

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.896/MUM/2017
(Assessment Year 2012-13)

M/s. All India Printing Ink –
Manufacturers Association Ltd.
307C, Twin Arcade, Military Road,
Marol Maroshi, Mumbai 400 059
PAN:AADCA 7486L

..... Appellant

Vs.

The Income Tax Officer -9(1)(2),
Mumbai -400 020

.... Respondent

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|-----------------------|---|---------------------------|
| Appellant by | : | Shri Girish M. Balekundri |
| Respondent by | : | Shri A.K.Kardam |
| Date of hearing | : | 11/05/2017 |
| Date of pronouncement | : | 24/05/2017 |

ORDER

The captioned appeal filed by the assessee pertaining to assessment year 2012-13 is directed against an order passed by CIT(A)-16, Mumbai dated 30/11/2016, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 23/03/2015.

2. In this appeal, the only issue raised by the assessee is against the action of the income-tax authorities in invoking the provisions of section 50C of the Act in order to calculate the capital gain arising to the assessee on sale of two office premises.

3. In brief, the relevant facts are that during the year under consideration assessee company sold two office premises, namely, Flat No.409 & Flat No.410 located at 4th Floor, H-Building, Royal Palm Project, Goregaon(E), Mumbai. The assessee sold the aforesaid two premises for consideration of Rs.17,50,000/- and Rs.27,50,000/- respectively, whereas the value determined by the Stamp Valuation Authorities was Rs.27,43,500/- and Rs.45,27,000/- respectively. By invoking section 50C of the Act the Assessing Officer adopted the full value of consideration for the purposes of computing capital gain at Rs.72,70,500/- instead of Rs.45,00,000/- considered by the assessee, thereby resulting in an addition of Rs.27,70,500/-. The CIT(A) has also affirmed the action of the Assessing Officer.

4. Before the Tribunal the solitary argument raised by the Ld.Representative for the assessee was based on sub-section(2) of section 50C of the Act which provides for reference to the Valuation Officer in order to determine the value of the property. It is seen that the only reason taken by the CIT(A) to reject the aforesaid plea of the assessee was that such an argument was not raised by the assessee before the Assessing Officer. The CIT(A) also noted that though assessee had pointed out that the actual value of the property was lower than the market value of the property on account of various legal/safety/construction issues, but the said argument was also rejected by him in the absence of any documentary evidence.

5. The aforesaid stand of the CIT(A) is again reiterated before the Tribunal by the Ld. Departmental Representative in support of the case of the Revenue.

6. The Ld.Representative for the assessee pointed out that there was a difference of almost 40% between the stated consideration and value

determined by the stamp Valuation Authority, which itself showed that certain peculiar features were attached to the property. In this context, attention was invited to the Statement of Facts attached to the appeal papers, which brings out the reasons for which the rates adopted by the Stamp Valuation Authority would not, as such, apply to the instant property. In terms of the said Statement of Facts, it is explained by the assessee that there was an illegal construction and that even occupancy certificate was not given by the authorities on account of bad construction; that there was no BMC water supply and even property tax assessment has not been done. Other reasons have also been stated, which are to the effect that the property is not serviced by any effective public transport system, etc.

7. In my considered opinion, the CIT(A) has unjustly denied the claim of the assessee of requiring the Assessing Officer to refer the matter to the Valuation Officer in order to determine the fair market value of the property in question. In fact, even as per the written submission reproduced by the CIT(A) in para -5 of his order, assessee has listed out various aspects, which affect the valuation of the property and on that basis, it is sought to be canvassed that the value taken by the Stamp Valuation Authority exceeds the fair market value of the property. In any case, in my view, the provisions of sub-section (2) of section 50C are quite clear and prescribe that where the assessee claims that the value adopted or assessed by the Stamp Valuation Authority exceeds the fair market value of the property and the same has otherwise not been disputed in any appeal or revision or no reference has been made before any authority, court or the High Court by the assessee, then the Assessing Officer may refer the valuation of such property to the Valuation Officer to determine its fair market value. Sub-section (3) of section 50C of the Act further prescribes that 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 determined by Valuation Officer shall be taken as the full value of the consideration received for the purpose of computing capital gain. In my considered opinion, it would in the fitness of things that the matter is restored back to the file of Assessing Officer with a direction to refer the valuation of the impugned property to the Valuation Officer in terms of sub-section (2) of section 50C of the Act and, thereafter proceed as per law. Needless to say the Assessing Officer shall allow the assessee a reasonable opportunity of being heard before passing an order afresh with regard to the computation of capital gains on sale of the impugned properties.

8. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 24/05/2017

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

Mumbai, Dated 24/05/2017
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai