

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI: JUDICIAL MEMBER

ITA no. 4730/Del/2013

Asstt. Yr: 2003-04

Income Tax Officer,
Ward 33(2), New Delhi.

(Appellant)

Vs. Sh. Gurcharan Singh,
38/2065, Naiwala Karol Bagh,
New Delhi-110005.
PAN: AATPS 6989 D
(Respondent)

Appellant by : Smt. Ritu Sharma Sr. DR
Respondent by : Shri K.P. Ganguly Adv.

Date of hearing : 09/06/2016.
Date of order : 27/06/20126.

ORDER

PER S.V. MEHROTRA, A.M:

This is revenue's appeal against the order dated 31.05.2013, passed by the ld. CIT(A) in appeal no. 417/2010-11 relating to AY 2003-04, raising following grounds of appeal:

- “1. The CIT(A) has erred in deleting addition of Rs. 1,39,86,300/- made by AO on account of long term capital gain.
2. The CIT(A) has erred in not appreciating the fact that the assessee could not prove that the property was occupied by the tenants and therefore it was sold below the prevailing market rate.”

2. Brief facts of the case are that the assessee filed return of income declaring the income of Rs. 1,11,304/-. The AO has observed that in this case a report from ITO(Inv.), Unit-VI(2), New Delhi on the TEP against Sh. Gurcharan Singh was received vide letter F. No. ITO(Inv)/Unit VI(2)/2009/37 dated 8.2.2009. Accordingly, the case was reopened on the ground that the assessee sold property no. J-117, Rajouri Garden, New Delhi and the same was alleged to have been sold for Rs. 1,47,00,000/-, but shown in the returned income for Rs. 13,50,000/- and hence an income of Rs. 1,34,00,000/- had escaped assessment for AY 2003-04. The assessee was asked to explain, how the property no. J-117, Rajouri Garden, New Delhi, against which advance of Rs. 20,00,000/- was taken and agreement for Rs. 68 lacs, was entered into, later on, sold by the assessee, for a sum of Rs. 13,50,000/- only. The AO further noticed that there was specific information against the assessee that he was compelled by the High Court in case no. 1A-9780/2000 to refund the advance of Rs. 20 lacs taken by him against the sale agreement of J-117 Rajouri Garden, New Delhi and backed out of the deal of Rs. 68 lacs for the property (as per the notice served to him by advance Mr. Wadhwa on behalf of the plaintiff). The High Court order dated 1.12.2000 passed by Hon'ble Justice K.S. Gupta was as under:

“Plaintiff have agreed to take back Rs. 20 lacs in full and final settlement of claim on or before 30/11/2000 from deft. And Settled sum of Rs. 20 lacs stands paid. Suit is dismissed as withdrawn.”

3. He further observed that it was further alleged that the same property was actually sold by him for Rs. 1,47,00,000/- in March 2003 and the sale deeds were registered in four parts totaling to Rs. 13,50,000/-. He concluded that the property which was agreed to be sold for Rs. 68 lacs and against which an advance of Rs. 20 lacs was taken by the assessee could not

be sold for Rs. 13,50,000/- only and that too after a period of 2 years 6 months. Keeping in view these facts the AO took the sale consideration at Rs. 1,47,00,000/- and after deducting the index cost of Rs. 6,36,300/-, computed the capital gains at Rs. 1,40,63,700/-.

4. Ld. CIT(A) allowed the assessee's appeal, inter alia, observing that though the Investment Wing found the tax evasion petition at Rs. 1,47,00,000/-, neither the Investigation ITO nor the AO could find any evidence of sale of land to the tune of Rs. 1,47,00,000/- nor any agreement to sell of Rs. 68,00,000/- was in possession of either the AO or the assessee. Under such circumstances, Ld. CIT(A) has observed that he has no other alternative but to take the sale consideration at Rs. 13,50,000/- as per the registered sale deed.

5. Ld. CIT(A) has further observed that ITO (Inv.) or AO while doing the scrutiny work should bring out evidences like Inspector enquiry report, report of registration of land in this locality in the concerned financial year which had been determined at higher value per square meter or comparable figures so that if there was any assessment by any authority while registering the sale deed then section 50C could have been applied at that stage. He pointed out that assessment for FY 2002-03 was done after ten years and at this stage proper evidence cannot be brought. He pointed out that in the absence of any inquiry or investigation made by AO it is very difficult to sustain such a big addition, where the deal was finalized with sale deeds registered.

6. Ld. DR submitted that assessee did not provide any evidence regarding tenants who were in occupation of the property and to vacate them

the assessee had to part with substantial amount. Ld. DR further submitted that it is difficult to accept that a property which was agreed to be sold at Rs. 68 lacs more than two and half years ago, was sold just for Rs. 13,50,000/-.

7. Ld. counsel for the assessee submitted that department has not brought on record any evidence on record except tax evasion petition to take the sale consideration at Rs. 1,47,00,000/-. He submitted that the property had been sold on the prevailing market price and the affidavit confirming that the said property was sold for Rs. 13,50,000/- by Shri Gurcharan Singh to 4 parties had been filed before the AO. He relied on the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO 131 ITR 597 to submit that apparent state of affair is real unless contrary is proved.

8. We have considered the submissions of both the parties and have perused the record of the case. The facts are not disputed. Admittedly the property earlier had been agreed to be sold at Rs. 68,00,000/- and the assessee had also got advance of Rs. 20 lacs in pursuance of the said agreement. However, subsequently the advance taken by assessee was refunded after settlement which has been recorded by Hon'ble Judge, as reproduced earlier. The AO has taken the sale consideration at Rs. 1,47,00,000/- on the basis of tax evasion petition which definitely cannot be a basis for substituting the sale consideration as recorded in the four sale-deeds, aggregating to Rs. 13,50,000/-. Ld. CIT(A) has accepted the sale consideration at Rs. 13,50,000/- but has pointed out various short comings in the assessment made due to which section 50C could not be applied.

9. Section 50C clearly deals with such kind of situation. The valuation adopted by some valuation authority for the purpose of payment of stamp

duty in respect of the transfer, the value so adopted or assessed, is deemed to be the full value of consideration received or accruing as a result of such transfer. It is also pertinent to note that assessee's claim was that property was occupied by tenants and in order to vacate the property consideration was paid, but no details in this regard have been furnished by assessee. Considering the vast difference between the consideration stated in the sale-deed and the consideration which was earlier agreed to for transfer viz. Rs. 68 lacs, it would be proper to restore the matter to the file of AO to examine the applicability of section 50C as he has not examined the facts from this legal perspective. We may point out that if the stamp duty valuation on the date of registration of sale deed was less than the stated sale consideration in the sale deed then no addition is called for. Therefore, for the limited purpose of finding out the deemed sale consideration as per section 50C, the matter is restored to the file of AO.

10. In the result, revenue's appeal stands allowed for statistical purposes only.

Order pronouncement in open court on 27/06/2016.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated:___/06/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

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