

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.2283/Mds/ 2013
निर्धारण वर्ष /Assessment year : 2008-2009

Rajkumar Kumbhat
(Deceased)
By L.R. Mr. Akash Kumbhat,
New No.31, Old No.12- 15/27,
Dr. Guruswamy Road,
Chetpet, Chennai 600 031.

Vs. The Income Tax Officer,
Business Ward XV(4)
Chennai

[PAN AABPK 2663A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. V. Jagadisan, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Supriya Pal, JCIT.

सुनवाई की तारीख/Date of Hearing : 19-09-2016
घोषणा की तारीख /Date of
Pronouncement : 23-09-2016

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

This appeal of the assessee is directed against an order dated 31.10.2013 of the Commissioner of Income-tax (Appeals)-VI,

Chennai, dated 31.10.2013. The assessee has raised the following grounds:-

1. The Commissioner of Income Tax (Appeals) erred in not properly considering the grounds raised in respect of objection against valuation of the property u/s 50C as well as other grounds raised in the appeal filed before the Hon'ble CIT (A).

2. The Commissioner of Income Tax (Appeals) erred in holding that the DVO considered the facts of litigation involved in the property while fixing the fair market value without proper regard to the decision on the subject furnished by the appellant.

3. The Commissioner of Income Tax (Appeals) erred in holding that the DVO has considered the provisions of section 50- C (2) in fixing the fair market value of the properties sold.

4. The Commissioner of Income Tax (Appeals) erred in holding that the DVO was justified in adopting CPWD rate as against state PWD rate which is applicable even to properties in Chennai, thus disregarding principles laid down by courts of law.

5. The Commissioner of Income Tax (Appeals) has not properly considered that the fair market value of the property sold should take into consideration the factual circumstance related to forced sale after litigation over a long period of years and the difficult position of the assessee to fight the battle against

earlier illegal sale of the same property by the illegal vendor to the same purchaser - The Commissioner of Income Tax (Appeals) failed to accept the normal fair market value should not be adopted u/s 50 C where the sale in question is a distress sale.

6. In any event, reasonings of the Commissioner of Income Tax (Appeals) for confirming the method adopted by DVO in determining fair market value of the property in question is not legally and factually correct.

7. The Commissioner of Income Tax (Appeals) erred in confirming the fair market value as on 1.4.1981 at Rs.35,000/- per ground - based on guideline value, the details of such value not being furnished to the assessee at any time. The Commissioner of Income Tax (Appeals) erred in rejecting the fair market value as on 1.4.81 adopted by the assessee/appellant.

8. The Commissioner of Income Tax (Appeals) having accepted that the FMV fixed by DVO is to be reduced by Rs.6,33,450/- erred in reducing only ₹2,11,150/- (1/3rd share) on gross FMV - the correct working is 1/3 of ₹3,66,18,000/- = ₹1,22,06,000/- less 1/3 of 6,33,450/- = 2,11,150/- - nett value ₹1,19,94,850/- and not Rs.1,21,35,616/-.

9. The Commissioner of Income Tax (Appeals) erred in

disregarding the claim that set off should be given in respect of an amount of ₹24,91,667/- being sale consideration already received in respect of sale of same property by the illegal owner to the same purchaser who purchased the property from the appellant”.

2. Facts apropos are that the assessee alongwith his two siblings had inherited an immovable property comprising of land and building at Old Survey No.1951, New Survey No.1419/7F, C.C. No.3807, Block No.28, Mylapore Village, Mylapore Triplicane taluk. The area of the plot came to 3731 sq.ft. The property was inherited by the assessee and his siblings on the death of their mother Smt. Ratankumari Kumbhat. Smt. Ratankumari Kumbhat had purchased this property in 1963 through a registered sale deed.

3. During the course of assessment proceedings for the impugned assessment year it was noticed by the Id. Assessing Officer that assessee had sold the above property to one Smt. J. Geetha on 12.10.2007 and the consideration mentioned in the sale deed was ₹1,50,00,000/-. On the last page of the document the Sub Registrar office placed a value of ₹10,500/- per sq.ft for the land and fixed a value of ₹1,50,000/- for the building. The buyer of the land had paid additional stamp duty as well. Based on the land value taken at

₹10,500/- per. Sq.ft for 3731 sq.ft of land sold by the assessee, value came to ₹3,91,75,500/-. Alongwith value of the building, the total value fixed by the Sub Registrar Office came to ₹3,93,25,500/- and the assessee's share as per the Assessing Officer being $1/3^{\text{rd}}$, came to ₹1,31,08,500/-. As per the Id. Assessing Officer the sale consideration paid by assessee's mother in 1963 while acquiring the subject property was only ₹15,000/-. He considered the base base guideline value of the popery as on 01.04.1981 at ₹35,000/- per ground, which effectively worked out to ₹14.50 per sq.ft. The Long term capital gains was reworked taking the consideration as ₹1,31,08,500/- and the cost at ₹99,356/-

4. Aggrieved, the assessee moved in appeal before the CIT(A). One of the grounds taken by the assessee before the Id. Commissioner of Income Tax (Appeals) was that the Id. Assessing Officer had not followed procedure set out in Sec.50C of the Income Tax Act, 1961 (herein after referred to as 'the Act'). After considering this objection, the Id. Commissioner of Income Tax (Appeals) directed the Id. Assessing Officer to refer the valuation of the subject property to the valuation officer of the Department. Accordingly, the Id. Assessing Officer referred to the District Valuation Officer. The District Valuation Officer called for the objections from the assessee which

assessee duly furnished vide its letters dated 26.09.2012, 17.10.2012 and 22.10.2012. After considering the objections of the assessee, the District Valuation Officer estimated fair market value at ₹3,66,18,000/-. The Id. Assessing Officer forwarded valuation report to the Id. Commissioner of Income Tax (Appeals).

5. Thereafter, the Id. Commissioner of Income Tax (Appeals) required assessee to file its objection in the light of the valuation report. The assessee submitted before Id. Commissioner of Income Tax (Appeals) that subject property was earlier sold by one Shri. H. Mahendra Kumar and three others who were tenants therein through a sale deed dated 27.05.2002 in favour of the very same buyer Smt. J. Geetha for a sale consideration of ₹74,75,000/-. As per assessee, sale effected by these persons who had no authority or title to the subject property was assailed by the assessee's through a suit filed before High Court of Madras. However, as per assessee such suit was compromised by mutual agreement. Pursuant to such compromise, assessee had sold subject property to Smt. J. Geetha alongwith other with his siblings for a total consideration of ₹1,50,00,000/-. Contention of the assessee was that the value as per Sec. 50C of the Act could not be adopted since it was a distress sale. As per assessee subject property was occupied earlier by the tenant who had

unauthorizely sold the property to Smt.J. Geetha and after such fraudulent sale assessee was constrained to sell the property at much lower a price than the market value due to the particular facts and circumstances, to avoid prolonged litigation. In so far as valuation made by the District Valuation Officer was concerned the assessee stated that District Valuation Officer ignored its objections and considered the building area wrongly as 2299 sq.ft against the actually sold area of 600 sq.ft. As per assessee area of the building was clearly mentioned in the sale deed as 600 sq.ft. One other contention of the assessee before Id. Commissioner of Income Tax (Appeals) was that District Valuation Officer had adopted CPWD rates for valuation of the building as against PWD rates. Reliance was placed by the assessee on the decision of Co-ordinate Bench in the case of *ACIT vs. MIL Industries Ltd (2013) 142 ITD 428* in support of its contention that in a distress sale fair market value as per Sec.50C of the Act could not be adopted. Reliance was also placed on the judgment of Hon'ble Allhabad High Court in the case of *CIT vs. Chandra Narain Chaudhri (2014) 99 DTR 105*.

6. However, the Id. Commissioner of Income Tax (Appeals) was not impressed by the above arguments except for the mistake committed by DVO in the area of the building sold. As per Id.

Commissioner of Income Tax (Appeals) assessee could not show why PWD rates was to be adopted for valuing the building. The Id. Commissioner of Income Tax (Appeals) also noted that Sec. 50C of the Act did not allow any relief for the type sought by the assessee for alleged distress situation as canvassed by the assessee. Nevertheless for the mistake in taking 2299 sq.ft against 600 sq.ft of building sold by the assessee a relief of ₹2,11,150/- was given to the assessee. As for the decision of Allhabad High Court in the case of *Chandra Narain Chowdri (supra)* the Id. Commissioner of Income Tax (Appeals) noted that there was no valuation by the District Valuation Officer in the said case and thus the facts were different.

7. Now before us, the Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that sale effected by the assessee was under peculiar circumstances. As per Id. Authorised Representative the tenants had sold the subject property claiming it to be theirs and had registered a sale deed in favour of the very same buyer on 27.05.2002. The Id. Authorised Representative submitted that assessee and his siblings came to know of the fraudulent sale by the tenants only on a later date. Contention of the Id. Authorised Representative was that they had moved the jurisdictional High Court for nullifying such sale. Nevertheless, as per

Id. Authorised Representative, assessee considering long time period involved in Civil litigation had opted for an out-of-Court resolution with the ultimate buyer. As per Id. Authorised Representative pursuant to such out of Court settlement, assessee had executed the sale deed on 12.10.2007 in favour of the very same buyer. As per Id. Authorised Representative the sum of ₹1,50,00,000/- received by the assessee and siblings on execution of such sale deed was not comparable to a normal sale. Hence, according to him Sec. 50C of the Act could not be applied at all.

8. So far as merits of the case was concerned, Id. Authorised Representative submitted that District Valuation Officer had taken land rate at ₹10,500/- per sq.ft without any evidence based on rates furnished by Sub Registrar Office. As against this, as per Id. Authorised Representative, guideline rate came to ₹5,556/- per sq.ft only at Anna Salai. Further as per Id. Authorised Representative if the building was valued as per state PWD rates, its valuation would go down by 25%. In any case as per Id. Authorised Representative rebate for difference due to adoption of larger area of building was not correctly given by the Id.CIT(A). Id. Authorised Representative further submitted that abatement had to be given for the amount received by the tenant who had sold the property.

9. In support of his contention that in a distress sale, valuation u/s.50C of the Act could not be adopted, reliance was placed on judgment of Allahabad High Court in the case of *Dinesh Kumar Mittal vs. ITO & ORS 193 ITR 0770*, *CIT vs. Smt.Rajakumari Vimala Devi 279 ITR 360* and decision of Co-ordinate Bench in the case of *ITO vs. K.S.R. Anirudhra (ITA No.396/Mds/2013, dated 07.03.2014)*. For adoption of PWD rates for valuing the building, Id. Authorised Representative placed reliance on the judgment of Rajasthan High Court in the case of *CIT vs. Smt. Prem Kumar Murdia 296 ITR 508*, *CIT vs. Dinesh Talwar 265 ITR 344* and Hyderabad Bench of the Tribunal in the case of *ACIT vs. Vinod Kumar Agarwal 257 ITR (Trib) 65* that of Chennai Bench of the Tribunal in the case of *ITO vs. Rajitha (ITA No.1642/Mds/2011, dated 26.03.2012)*.

10. Per contra, the Id. DR strongly supported the orders of the authorities below.

11. We have considered the rival contentions and perused the orders of the authorities below. Section 50C of the Act is reproduced hereunder:-

“(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessed or assessable by any authority of a State Government (hereafter in this section

referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer ;

(b) the value so adopted or assessed or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer”.

Reading of the above Section would show that assessee had an option before Id. Assessing Officer, for seeking a reference to a Valuation Officer for valuing the capital asset which was transferred. Assessee here had exercised this option before Id. Commissioner of Income Tax (Appeals). Id. Commissioner of Income Tax (Appeals) through Id. Assessing Officer had made such reference and got capital asset valued.

12. Coming to the procedure which is to be followed by the Valuation Officer there are clearly set out in sub-sec (2) of Sec. 50C. There is no case for the assessee have that Valuation Officer had not followed the above procedure. Assessee was given opportunity by the Valuation Officer for presenting its case. The earlier episode of tenant attempting the sale of the subjected property and subsequent compromise with the ultimate buyer were all canvassed before the valuation officer. The Id. Counsel for the assessee on a question from the Bench admitted that DVO had indeed considered these and given rebate in valuing the property. However, according to him the rebate was insufficient. In our opinion once the procedure set out in sub-sec.(2) of Sec. 50C of the Act is followed by the Valuation Officer, the Assessing Officer is left with no choice but adopt such value as fixed by the Id. Assessing Officer. By virtue of sub-sec (3) of Sec. 50C of the

Act, an Assessing Officer can examine such value only if it was more than the valuation given to the property by the stamp valuation authority. Coming to the grievance of the assessee that State PWD rates and not CPWD rates are to be adopted, the cases cited by the Id. Authorised Representative are all relating to assessment of undisclosed investments for under statement of construction cost and not where Sec. 50C of the Act was invoked. As for the cases relied by the Id. Authorised Representative for canvassing for his contention that for distress that Sec. 50C of the Act could not be adopted, fact situation in each of these cases were entirely different. The Hon'ble Allahabad High Court in the case of *Dinesh Kumar Mittal (supra)* was on an issue relating to an addition by substituting true sale consideration with value fixed by registration authorities in an year prior to Sec. 50C being introduced in the Act. As for the case of Smt. *Rajkumari Vimla Devi (supra)* their lordship was considering an issue of deemed gift u/s.4(1)(a) of the Gift Tax Act. Coming to the decision of Chennai Bench of the Tribunal in the case of *Shri. K.S.R. Anirudha, (supra)* the question was whether absence of access road if not considered by DVO in his valuation, could materially affect such valuation. As for the decision of *MIL Industries (supra)* the value was refixed for a reason that variables involved in DVO estimation were changing from time to time. However, paras of 14 & 15 of said

decision which is reproduced hereunder, in our opinion swings the case in favour of the Revenue only.

"14. But, the only concern is that the Commissioner of Incometax (Appeals) has been carried away by certain situations explained by the assessee before him. The assessee has explained that the sale made by the assessee was a distress sale and the entire consideration was paid to the UCO Bank and the sale consideration was comparable to the earlier valuation of the property taken by the UCO Bank and in such circumstances there was no chance to expect more price for the property. It means that there were certain compelling circumstances, which made the assessee to sell the property for a consideration of ₹2,22,64,409/-

15. In our view, these factors, however heartening may be, cannot be acted upon by the appellate authorities for the reason that section 50C is a deeming provision. Any relief granted to an assessee must be on the basis of reasons. The reasons must be within the four corners of law. Whatever may be the problems suffered b/ an assessee, in reality those reasons cannot be permitted to go beyond the scope of section 50C. When section 50C says that the sale consideration shall be the guideline value, if the stated consideration is less than that, it means that law has already decided the course of action. Nothing can persuade the situation including the genuine and valid difficulties of an assessee".

13. Now coming to the argument that value of land was fixed by the Id. DVO without any evidence, it is an admitted position that DVO had considered the rates furnished by the Sub-Registrar Office. So far as buildup area sold being less than that what it was considered by the DVO, we find that the Id. Commissioner of Income Tax (Appeals) has indeed given relief for this. Coming to the question of abatement for amount received by earlier tenant as per earlier sale deed, in our

opinion this cannot be in anyway considered for any relief to be given to the assessee. This is for the simple reason that no purchaser of a property can acquire a title better than that of the seller. In assessee's case, although had filed a suit against the tenants who had earlier sold the subject property, assessee's assertion all along was that they had no title in the subject property. Thus, we do not find any merits in the appeal filed by the assessee.

14. In the result, the appeal filed by the assessee in ITA No.2283/Mds/2013 stand dismissed.

Order pronounced on Friday, the 23rd day of September, 2016, at Chennai.

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:23rd September, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |