



ITA.No.956/Mum/2016
Shailesh N. Shah
Assessment Year-2011-12

आयकर अपीलिय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.956/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shailesh N. Shah 105, Mukund Mansion V.P.Road, C.P.Tank Mumbai-400 004	बनाम/ Vs.	Income Tax Officer-16(3)(4) Mumbai
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AWQPS-1957-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

Assessee by	:	Vimal Punmiya, Ld.AR
Revenue by	:	M.V.Rajguru, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	09/05/2018
घोषणा की तारीख / Date of Pronouncement	:	04/07/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-30 [CIT(A)], Mumbai, *Appeal No.CIT(A)-30/19(3)(3)/83/2014-15* dated 09/12/2015. The assessment for impugned AY was framed by Ld.



Income Tax Officer-16(3)(4), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 10/03/2014 wherein the income of the assessee has been assessed at Rs.103.29 Lacs after certain additions as against returned income of Rs.8 Lacs *filed* by the assessee on 08/11/2011. The effective grounds raised in the appeal reads as hereunder: -

1. *On the facts and circumstances of case and law, the Ld. CIT(a) erred in confirming value of Rs.69,16,667/- as deemed full value of consideration instead of actual consideration of Rs.38,33,000/- for property bearing CTS 3929 to 3949.*
2. *On the facts and circumstances of case and law, the Ld. CIT(A) erred in confirming value of Rs.45,03,333/- as deemed full value of consideration instead of actual consideration of Rs.33,33,500/- for property bearing CTS 3836 to 3866.*

2. Facts in brief are that the assessee being *resident individual* reflected *capital gains* from two properties sold during the impugned AY. The two properties under consideration were stated to be acquired by the assessee's grandfather in the year 1948 with very old structure of various rooms. These properties were inherited by the assessee along with two other grandsons, each having 1/3rd share in the property. During the impugned AY, the assessee and the other co-owner namely *Mukundlal V.Shah* sold their respective shares aggregating to 2/3rd share of whole property. The only dispute under appeal is regarding the deemed sale consideration of these properties in terms of Section 50C of the Income Tax Act, 1961 since it was noted that the stamp duty valuation of the property was much higher than the reflected transaction value. The same could be appreciated in the following manner:-



No.	Description	Assessee's Share in total consideration	Total Sale Consideration of the Property as reflected in the agreement	Stamp Duty Valuation of the property	Difference
1.	CTS No. 3929 & Choksi Building No. 123 & No. 378/1 (Part), CTS No. 3929 to 3949, Mauje Koelkalyan	One Half	76,66,000/-	2,08,90,500/-	1,32,24,500/-
2.	Area 1263, 3M & No. 378/1 (Part) CTS No. 3836 to 3866, Mauje Koelkalyan	One Half	66,67,000/-	1,25,02,000/-	58,35,000/-
	TOTAL				1,90,59,500/-

The Ld. AO, applying the deeming provisions of Section 50C, proposed addition of the differential amount of Rs.95.29 Lacs towards assessee's one-half share. The assessee while contesting the same, requested for valuation thereof by *District Valuation Officer [DVO]* in terms of Section 55A for determination of correct market value. Pending receipt of DVO's valuation report, the assessment was completed on 10/03/2014 making an addition of Rs.95.29 Lacs in the hands of the assessee, being assessee's 50% shares in total differential amount of Rs.190.59 Lacs as tabulated above.

3. Aggrieved, the assessee contested the same before Ld. CIT(A) vide impugned order dated 09/12/2015 wherein the matter was remitted back to the file of Ld. AO to re-compute the capital gains in terms of valuation arrived at by Ld. DVO by making following observations:-

7.4 Perused the material available on record and the submissions of the appellant and the provisions of section 55A of the Act. As per section 55A of the Act, the AO may refer the valuation of the capital asset to a Valuation Officer to ascertain the fair market value, in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer and the AO is of the opinion that the value so claimed is at variance with its fair market value. In the other case, if the AO is of the opinion that the FMV of the asset exceeds the value of the asset as claimed by the assessee by more than certain percentage/ amount and also having regard to the nature of the asset and other



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relevant circumstances, it is necessary to do so, AO refers the matter to DVO. In the present case, when questioned in the assessment proceedings about the variance in the valuation as per the stamp duty authorities and apply the provisions of section 50C of the Act, the appellant filed his objections for such adaptation of the provisions and requested to refer the matter to the Valuation Officer for valuation. Since the reference to the Valuation Officer is done at the request of the appellant himself and the Valuation Officer after taking into account all aspects and objections and also quoting some sale instances of properties nearer to the property, arrived at the value of such properties The AO adopted the stamp duty value in the assessment order in the absence of the report on the stamp duty value in the assessment order in the absence of the report on the date of finalizing the assessment. Since, the report is received now, vide No. Vo-II/MUM/CGT/778/2015-16 dated 29-07-2015, a copy of which is submitted in the present proceedings by the appellant, the AO is directed to check the correctness of the same and adopt the Final Valuation arrived at by the DVO, as available in Para 9 of the Valuation report for each of the property as the fair market value for computing the LTCG. AO is directed to check and adopt the values mentioned in the report of the DVO, for each of the two properties as the fair market value, while calculating the capital gains on the properties. With these directions, issues raised in ground No.2 are disposed off accordingly.

Aggrieved as aforesaid, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], *Sh. Vimal Punmiya*, contested the valuation as arrived at by *Ld. DVO* and placed reliance on the valuation as done by the assessee's registered valuer. It was submitted that the properties under dispute were occupied by various tenants and therefore, the actual sale consideration as reflected by the assessee may be accepted. The same has been controverted by Ld. Departmental Representative [DR], *Sh. M.V.Rajguru* by submitting that Ld. AO had no option but to accept the valuation of *DVO*.

5. We have carefully heard the rival contentions and perused relevant material on record including documents placed before us. Upon due consideration, we find that short dispute before us is the deemed sale consideration of the two properties which have been sold by the assessee during the impugned AY. The dispute is in a narrow compass



and is related with estimation of value of the properties u/s 50C which could be tabulated in the following manner:-

No.	Description	Assessee's Share in Sale Consideration	Valuation as per DVO's Report	Difference
1.	CTS No. 3929 to 3949	38,33,000/-	69,16,667/-	30,83,667/-
2.	CTS No. 3836 to 3866	33,33,500/-	45,03,333/-	11,69,833/-
			Amount in Dispute	42,53,500/-

6. It is noted that the assessee's *registered valuer* has adopted *rent capitalization method* while arriving at the value of the building whereas *Ld. DVO* has arrived at fair market value of the property by *physical development method of valuation* based on sale instances and after taking into account various factors affecting valuation of the property. The approach of *Ld. DVO*, in our view, was more scientific keeping in view the fact that the property had potential of further development / exploitation and was sold by the assessee to a builder. Therefore, we are not inclined to accept the valuation as arrived at by the assessee's registered valuer.

7. Proceeding further, so far as the valuation as arrived at by *Ld. DVO* is concerned, we find that the properties in question were *tenanted* properties which is evident from *list of tenants* which has already been attached with *Deed of Assignment* as placed before us. The perusal of the same reveals that the properties in question were inhabited by numerous tenants and this very fact deserves to be factorized while arriving at the valuation of the properties. This is more important in view of the fact that there are no *allegations* against the assessee that it had received any sale consideration over and above the transaction value as shown in the agreements. At the same time, the provisions of Section



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50C, being deeming in nature, are to be construed strictly and are to be applied irrespective of factual matrix. Therefore, keeping in view the totality of facts and circumstances, we sustain aggregate addition to the extent of Rs.25 Lacs in the hands of the assessee against both the above stated properties. Conversely, the balance additions of Rs.17.53 Lacs stands deleted.

8. The assessee's appeal stand partly allowed.

Order pronounced in the open court on 04th July, 2018.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04.07.2018.
Sr.PS:-Thirumalesh

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai