

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai**

**Before Shri R.C. Sharma, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 3267/Mum/2014
(Assessment Year: 2007-08)

Shri Shakeel Ali Sutarwala Income Tax Officer-13(3)(4)
5th Floor, EBY Castle Mumbai
No. 64, Mohammed Ali Vs.
Road, Dongri
Mumbai 400003

PAN – BCNPS0132B

Appellant

Respondent

Appellant by: Sxhri B.N. Rao
Respondent by: Shri Ashish Kumar

Date of Hearing: 25.07.2018
Date of Pronouncement: 30.07.2018

ORDER

Per Sandeep Gosain, JM

This appeal filed by the assessee is directed against the order of the CIT(A)-25, Mumbai dated 03.02.2014 and it relates to A.Y. 2007-08.

2. The assessee has raised the following grounds of appeal: -

- “1. The learned CIT(A)-24, Mumbai erred in confirming the order of the AO to the extent of adopting the value of the properties sold as assessed by the Stamp duty authorities. He erred in holding that Section 50C of the I. T. Act, 1961 was applicable in the case of the appellant.
2. The learned CIT(A) ought to have appreciated that on facts and in circumstances of the case the Vendors had received in aggregate only Rs.49,00,000/- on sale of two properties the AO could not have substituted the true consideration received by the value assessed by the stamp duty authorities.
3. The learned CIT(A) ought to have held that while it is not the case of the AO that the Vendors had sold the properties for any amount in excess of Rs.49,00,000/- and further no evidence has come on records that the Vendors could have received any amount beyond the said consideration of Rs.49,00,000/-, the

consideration could not be substituted by the market value assessed by stamp duty authorities.

4. *The learned CIT(A) ought to have held that the total consideration to be considered for capital gains in the hands of appellant was only Rs.8,16,667/-."*

3. The brief facts of the case are that the assessee filed return of income showing total income of `93,719/- and the return of income was processed u/s. 143(1) of Income Tax Act, 1961 (hereinafter "the Act"). Assessee's case was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Act, 1961 were served on the assessee. It was noticed by the Assessing Officer that assessee had shown business income and income from other sources, however, the AIR system indicated that the assessee had transferred two immoveable properties during the financial year relevant to A.Y. 2007-08 and had not offered any income in respect of the same, accordingly, the Assessing Officer made addition `1,04,80,719/- under the head capital gains.

4. Aggrieved by the order of the AO the assessee preferred appeal before the CIT(A) and the learned CIT(A), after considering the case of both the parties, partly allowed the appeal.

5. Aggrieved by the order of the CIT(A) assessee is in appeal before us on the grounds mentioned above. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of the CIT(A) in restricting the long term capital gains. Therefore we thought it fit to decide the same through the present consolidated order.

6. The learned A.R. reiterated the same arguments as was raised before the learned CIT(A). It was also argued that CIT(A) erred in confirming the order of the AO to the extent of taking the value of the properties sold as assessed by the Stamp Duty Authorities. It was also argued that Section 50C of the Act was not applicable in the case of the assessee. It was further argued that the CIT(A) ought to have appreciated that on the facts and in the circumstances of the case, the vendors had

received in aggregate only `49,00,000/- on sale of properties. Therefore the AO could not substitute the true consideration received by the value assessed by the Stamp Duty Authorities. The learned A.R. further submitted that the CIT(A) ought to have held that the total consideration to be considered for capital gains in the hands of the assessee was only `8,16,667/-.

7. On the other hand, the learned D.R. relied upon the orders passed by the Revenue authorities.

8. We have heard the rival contentions and perused the material placed on record as well as the judgement cited by the learned A.R. Before we decide the merits of the issue it is necessary to evaluate the order of the CIT(A). The CIT(A) has discussed these grounds in para 4 of his order and the operative portion of the order as contained in paras 4.2.1 to 4.2.6 are reproduced below: -

“4.2.1 Crux of the matter and basic facts of the case are as follows:-

Assessee filed return of income showing total income of Rs. 93,719/- and the return of income was processed u/s. 143(1) of I.T. Act, 1961. Assessee's case was selected for scrutiny and notices u/s. 143(2) and 142(1) of I.T. Act, 1961 were served on the assessee. It was noticed by the Assessing Officer that assessee had shown business income and income from other sources, however, the AIR system indicated that the assessee had transferred two immovable properties during the financial year relevant to A.Y. 2007-08 and had not offered any income in respect of the same assessee initially denied the execution of such documents and therefore the Assessing Officer made further inquiries and obtained copies of conveyance deeds from the Registrar's office and confronted the assessee with a show cause notice. Assessee once again denied the execution of such transactions of transfer of two immovable properties and therefore Assessing Officer proceeded ahead with the finalization of computation of capital gains on the basis of details and documents available on records and computed long term capital gains. Assessing Officer treated the sale proceeds of Rs. 56,09,000/- in respect of one of the immovable properties as exclusively that of the assessee only and calculated the long term capital gains at Rs. 56,09,000/- by invoking the provisions of section 50C of Assessing Officer and denied the benefit of cost of acquisition due to absence of details and documents. As regards the second immovable property, Assessing

Officer taxed Rs. 47,78,000/-, the one sixth share of sale proceeds of the second immovable property as assessee's share, and computed the long term capital gains at Rs. 47,78,000/-. Thus Assessing Officer taxed the total amount of Rs. 1,03,87,000/- (56,09,000 + 47,78,000) as long term capital gains and calculated the total income at Rs. 1,04,80,719/- and calculated the tax accordingly. Assessee is in appeal against the same and has filed 10 grounds of appeal challenging the additions.

4.2.2 Assessee along with his mother Fatima Suratwala inherited one sixth share in two immovable properties at Vadavali Chembur, Mumbai on death of his father and, therefore, assessee inherited one twelfth share in the two immovable properties. Assessee having one twelfth share, along with other six joint co-owners transferred two immovable properties in village vadavali, Chembur, Mumbai for Rs. 48,00,000/- and Rs. 1,00,000/- to one Mr. Prithvipal Chavan and did not offer any long term capital gains in the return of income. Assessing Officer called for the copies of the two conveyance deeds and other documents and noticed that the stamp duty valuation authorities had adopted the market value of two properties for stamp duty purpose at Rs. 2,86,68,000/- and Rs. 56,09,000/- and issued a show cause notice to the assessee, however, assessee denied execution of such transactions and offered no explanation for the same. Assessing Officer, therefore, was forced to proceed on the basis of details and documents available on records and adopted the entire market value of the property of Rs. 56,09,000/- as assessee's share in the property and adopted Rs. 47,78,000/- @ 16.66%, that is, one sixth share in property valued at Rs. 2,86,68,000/-, as assessee's share and taxed the same as long term capital gains and computed the long term capital gains without allowing any cost of acquisition since details were not available with him. Total long term capital gains taxed by the Assessing Officer came to Rs. 1,03,87,000/-.

4.2.3 It appeared from the records and assessee's submissions and grounds of appeal that even when the provisions of section 50C of IT. Act, 1961 were invoked, benefit of option to refer the valuation to valuation officer u/s. 50C of I.T. Act, 1961 was not given since he had denied the execution of such transactions. During the appellate proceedings, assessee's CA has raised this issue in the grounds of appeal as well as in submissions and since it was a fair and reasonable demand in view of adoption of market value as per stamp duty valuations, the Assessing Officer was directed to refer the valuation of the market value of the property as on 1/4/1981 as well as date of conveyance of the properties to the departmental valuation officer for valuation. Valuation officer issued notices to the assessee and has submitted his valuation report dated 22/12/2011 and 15/4/2013 to the Assessing Officer and the assessee and the co-owners of the properties arrived at by the valuation officer as on 1/4/1981 and as on 15/4/2013 conveyance of two properties are as follows:-

- | | | |
|----|--|------------------|
| 1) | Valuation of property as on 1/4/1981 | Rs.7,26,800/- |
| 2) | Valuation of property as on date of sale | Rs.3,12,96,200/- |

4.2.4 Thus, assessee's share at the rate of one twelfth of the fair market value of the properties as on 1/4/1981 and date of sale comes to Rs. 60,566/- and Rs. 26,08,016/- and the same needs to be considered for the purposes of taxation as assessee's share in the property. Assessee's advocate Mr. N. R. Rao in his letter dated 15/10/2013 and discussions on 17/1/2014 has objected to the adoption of market value of the entire property at Rs. 7,26,800/- on the ground that the departmental valuer has not considered the registered valuer's report dated 21/6/2012 valuing the property at Rs. 36,12,722/- as on 1/4/1981 and therefore the report of the departmental valuer is erroneous. However, it appears from the valuation report that departmental valuer at item 5 on page 3 of the report dated 15/4/2013 has already considered the registered valuer's report dated 21/6/2012 valuing the two immovable properties at Rs.36,12,722/- and also offered his comments as follows:-

"The reg. valuer in his valuation report has adopted the fair market as on 01/04/1981 @Rs. 1000/- per sq. ft. for Borla Village and Rs. 120/- per sq. ft. for Vadhavali without any justification or sale instances and which is much higher during that period hence cannot be accepted. The rate adopted by the valuer is from the Valuers Directory which is a private document and not approved by any govt. agencies.

The rates has to be derived based on the comparable sale instances of nearby localities after considering the important affecting factors such as location, time gap, specifications, future potential, advantages and disadvantages of the properties etc., but valuer has fail to give proper evidences in support of his rates during 01/04/1981.

Therefore, the FMV estimated by the registered valuer cannot be accepted as it is. However, some important details given by the reg. valuer is considered in the preparation of this report."

Departmental valuer at item number 7.2 and 9 of his report dated 15/4/2013 has observed as follows:-

"The assessee was given opportunity to state his objection in person or in writing on or before 08/04/2013, but the assessee has not submitted his objection till date. Therefore, it is presumed that the assessee is not having any objection to the above preliminary valuation. Having pursue all the details submitted by the assessee and also all the relevant materials gathered by me and after giving due weightage and discount for the factors effecting the rate and value such as, time lag, shape and size, location and situation, approach and access, scope and development potential and usage alongwith other factors like physical, legal, social and economical, I hereby determine the fair market value of the property i.e. "All the

piece and parcel of land bearing CTS No. 619/23 and CTS No. 498, 498/1 to 3 situated at Village Borla and Village Vadhavali respectively, lying and situated at Mitibaug, Sion Trombay Road, Mumbai-400071" as on 01/04/1981 @ Rs. 7,26,800/- (Rupees Seven Lakh Twenty Six Thousand Eight Hundred Only) as per detailed given below."

4.2.5 Perusal of these comments and observation makes it very clear that the departmental valuer has not only considered registered valuer's report dated 21/6/2012, but has also given an opportunity to the assessee who has not filed any objections before him. It also appears from the records that the valuation report of the departmental valuer dated 15/4/2013 is fair and reasonable and prepared only after giving sufficient opportunities to the assessee. Therefore, it is held that the objection raised by the assessee's advocate does not have any merit in it and is, therefore, rejected. Keeping in view the facts of the case, the long term capital gains chargeable to tax in assessee's case are as follows:-

Sr. No.

1.	Financial Year in which properties were acquired by predecessors in title to the appellant	Earlier to 01/04/1981
2.	Period in which subject properties are sold	Financial year 2006-07 relevant to Assessment year 2007-08
3.	Share of interest in the subject properties held by appellant	1/12th share in the subject properties
4.	Indexation multiple	5.19
5.	Sale Value of the properties	₹3,12,96,200
6.	Share of appellant being 1/12 th sale value to be considered in the hands of the appellant	26,08,016
	Cost as on 01/04/1981 as per Department's Valuation Report	60,566
	Indexation cost in the hands of assessee 5.19 of the assessee	3,14,337
	Therefore capital gains in the hands of the assessee	22,93,679

4.2.6 In nutshell, it is held that the long term chargeable to tax in respect of the assessee's share in two immovable properties at Vadavali Chembur, Mumbai comes to **Rs. 22,93,679/- instead of**

Rs. 1,03,87,000/- computed by the Assessing Officer in the assessment order and the same shall be taxed as per law and assessee's appeal is **partly allowed**. Each one of the first ten grounds in appeal stand decided in these paragraphs since all the ten grounds referred separately and cumulatively to only one issue that of quantum and chargeability of long term capital gains in respect of assessee's one twelfth share in two immovable properties at Vadavali, Chembur.”

9. After having gone through the facts of the present case as well as hearing the parties at length we find that the CIT(A) had correctly appreciated the facts that while invoking provisions of Section 50C of the Act, market value of the properties in question was not called for. Therefore the AO was accordingly directed to refer the valuation of the market value of the properties as on 01.04.1981 as well as Deed of Conveyance of the properties to the Departmental Valuation Officer for valuation. Consequently the Valuation Officer after considering the necessary facts submitted his valuation report thereby assessing the value of the properties as on 01.04.1981 at `7,26,800/- and the value of the properties as on the date of sale at `3,12,96,000/-. These valuations were challenged by the assessee on the ground that while reaching to the conclusion, the Departmental Valuer has not considered the Registered Valuer's report dated 21.06.2012 valuing the properties at `36,12,722/- at `36,12,722/- as on 01.04.1981. We noticed from the record that the Departmental Valuer has duly considered the Registered Valuer's report dated 21.06.2012 while reaching to the conclusion. This fact has also been appreciated by the learned CIT(A) in para 4.2.5 of his report wherein it has been categorically mentioned that the Departmental Valuer has not only considered the Registered Valuer's report dated 21.06.2012 but had also given an opportunity to the assessee who has not filed any objections before him.

10. Taking into consideration all these facts we are in agreement with the findings recorded by the learned CIT(A) that the Valuation Report of

the Departmental Valuer dated 15.02.2013 is fair and reasonable and prepared only after giving sufficient opportunity to the assessee. While taking into consideration the Valuation Report of the Departmental Valuer, the long term capital gains was restricted to `22,93,679/- instead of `1,03,87,000/- as computed by the AO in the assessment order. Even before us the learned counsel for the assessee has not been able to rebut the findings recorded by the learned CIT(A) by leading in convincing or cogent document or arguments. The learned A.R. also relied upon the judgement passed by the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Chandani Bhochar (2010) 323 ITR 510. We have considered the facts of the case. In the said case, the assessee has proved the sale consideration mentioned in the Sale Deed by legally acceptable evidence and therefore it was held that the valuation done for the purpose of Section 50C would not represent the actual consideration passed on to the seller. We are of the view that the facts contained in the aforementioned case titled Chandani Bhochar (supra) are distinguishable from the facts of the present case. Therefore the judgement cited by the learned A.R. does not support the present case. Therefore we do not see any reason to interfere with the lawful and judicial finding of the CIT(A).

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30th July, 2018.

Sd/-
(R.C. Sharma)
Accountant Member

Sd/-
(Sandeep Gosain)
Judicial Member

Mumbai, Dated: 30th July, 2018

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -24, Mumbai
4. The CIT - 13, Mumbai
5. The DR, "E" Bench, ITAT, Mumbai

By Order

//True Copy//

n.p.

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*