

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1072/JP/2016
निर्धारण वर्ष/Assessment Years : 2013-14.

Mohandas Fatehpuriya, Shop No. 67, Ramganj Bazar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 7(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAEPF 1969 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Shri Prithvi Raj Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 18.10.2017.
घोषणा की तारीख / Date of Pronouncement : 26/10/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

This appeal by the assessee is directed against the order of Id. CIT (A)-III, Jaipur dated 27.09.2016 pertaining to A.Y. 2013-14. The assessee has raised the following grounds of appeal :-

1. The learned Appellate Authority, the CIT (Appeals) III, Jaipur, has erred in law by holding that " As per section 50C(2) if the assessee had challenged the stamp value made by registration of authorities or disputed the said valuation before the competent authorities court or High court, then the AO may refer valuation of capital asset to a valuation officers" (Para 4.3 page 6 of the appellate order dated 23.09.2016).

2. The learned Appellate Authority has erred in law and in fact in observing in the impugned Appellate order that " As observed in this case, no such objection was raised before AO nor contested before competent authorities" (para 4.3 page 6 of order) as well as in failing to consider the fact that the appellant had clearly disputed the valuation endorsed by the stamp valuation authority vide point no. 3 of the letter dated 18.03.2016 submitted in the course of assessment proceedings as well as in the course of hearing of first appeal also, and has thus failed in giving proper directions to the AO in terms of provisions of section 50C sub-section (2) for referring the valuation of sold plot of land to a Valuation Officer referred to in that section.
3. The learned Appellate Authority has erred in law and in fact by holding that " A.O. had no other option but to accept the valuation as taken by Sub-Registrar for stamp duty purpose which in my view is correct as per facts of case and according to the provision of section 50C of the Act" (para 4.3 last para page 6 of the Appellate Order.
4. The learned Appellate Authority has erred in law and in fact in failing to consider various issues raised vide submission dated 23.09.2016 during the course of hearing of appeal, specially the matters relating to application of commercial rates issued by 'District Level Committee' (DLC) on the plot of land falling in and meant for residential use and relating to the actual date of registration.
5. The appellant craves leave to add, amend or alter any ground or grounds of appeal before final hearing of the same.

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 21st March, 2016. While framing the assessment, the AO observed that the assessee has sold a property at Rs. 80,40,000/-. However, as per the Stamp Valuation Authorities the valuation was adopted at Rs. 1,19,71,700/-. Therefore, the AO invoking provisions of section 50C adopted the sale value of the property at Rs. 1,19,71,700/- and re-computed the long term capital gain thereby he made addition of Rs.

48,84,149/- as long term capital gain. Against this, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions of the assessee dismissed the appeal. Aggrieved by this, the assessee is in present appeal before us.

3. The only effective ground of appeal is against adopting the value of the property as adopted by the Stamp Valuation Authorities.

3.1. The Id. Counsel for the assessee at the time of hearing vehemently argued that the authorities below were not justified in adopting the said value when the assessee has made a claim before the AO that the value adopted by the Stamp Valuation Authorities is not correct. He submitted that as per section 50C(2) of the Act, the AO ought to have referred the issue to the Departmental Valuation Officer (DVO). The Id. Counsel reiterated the submissions as made in the written brief. The submissions of the assessee are as under :-

“ 3. **SUBMISSIONS**

3.1. Section 50C(2) provides the situation under which AO is required to refer the matter to Valuation Officer. The said sub-section provides following two conditions:

- 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.*

Neither any specific manner nor any particular Form in Income Tax Rules is prescribed for requesting the AO to refer the matter to Valuation Officer. The

basic condition is “**claiming**” before the AO that value adopted by Stamp Valuation Authorities exceeds the Fair Market Value at which the transaction of sale has taken place. Subsequent condition is that no appeal is filed under Stamp Duty Law.

- 3.2. In the present case, both the conditions are fulfilled. Claim was made *vide* letter dated 18.03.2016 **[PB 28-29]**. Further, no appeal was filed under Stamp Duty Law.
- 3.3. The lower authorities have erred in holding that the assessee has not made a request for referring the matter to the Valuation Officer. It is submitted that *vide* letter dated 18.03.2016 **[PB 28-29]**, the assessee has disputed the value of the plot taken by the Stamp Duty Authorities. It is a settled legal proposition that Id. AO while discharging his duties is bound to refer the valuation to the valuation officer when the assessee has disputed the value adopted by the Stamp Authorities, even if the assessee has not made a specific request for the same.
- 3.4. Reliance is also placed on the following judicial pronouncements the extracts of which have been set out for the sake of convenience:-

High Court

3.4.i. In the case of **Sunil Kumar Agarwal [2014] 47 taxmann.com 158 (Calcutta) [CLC 1-5]** in which it was held that:

“....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....” [CLC 4]

Jaipur ITAT

4.4.ii In the case of **Smt. Kamlesh Tiwari, ITA No. 587/JP/2013 [CLC 6-16]** followed the ratio laid down by the **Hon'ble Calcutta High Court** in the case of **Sunil Kumar Agarwal (Supra)** and held that even though the assessee simply disputed the valuation adopted by the Stamp Valuation Authority but had not made any specific request to refer the matter to the Valuation Officer, the Assessing Officer should have referred the matter to the Valuation Officer.

3.4.iii. In the case of **Vijay Kumar Patni, ITA No. 202/JP/2012 [CLC 29-42]**, Hon'ble Bench relying on the case of **Sunil Kumar Agarwal (supra)** held as under:

“As per Section 50C, the Id Assessing Officer is duty bound to take value as taken by the Stamp Authorities. As per law the assessee can challenge the valuation made by the stamp authority by filing the appeal against the stamp duty paid before the appellate authority under the Registration of Stamp Act and another alternative is that he can object the valuation proposed by the Assessing Of on the basis of Section 50C of the Act and on that basis the Assessing Officer can refer the issue to the DVO and get valuation as per law. The Hon'ble Calcutta High Court in the case of Kumar Agarwal (supra) cited by the assessee are squarely applicable. Therefore, the Id Assessing Officer is directed to refer the matter to the DVO and take fair market value on the date of sale/transfer. On that basis, he will compute the capital gain as per law. Therefore, we set aside this issue to-the Assessing Officer.” [CLC 40-41]

Other ITAT

3.4.iv. Sarwan Kumar v. ITO [2014] 45 taxmann.com 16 (Delhi - Trib.)

“Head Notes - Section 50C of the Income-tax Act, 1961 - Capital gains - Special provision for full value of consideration in certain cases (Conditions precedent) - Assessment year 2006-07 - Whether where an assessee has claimed before Assessing Officer that value of land and building assessed by stamp valuation authority exceeded fair

market value of property, then in terms of section 50C(2)(a), Assessing Officer ought to have referred matter to valuation officer instead of straightway deeming value adopted by stamp valuation authority as full value of consideration - Held, yes [Para 6]”

3.4.v. Anil Kumar Jain vs. ITO [2013] 34 taxmann.com 258 (Delhi - Trib.)

“..Head Notes - Section 50C of the Income-tax Act, 1961 - Capital gains - Special provision for computation of full value of consideration in certain cases [Reference to Valuation Officer] - Assessment year 2009-10 - Assessee earned short term capital gain on sale of property - Assessee made a claim before Assessing Officer that value adopted or assessed by stamp valuation authority was higher than fair market value - Value adopted by stamp valuation authority had not ever been disputed by assessee in any appeal or revision or otherwise to any other authority or Court as referred to in section 50C(2) - Whether it was incumbent upon Assessing Officer to refer matter for valuation to a Valuation Officer as provided in section 50C(2) - Held, yes..”

3.4.vi. Raj Kumari Agarwal Vs DCIT [2014] 47 taxmann.com 88 (Agra - Trib.)

“...Head Notes Section 50C of the Income-tax Act, 1961 - Capital gains - Special provision for computation of full value consideration (Valuation by DVO) - Assessment year 2008-09 - Whether where assessee had claimed that actual market value of her land was less than stamp duty valuation adopted by Assessing Officer, it was incumbent upon Assessing Officer to refer valuation of said land to Departmental Valuation Officer (DVO) - Held, yes - Whether where same had not been done, matter was to be remitted back for fresh adjudication - Held, yes [Para 8] ...”

In view of the above, the lower authorities have erred in adopting the Stamp Duty Valuation without referring the matter to Valuation Officer, therefore, the same deserves to be quashed and capital gains be directed to be completed w.r.t. actual sale consideration of Rs. 80,40,000 instead of Rs. 1,19,71,700.

GROUND NO. 3: INVOKING THE PROVISIONS OF SECTION

50C:

1. ASSESSING OFFICER

Ld. AO, on observing that the value adopted by the Stamp Valuation Authority is more than the sales consideration, invoked the provisions of section 50C and computed the capital gains at Rs. 48,84,149.

2. COMMISSIONER OF INCOME TAX (APPEALS)

Ld. CIT(A) upheld the action of ld. AO.

3. SUBMISSIONS

- 3.1. Section 50C is a deeming provision which should be strictly construed. Nothing more should be read than what is specifically provided in the section. It is submitted that the provisions of section 50C require substitution of sales consideration with Stamp Duty Valuation subject to the conditions laid therein, for the purposes of Section 48 only. It has not been referred to in the other tax saving sections like section 54, 54EC and 54F. Therefore, these tax saving provisions will operate without any reference to section 50C.
- 3.2. Reliance is placed on the judgment of the **Hon'ble Bombay High Court** in the case of **Ace Builders (P) Ltd. (2006) 281 ITR 210 (Bom.) (CLC 17-24)** wherein it was held that *"...It is true that section 50 is enacted with the object of denying multiple benefits to the owners of depreciable assets. However, that restriction is limited to the computation of capital gains and not to the exemption provisions. In other words, where the long-term capital asset has availed of depreciation, then the capital gain has to be computed in the manner prescribed under section 50 and the capital gains tax will be charged as if such capital gain has arisen out of a short-term capital asset but if such capital gain is invested in the manner prescribed in section 54E, then the capital gain shall not be charged under section 45 of the Income-tax Act..."* **[CLC 23]**
- 3.3. In the above background it is submitted that when, as per the computation of total income, the capital gains offered for tax are Rs. NIL, provisions of section 50C cannot be invoked. Section 50C comes into play only when some capital gain is liable for taxation.
- 3.4. Reliance is placed on the **Hon'ble Jaipur Bench of ITAT** in the case of **Shri Gyan Chand Batra (2010) 133 TTJ 482 (JP) [CLC 25-28]** wherein the Hon'ble Bench has taken the view that meaning of full value of consideration

in section 54F is not governed by section 50C. Head notes of the case are reproduced below:

“Section 50C provides a deeming provision or considering the full value of consideration as the value adopted for stamp duty. The deeming fiction as provided in section 50C in respect of the words ‘full value of consideration’ is to be applied only for section 48. The words ‘full value of consideration’ as mentioned in other provisions of the Act are not governed by the meaning of ‘full value of consideration’ as contained in section 50C. The natural meaning of full value of consideration refers to consideration specified in the sale deed.

In Explanation to section 54F(1), it is mentioned that net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of ‘full value of consideration’ in Explanation to section 54F(1) will not be governed by meaning of words ‘full value of consideration’ as mentioned in section 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under section 48. Section 54F(1) says that capital gain is to be dealt with in accordance with the provisions of sub-sections (a) and (b) of section 54F(1). Hence, deeming provisions as mentioned in section 50C will not be applicable to section 54F so far as the meaning of ‘full value of consideration’ is concerned.” [CLC 25]

- 3.5. Hon'ble ITAT Jaipur Bench, recently in the case of **Sh. Nand Lal Sharma, ITA No. 413/JP/2012** following the decision in the case of **Shri Gyan Chand Batra (Supra)** held that *“....We find merit in the arguments of the Id. AR that Section 50C is deeming fiction by which stamp duty value of the asset sold is to be substituted for actual consideration. This being purely a fiction, its scope is limited to Section 50C only and cannot be enlarged without a specific reference. In the absence of any enabling statutory provision, a fiction cannot be imported in other section. This view has been squarely adopted by Hon'ble Delhi High Court in the case of CIT vs. Smt. Nilofer Singh (supra) and followed it by this Bench ITAT in the case of Gyan Chand Batra vs. ITO (supra). Respectfully following the same, we hold that while computing exemption u/s 54, the actual sale consideration is to be taken into consideration and not the stamp duty valuation u/s 50C....”*
- 3.6. In view of the above ratio, the provisions of section 50C cannot be invoked in the present case. From perusal of Return Form **[PB 34-35]** and computation of return of income **[PB 42]**, it is evident that the assessee's

capital gain was Rs. NIL. Hence, Id. CIT(A) has erred in confirming the action of Id. AO of invoking the provisions of section 50C.

In view of the above, provisions of section 50C has been wrongly invoked and, therefore, the addition deserves to be deleted.

GROUND NO. 4: COMPUTING CAPITAL GAINS AT RS. 48,84,149 BY CONSIDERING THE PLOT SOLD AS COMMERCIAL ASSET:

1. ASSESSING OFFICER

Ld. AO considered the plot of land to be commercial in nature on the basis of endorsement of Stamp Valuation Authority [PB 8] and adopted the DLC value of Rs. 1,19,71,700 as sales consideration instead of Rs. 80,40,000 declared by the assessee.

2. COMMISSIONER OF INCOME TAX (APPEALS)

Ld. CIT(A) upheld the contention of the Id. AO that the plot sold is commercial plot by holding that the assessee, except furnishing photographs of the land, has not furnished any evidence that the order of Sub-Registrar was appealed against.

3. SUBMISSIONS

3.1. The assessee purchased the said plot from New Light Hosing Co-operative Society [PB 7], and, therefore, it is established beyond doubt that the plot of land when purchased was a residential plot. Further, the plot when sold was also bearing the residential status only. Mere mention by Stamp Duty Authorities cannot change the use of land. Change of land use is possible through a legal process. Assessee has never even attempted to get the land use changed. There is no independent finding of lower authorities that land use was changed.

3.2. The assessee, before the lower authorities, has furnished the latest photographs of the plot of land [PB 19-27] from which it is evident that the New light colony in which the plot is situated is a residential area.

3.3. In view of above, it is clear that the assessee has submitted all the possible evidences to prove his contention.

In view of the above, the plot in question is residential only and, accordingly, the Stamp Duty Valuation has no relevance.”

3.2. On the contrary, the Id. D/R vehemently opposed the submissions and supported the orders of the authorities below.

3.3. We have heard the rival contentions, perused the material on record and gone through the orders of the authorities below. The Id. CIT (A) in para 4.3 of her order has decided the issue as under :-

" 4.3. I have carefully considered the facts of the case, findings of the AO and submission of the appellant. Ground 1 & 2 are interrelated and therefore taken up together. The facts are that the appellant sold a piece of land situated at New Light Colony, Jaipur for Rs. 80,40,000/- which was valued by Sub-Registrar as on date of registration at Rs. 1,19,71,700/- in terms of endorsement u/s 54 made in registered sale deed. Accordingly AO adopted the same as sale consideration for computation of Long Term Capital Gain u/s 50C. Before me, the assessee contended that the said plot was situated in residential area and is a residential plot and Sub Registrar has wrongly valued the same at Rs. 1,19,71,700/- without informing appellant. Therefore, he requested for considering the declared sale consideration of Rs. 80,40,000/- for computing Capital Gain.

On careful consideration of facts, it is seen that even before me except furnishing photographs of land, no evidence is filed claiming that the order of Sub Registrar charging additional stamp duty on value of Rs. 1,19,71,700/- was appealed against, by the assessee.

Moreover the assessee contended that AO should have referred the matter for valuation, but from the records it is seen no such request was made during assessment proceedings. As per section

50C(2) if the assessee had challenged the stamp value made by registration of authorities or disputed the said valuation before the competent authorities court or High Court, then AO may refer valuation of capital asset to a valuation officer. As observed in this case, no such objection was raised before AO nor contested before competent authorities. Further as per section 155(15), the assessing officer can rectify the assessee if the valuation done by Sub-registrar is modified in any appeal or revision by the competent authorities.

Therefore AO had no other option but to accept the valuation as taken by Sub-Registrar for stamp duty purpose which in my view is correct as per facts of case and according to the provision of section 50C of the Act, thus action of AO is upheld."

The Id. Counsel for the assessee heavily relied upon the judgment of the Hon'ble Calcutta High Court rendered in the case of Sunil Kumar Agarwal vs. CIT (2014) 47 taxmann.com 158 (Calcutta). The Hon'ble High Court in para 8 of the judgment has held as under :-

"8. 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.

In the present case, the assessee has pointed out that vide letter dated 18th March, 2016 disputed the valuation of the property. He drew our attention to paper book pages 28-29 where the letter dated 18th March, 2016 is enclosed. For the sake of clarity, section 50C is reproduced herein below :

“ 50C. Special provision for full value of consideration in certain cases.

- (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:

[Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for 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 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.

Explanation (1) – For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (c) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

[Explanation 2. – For the purposes of this section, the expression “assessable” means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty].

From the above provisions, it is evident that the AO is required to refer the issue of valuation of property to the DVO if the assessee claims that the value adopted or assessed by the Stamp Valuation Authorities exceeds the fair market value of the property as on the date of transfer. In the light of the above provision and respectfully following the judgment of Hon'ble Calcutta High Court, supra, we hereby set aside the orders of the authorities below and restore the assessment to be framed denovo to the file of the AO. The AO is directed to refer the issue of Fair

Market Value of the property to the DVO. The AO shall make enquiry from the Stamp Valuation Authorities as to what was the basis for adopting the impugned valuation. Thus the ground of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 26 /10/2017.

Sd/-

Sd/-

(विक्रम सिंह यादव)

(कुल भारत)

(Vikram Singh Yadav)

(Kul Bharat)

लेखा सदस्य / Accountant Member

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26 /10/2017.

das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Mohandas Fatehpuria, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 1072/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar