

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No. 448/PUN/2015
निर्धारण वर्ष / Assessment Year : 2009-10

Shivaji Chintaman Jamkar (HUF),
C/o. Shivaji Chintaman Jamkar,
Jawahar Colony, Nagar Road,
Dist. Beed

PAN : AADJ6074J

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-2,
Beed

.... प्रत्यर्थी / Respondent

Assessee by : Shri Kihor Phadke
Revenue by : Shri Achal Sharma, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 21.12.2017	घोषणा की तारीख / Date of Pronouncement: 05.01.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-2, Aurangabad dated 30-03-2015 for the Assessment Year 2009-10.

2. Grounds raised by the assessee are as under :

"1. The learned CIT(A), Aurangabad, erred in law and on facts in sustaining the addition of capital gains amounting to Rs. 28,63,357/- worked out by the ITO, Ward 2(4), Beed, by invoking section 50-C of the ITA, 1961; without appreciating that the rights of the appellant in the said land are not akin to rights as an owner of land, and thus, erred in not appreciating that section 50C is not applicable in the present case.

2. The learned CIT(A), Aurangabad, erred in law and on facts in sustaining the said addition without appreciating that the said land was reserved by Government for cattle grazing (GAIRAN); transfer of which, if made without permission from appropriate Government authorities, is illegal as per Rule 22C of Maharashtra Registration Rules of Registration Act, 1908. The learned CIT(A) failed to appreciate that since the required permission was not taken from stipulated Government Authorities, the said transaction was irregular.

3. *Without prejudice to the above grounds no. 1 & 2, the learned CIT(A), Aurangabad & the learned ITO, Ward 2(4), Beed; erred in law and on facts in not appreciating that the issue of valuation of the said land was not referred to the Departmental Valuation Officer (DVO), as so stipulated in section 50C(2). The learned I-T authorities ought to have referred the issue of valuation of the said land to the ova before concluding the assessment / appeal.”*

3. Briefly stated relevant facts are that the assessee (HUF) derives income from House Property and filed the return of income on 21-08-2009 declaring total income of Rs.1,16,720/- in respect of his agricultural income for the A.Y. 2009-10. The returned income includes the income by way of capital gain of Rs.59,550/- earned on sale of a land at Nalwandi, Dist. Beed. During the re-assessment proceedings, the AO noticed that the assessee sold certain lands described as “lands reserved by the Government for cattle grazing” for the sale consideration of Rs.4,91,000/-. The stamp duty valuation of the said land is Rs.33.90 lakhs. In the reassessment, the AO adopted the said figure for working out the long term capital gains and applied the provisions of section 50C of the Act and accordingly, the capital gain was worked out. Further, there was another transaction of sale of plots at Garkheda. The value as per the Sub-Registrar, Beed of the said plot of lands is Rs.18,55,125/- each (total consideration of both the plots (Plot No. 17 & 18 at Garkheda) as per section 50C works out to Rs.37,10,250/-. The AO applied the said provisions for this transaction as well and determined the total income at Rs.65,75,972/-.

4. The CIT(A) confirmed the addition relating to the sale of property at Nalwandi Road and granted relief with regard to the sale transactions involving Garkheda plot, Aurangabad. The Revenue is not in appeal against the relief granted by the CIT(A) to the assessee.

5. The assessee is in appeal before us with regard to the decision of CIT(A) on applicability of provisions of section 50C to the said land, which are reserved by the Government for cattle grazing.

6. Before us, Ld. Authorised Representative for the assessee submitted that AO/CIT(A) failed to appreciate the lands reserved by the Government for cattle feeding are not free from ownership of the Government on the said lands. Therefore, the value adopted by the AO requires downward revision. Assessee opposed the AO's move for adopting Sub Registrar's office value and however, no formal request was made to the AO for referring the property to the valuation cell for determining the market value of the said property. If referred, the value would be certainly lesser than the value of Rs.33.90 lakhs as per the stamp duty authorities. Ld. Authorised Representative for the assessee submitted that it is in the interest of justice, the matter should be remanded now to the file of AO for adjudication of this issue and for making reference to the valuation authorities for an expert opinion on these lands/or rights in the lands which are not free from the litigation/encumbrances/Government attachments, etc.

7. Further, on the issue of applicability of the provisions to the "rights" in the lands of this kind, Ld. AR for the assessee brought our attention to the language of said section 50C submitted that these provisions are applicable only to '*a capital asset, land building or both*' and not to the "rights in the said lands" owned and reserved by the Government for cattle feeding.

8. Further, Ld. AR for the assessee filed written submissions (synopsis) mainly harping on the nature of the land and the applicability of the order of the Tribunal in the case of ITO Vs. Yasin

Moosa Goodil – ITA No.2519/Ahd/2009 which is relevant for the proposition of remanding the matter to the income-tax authorities. Reliance is placed on the following decisions for the proposition that a request for referral to the DVO at the stage of appellate proceedings is justified and also the proposition for exclusion of rights in the lands outside the scope of provisions of section 50C of the Act :

*CIT Vs. Greenfield Hotels & Estates (P) Ltd. – 389 ITR 68 (Bom.)
Kancast (P) Ltd. Vs. ITO – 55 taxmann.com 171 (Pune Trib.)
Atul G. Puranik Vs. ITO – 11 taxmann.com 92 (Mumbai Trib.)*

9. Further, bringing our attention to the provisions of sub-section (2) of section 50C, Ld. AR for the assessee submitted that referring a matter to the valuation officer ought to have been done when there is substantial difference between the value determined by the stamp duty authorities (Rs.33.90 lakhs) and the actual sale consideration, i.e. Rs.4,91,000/-. Reliance is placed on the judgment of Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal Vs. CIT 372 ITR 83. Further also, relying on the CBDT Circular No.14XL - 35, dated 11-04-1955, Ld. AR for the assessee submitted, considering the unawareness of the assessee on the technicalities/legal provisions, the income-tax authorities should have given option to refer the matter to the DVO during assessment proceedings. Relevant decisions are enclosed to the said synopsis before us.

10. On the other hand, Ld. DR for the Revenue relied heavily on the orders of the AO and the CIT(A) on this issue and submitted that the decision of CIT(A) on this issue is fair and reasonable and it does not call for any interference. However, the fact of not making a formal request before the CIT(A) or the AO was highlighted by the Ld. DR before us.

11. We heard both the parties on the issue of exclusion of rights of lands outside the scope of provisions of section 50C of the Act on one side, adopting the stamp duty value mechanically ignoring that the fact that the lands are reserved by the Government for cattle feeding and also the illegality of the transaction of sale of the said lands by the assessee on the other side. In our view, the request of the assessee before us on both the counts, i.e. referral to the DVO as well as exclusion of the rights on the lands outside the scope of provision of section 50C of the Act requires remanding the issue to the file of AO for fresh adjudication and a decision on both the issues. It is the duty of the AO to make a proper assessment. Referral of the property to DVO is necessary when the assessee objects to the AO's move directly or indirectly for reduction of the Sub-Registrar's office value. Therefore, AO is directed to study the issue afresh and conclude the said issues in the light of the decisions relied upon by the Ld. AR for the assessee before us. Further, considering the special aspects of the lands, we also direct the AO to obtain an expert opinion of the DVO after making referral to the DVO and after giving reasonable opportunity of being heard to the assessee. We find it is not a simple issue whereby the AO can mechanically adopt the stamp duty for working out the long term capital gains ignoring the various facts about the land linked to the public purposes involved and the nature of the land, long term nature of the asset, Government ownership, illegality of the transaction, applicability of provisions of section 50C of the Act to the "mere rights on the land" and not the ownership of the land for building or both. AO needs to examine all aspects of the issue and make a proper assessment. In view of the above discussion, AO is directed to grant reasonable opportunity to the assessee at all

stages of the assessment and take a fresh decision in the matter. Accordingly, all the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on this 05th day of January, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

(D. KARUNAKARA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 05th January, 2018.
सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-2, Aurangabad
4. CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A Bench"
Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune