

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA NO. 1402/MUM/2015 : (A.Y : 2011-12)

Prakash Savjibhai Nanda Vs. ITO-9(3)(2),
Plot No. 3, G.K. Nagar No. 1, Mumbai (Respondent)
Shankar Lane, Kandivali (W),
Mumbai 400 067.
PAN : ACBPN7105J (Appellant)

**Assessee by : Shri S.C. Agarwal
Revenue by : Shri Santosh Mankoskar**

**Date of Hearing : 27/06/2016
Date of Pronouncement : 30/06/2016**

ORDER

The captioned appeal by the assessee is directed against the order of CIT(A)-21, Mumbai dated 22.12.2014, pertaining to the Assessment Year 2011-12, which in turn has arisen from the order passed by the Assessing Officer dated 31.01.2014 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, assessee has raised the following Grounds of appeal:

"Ground no. 1

In the facts and circumstances of the case the learned commissioner of Income Tax appeals – 21 Mumbai erred in law and in the facts in confirming and affording the order passed by Income Tax Officer ward 9(3)(2) by

calculating the Capital Gain at Rs.4262790/- instead of Rs.432790/- declared by the appellant, without appreciating the fact that :

- a. The full value of consideration received is Rs.4000000/- only. Therefore the Capital Gain could only be computed accordingly.*
- b. That the provisions of section 50C of the Income Tax Act is not applicable. Since the property is on lease hold property from the B.P.T and therefore erred in applying the provisions of section 50C of the Income Tax Act.*

Ground no. 2

In the facts and circumstances of the case the learned commissioner of Income Tax appeals – 21 Mumbai erred in not directing the Assessing Officer for valuation of property to the departmental valuation officer without appreciating the fact that :

- a. The valuation by the departmental valuation officer contemplated under section 50C is to avoid miscarriage of justice and to give fair treatment to the appellant.*
- b. That the learned commissioner of Income Tax and Assessing Officer discharging a quasi judicial function has the bounded duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.*
- c. That the Stamp duty paid by the purchaser and therefore the proposition that the appellant has accepted the stamp duty valuation is incorrect.*
- d. That the consideration received is Rs.4000000/- and the stamp duty valuation is Rs.7830000/- which is all most double and without appreciating the fact that the land is on lease of BPT. The lease Period of 50 years has been already expired out of 99 years lease period.”*

3. At the time of hearing, the learned representative for the assessee, at the outset, submitted that the appellant would be satisfied if the matter is restored to the file of Assessing Officer for reference to the Departmental Valuation Officer (DVO) for the purposes of obtaining the appropriate valuation of the property.

4. In order to appreciate the short point raised by the assessee, following facts are relevant. Assessee is an individual, who filed his return of income for Assessment Year 2011-12 on 29.7.2011 declaring total income at Rs.1,81,310/-. The assessee had sold a leasehold property situated at Godown no. 2, Popatlal Chambers, Dana Bunder vide Sale Agreement dated 11.12.2010 to Shri Neeraj Kumar M. Mishra for a total consideration of Rs.40,00,000/- and after deducting indexed cost of acquisition, Long Term Capital Gains worked out to be Rs.4,32,790/-. The property was purchased by him during February, 2007. The stamp duty value of the property as per the Stamp Valuation authority was Rs. 78,30,000/- as against the agreement value of Rs.40,00,000/-. The assessee had computed capital gains on the basis of agreement value of Rs.40,00,000/-, but the Assessing Officer adopted the stamp duty value as the sale consideration by applying the provisions of Sec. 50C of the Act. The justification/submissions of the assessee were not accepted by the Assessing Officer and after taking the sale value as per stamp duty value, he worked out the Long Term Capital Gains at Rs.42,62,790/- as against Rs.4,32,790/- as computed by the assessee. Aggrieved by the order of Assessing Officer, assessee preferred first appeal before the CIT(A)-21, Mumbai and raised various arguments in his support. CIT(A)-21 disposed of the appeal by his order

dated 22.12.2014 and dismissed the appeal of the assessee. During the proceedings before CIT(A), one of the contentions raised by the assessee was that the valuation of the property has not been referred by the Assessing Officer to the Valuation Officer by failing to appreciate that the appellant has objected for adopting the stamp duty valuation and requested for valuation and therefore, Assessing Officer was bound to refer the same to Valuation officer. In support, he relied upon various judicial pronouncements in this regard.

5. Before me, the learned representative for the assessee has reiterated the above preliminary contention and also relied on following judgments :-

- i) *Sunil Kumar Agarwal vs. CIT – Siliguri, GA No. 3686 of 2013 (Calcutta High Court) dt. 13.3.2014*
- ii) *Anil Kumar Jain vs. ITO, ITA No. 5331/Del/2012 (ITAT Delhi) dt. 26.4.2013*
- iii) *N. Meenakshi vs. ACIT, W.P No. 851 of 2009 (Madras High Court) dt. 11.9.2009*

The point raised by the appellant is that higher stamp duty value has been adopted by the Assessing Officer for computation of capital gains and no valuation report has been obtained from the Valuation Officer as per the provisions of Sec. 50C(2) of the Act despite request by the assessee.

6. I have heard the rival arguments. First of all, it would be prudent to reproduce the relevant portion of Sec. 50C which is as follows :-

“50C. (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 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 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 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 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”

A plain reading of the above section shows that whenever the stated sale consideration of a property is less than the stamp duty valuation, then stamp duty value shall be deemed to be the actual sale consideration for computing capital gains as per Sec. 48 of the Act. However, as per sub-section (2) of Sec. 50C, assessee may dispute the value adopted or assessed by the Stamp Valuation authority as the Fair Market Value (FMV) of the property on the date of transfer. In such a case, the Assessing Officer should refer the matter of valuation of the property to a Valuation Officer. Thus, a safeguard has been provided to the assessee to rebut the presumption as provided in sub-section (1) of

Sec. 50C. On this aspect, the pertinent point raised by the assessee is that in the present case the matter has not been referred to the Valuation officer to arrive at its fair market value, and instead the value adopted by the Stamp Valuation authority has been straightaway adopted as the full value of consideration for computing Capital Gains. The learned representative pointed out that before the CIT(A), assessee had raised a specific ground of appeal in this regard, but the same has not been accepted.

7. In the context of the above plea, the following observations in the case of Sunil Kumar Agarwal vs. Commissioner of Income-tax – Siliguri (Calcutta High Court) in ITAT No. 221 of 2013 are relevant :-

“..... we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.”

and also the following observation in the case of Shri Anil Kumar Jain vs. ITO in ITA No. 5331/Del/2012 (ITAT-New Delhi) :-

“8. From this finding recorded by the Assessing Officer, it is clear that the assessee made a claim before the Assessing Officer that the circle rate was much higher than actual market value of the property. In this situation, section 50C(2) provides that without prejudice to the provision of sub-section (1) where the assessee claims before any Assessing Officer or authority that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer and the value so adopted and assessed by the stamp valuation authority has not been disputed in any appeal or revision or any 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 in that event, relevant and corresponding provisions of the Wealth Tax Act shall, with necessary modifications, will apply.

9. In the present case, it is not in dispute that the assessee has made a claim before the Assessing Officer that the value adopted or assessed by the stamp valuation authority was higher than the fair market value. From the replies filed by the assessee, we also observe that it is also not the case whether the value adopted by the stamp valuation authority has ever been disputed by the assessee in any appeal or revision or otherwise as referred to in section 50C(2) of the Act. In these circumstances, it was incumbent upon the Assessing Officer to refer the matter for valuation to a Valuation Officer has provided in sub-section 50C(2) of the Act.

10. On the basis of foregoing discussion and factual matrix of the present case, we hold that the view taken by the Assessing Officer as well as confirmed by the Commissioner of Income Tax(A) is not correct. Since the Assessing Officer failed to refer the matter to the valuation officer u/s 50C(2) of the Act, we find it fit and proper to restore the matter back to the file of the Assessing Officer for a fresh adjudication after referring the matter to the Valuation Officer u/s 50C(2) of the Act. The Assessing Officer shall provide reasonable opportunity of being heard to the assessee and then decide the issue accordingly. We also make it clear that the matter with regard to the determination of sale consideration and capital gain shall remain open before the Assessing Officer and both the parties shall be at

liberty to raise any other contention submitted by any other document or evidence as they may think fit and proper under the law. The Assessing Officer will consider all the contentions and evidence placed before him and decide the issue de novo by passing a speaking and well-reasoned order.”

and lastly, the following observations of Hon'ble Madras High Court in the case of N. Meenakshi vs. ACIT in W.P No. 851 of 2009 :-

“Sub-sections (2) and (3) of Section 50C provides further safeguard to the assessee, in the sense that if the assessee claims before the assessing officer that the value adopted by the stamp duty authorities exceeds the fair market value and the value so adopted or assessed for the purpose of stamp duty has not been disputed in any appeal or revision before any authority, the Assessing Officer could refer the valuation of the capital asset to the Departmental Valuation Officer. On such reference, if the value determined by the Valuation Officer is more than the value adopted or assessed by the stamp duty authority, the Assessing Officer shall adopt the market value as determined by the Stamp duty authority. Thus, a complete foolproof safeguard has been given to the assessee to establish before the authorities concerned the real value. Thus, what is stated in Section 50C as a real value cannot be regarded as a notional or artificial value and such real value is determinable only after hearing the assessee as per the statutory provisions stated supra.”

8. In the light of the aforesaid legal position, I find ample force in the plea of the assessee for remanding the matter back to the file of Assessing Officer for the purposes of referring the matter to the Valuation officer in terms of sub-section 2 of Sec. 50C of the Act. The Assessing Officer shall provide the assessee reasonable opportunity of being heard and thereafter decide the issue afresh in accordance with law.

9. Before parting, I may make it clear that so far as the other issues with regard to determination of sale consideration and Capital Gains are concerned, the same shall remain open before the Assessing Officer who shall decide the same in accordance with law.

10. In the result, appeal of the assessee is allowed for statistical purposes, as above.

Order pronounced in the open court on 30th June, 2016.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 30th June, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai