orders passed by CIT(A) and found that the assessee has not produced any document in support of

his arguments and no new circumstance has been brought on record before us in order to controvert or rebut the findings recorded by the learned CIT (A). Moreover, there are no reasons for us to deviate from the findings recorded by the learned CIT (A). Therefore, we are of the considered view that the findings recorded by the learned CIT (A) are judicious and are well reasoned. Accordingly, we uphold the same. Resultantly, this ground raised by the Revenue stands dismissed.

Ground No.6

10. Ground No.6 is general in nature and hence, requires no specific adjudication.

Ground No.7

11. Ld CIT(A) has dealt with this issue and has given categorically finding that mere initiation of penalty u/s 271(1)(c) is not an appealable action. Even otherwise once the appeal has already been dismissed by CIT(A) therefore the assessee was justified in initiating the penalty proceeding u/s 271(1)(c) and even in view of our finding on issue no.1,2&4 the present ground raised by assessee is not maintainable.

Ground No.8

12. Ground No.8 is general in nature and hence, requires no specific adjudication.

13. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on 21 September, 2016.

Sd/-
(Jason P. Boaz)

लेखा सदस्य / Accountant Member

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.09.2016

Ps. Ashwini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai