

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-I", NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.5494/Del/2016
Assessment Year : 2013-14**

Vinod Kumar Mehta, K-3/20A, 1 st Floor, DLF Phase- II, Gurgaon. PAN : AJDPM 5579 Q	Vs.	ITO, Ward- 4(4), Gurgaon
(Appellant)		(Respondent)

Appellant by : Shri G. N. Gupta, Adv.
Respondent by : Shri F. R. Meena, Sr.DR
Date of hearing : 06-12-2016
Date of pronouncement : 23-12-2016

ORDER

PER S.V. MEHROTRA, A.M :

This is an appeal filed by the assessee against the order dated 18.08.2016 passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon, u/s 143(3) of the Income Tax Act, 1961 (in short "the Act") relating to assessment year 2013-14.

2. Brief facts of the case are that assessee filed his return of income declaring total income of Rs.11,48,640/-. The Assessing Officer noticed that assessee had sold a property bearing No. K-10/40, DLF Phase-II, Gurgaon admeasuring 1657 sq.ft. for a consideration of Rs.28 lacs. The Assessing Officer has observed in para 2 and 3 as under :-

“2. A perusal of records shows that the assessee has sold a property bearing No. K-10/40, DLF Phase-II, Gurgaon measuring 1657 square feet for a consideration of Rs. 28 lac. The assessee submitted that he executed a sale of first floor (which was stated to be sold on 10.04.2006 through GPA and agreement) of shop No.K-10/40, DLF Phase-II, Gurgaon and the basement was sold on 10.01.2013. As per sale deed, the total sale consideration was received at Rs.28 lac and after excluding the cost of first floor of Rs. 15,00,000/-, the assessee has declared the value of ground floor at Rs.13,00,000/-. The assessee submitted that after indexing the cost, long term capital gain has been declared at Rs. 13,223/-. On perusal of sale deed it is noticed that the Stamp Valuation Authority has taken the value of said property at Rs. 54,68,100/-. The assessee was required vide order sheet entry dated 26.10.2015 to show cause as to why provisions of section 50 C be not invoked for calculation of long term capital gains and also required to explain as to why addition be not made on the basis of adopting the cost of property as determined by the Stamp Valuation Authority. In response to query raised, the assessee submitted the written reply. In the written reply the assessee has submitted that the long term capital gain proposed at Rs.41,81,523/- is absolutely wrong as the assessee had deducted amount of consideration of Rs. 15 lac for the first floor out of Rs. 28 lacs total consideration shown in the sale deed to arrive at the consideration of Rs. 13 lac for the basement.

3. As per sale deed dated 11.01.2013, it is seen that the assessee has received a consideration of Rs. 15 lac in the financial year 2006-07 (Rs.5 lac on 10.04.2006, Rs. 5 lac on 12.04.2006 and Rs. 5 lac on 17.4.2006) and Rs. 13 lac in Financial Year 2012-13 (Rs. 5 lac on 23.4.2012, Rs. 5 lac on 19.5.2012 and Rs. 3 lacs on 10.09.2012). In the said sale deed, the stamp valuation authority has taken the cost of property at Rs. 54,68,100/- and charged a stamp value at Rs. 4,37,500/-. The assessee has submitted that he sold the first floor of the shop on 10.04.2006 for a consideration of Rs.15 lac and now the assessee has sold the remaining portion of the shop for a total consideration of Rs. 28 lacs. The provisions of section 50 C of Income Tax Act, 1961 are squarely applicable to this case, being the stamp valuation authority has taken the value of the said property at Rs. 54,68,100/-. As per provisions of section 50C of Income Tax Act, 1961, if the consideration declared to be received or accruing as a result of transfer of land or building is less than the value adopted or assessed or assessable by the Authority of a State Govt. i.e. 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 be deemed to be the full value of consideration and capital gain shall be computed on the basis of such consideration under section 48 of the Income Tax Act, 1961. In view of provisions of section 50C of the Income Tax Act 1961, the sale value of the property in question, is taken at Rs. 54,68,100/- as adopted by the Registration Authority for stamp valuation purposes and after excluding the amount of Rs. 15 lac which was received by the assessee in the year 2006, the long term capital gains is calculated as under:

Sale consideration (Rs. 54,68,100 - 15,00,000)	Rs.39,68,100/
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<i>Indexed cost</i>	<i>Rs. 12,86,677/-</i>
<i>Long Term Capital Gains</i>	<i>Rs.26,81,423/-”</i>

3. He, accordingly, made an addition of Rs.26,68,200/- under the head ‘Long Term Capital Gains’. Before Id. CIT(A), it was submitted that the Assessing Officer had a choice under sub-section 50C(1) to refer the matter before the Valuation Officer and, therefore, he should have done that since the circle rate fixed was not final. Ld. CIT(A) pointed out that for the purposes of reference to the Valuation Officer, the conditions prescribed u/s 50C(2)(a)(b) have to be fulfilled. He pointed out that Id. counsel for the assessee did not make any claim in writing before the Assessing Officer. He, therefore, upheld the assessment order. Being aggrieved, the assessee is in appeal before the Tribunal and has taken following grounds of appeal :-

“1. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)-1, Gurgaon {CIT(A)} erred in confirming the action of the Income Tax Officer in holding that the provisions of section 50C of the Income Tax Act, 1961 (Act) applied in respect of sale of basement of K-10/40, DLF Phase-II, Gurgaon {Basement}.

2. That on the facts and in the circumstances of the case, and without prejudice to ground of appeal no.1 above, CIT(A) erred in holding that the provisions of section 50C(2) of the Act were not applicable in the case of the appellant as the appellant allegedly made no claim before the ITO that the value of the Basement assessed by the stamp valuation officer exceeded its fair market value.

3.1 That on the facts and in the circumstances of the case, and without prejudice to the generality of grounds of appeal no.1 & 2 above, CIT(A) erred in confirming the long term capital gain of Rs.26,86,423/- arising out of the sale of Basement as against Rs. 13,223/- shown by the appellant.

3.2 That on the facts and in the circumstances of the case, the aforesaid computation of Long Term Capital Gain is arbitrary & highly excessive.

4. The Appellant craves liberty to add, vary or amend any grounds of appeal.”

4. At the time of hearing, Id. counsel for the assessee pressed only ground no.2 and pointed out that the provisions of section 50C(2) permits the assessee to contend before assessing authority that the registration value fixed under Stamp Act is excessive and does not correspond with the fair market value of the property as on the date of the transfer subject to condition that the assessee had not challenged the levy of stamp duty under the Stamp Act before any forum. He submitted that Assessing Officer being *quasi-judicial* authority should have referred the matter to DVO because of vast difference in valuation. He pleaded that the matter may be referred to the Assessing Officer for being referred to DVO for valuation of property.

5. I have considered both the parties and have perused the record of the case. The assessee had raised specific plea before the Id. CIT(A) in regard to reference to be made to DVO as there was wide difference between valuation arrived at by Stamp Valuation Authorities and as per sale deed. From the observations of Assessing Officer, reproduced earlier, it is evident that the assessee had disputed the capital gains proposed at Rs.41,81,523/- on the ground that the assessee had deducted a consideration of Rs.15 lacs for the first floor. However, when this claim was rejected then the

Assessing Officer being *quasi-judicial* authority should have referred the matter to the DVO for arriving at proper valuation of the property. The Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT (2015) 372 ITR 83 (Cal) has observed as under :-

“We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has not been met by the assessee, can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of clause (a) of sub-Section 2 of Section 50C was met by the assessee.

We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

For the aforesaid reasons, 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.”

6. In view of the above discussion, the ground no.2 raised by the assessee is allowed for statistical purposes. The Assessing Officer is directed to refer the matter to DVO for arriving at fair market value of the property as on date of sale.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of December, 2016.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated : 23-12-2016.

Sujeet

Copy of order to: -

- 1) The Appellant;
- 2) The Respondent;
- 3) The CIT;
- 4) The CIT(A)-, New Delhi;
- 5) The DR, I.T.A.T., New Delhi;

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi