

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH “SMC”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं./ ITA No.1069/PUN/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Madhav Bhargav Chitale,
Vadnaka, Chiplun,
A/p. Chiplun,
Dist. Ratnagiri
PAN : AAOPC7709A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3, Ratnagiri.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Saurabh P. Rairikar

Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 08.10.2018	घोषणा की तारीख / Date of Pronouncement : 12.10.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 02.04.2018 relating to assessment year 2009-10 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

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

“1. The addition cause due to the valuation adopted by the ITO vide provisions of the erstwhile section 50C of the Income Tax Act, 1961 be deleted for the reason that it being excessive in as much as the valuation appraised by the proper valuation officer for stamp duty purposes is for the completed structure as against the incomplete structure transferred in the instant case. Consequential reduction in the interest amounts and penalties (if any) sought to be recovered.

2. A reference to the Valuation Officer vide provisions of sub section 2 of section 50C of the Income Tax Act, 1961 may kindly be allowed for the reason that the value adopted by the ITO during the assessment vide provisions of section 50C (Rs.52,28,000/-) is way higher than the then market value of Rs.31,08,000/- (as adopted from the report of an independent Government Valuer); the said report being on the record with Assessing Officer , ITO Ward-3, Ratnagiri.

3. Any other order as your Honor deems fit to pass.”

3. The issue raised in the present appeal is against computation of capital gain in the hands of assessee and applicability of the provisions of section 50C of the Act.

4. Briefly in the facts of the case, the assessee during the year under consideration had sold immovable property vide sale deed dated 13.09.2008. The assessee had sold the property at Chiplun. The assessee had declared the sale consideration of the property at Rs.30,00,000/-. However, the market value of the said property was taken by Registration Authority at Rs.52,28,000/-. The assessee offered income from capital gains by taking sale consideration of Rs.30,00,000/-. The Assessing Officer in view of provisions of section 50C of the Act show caused the assessee as to why the value of the sale consideration of Rs.52,28,000/-, for working income from capital gain, should not be adopted. The assessee claimed that fair market value of the property as on the date of sale was Rs.31,08,000/- in support of which, the assessee furnished valuation report from M/s. Dambe Surveyors & Co., Chiplun, the Govt. Approved Valuer. Another point which was raised by the assessee was that the said property was incomplete on the date of sale. However, the Assessing Officer rejected both the pleas of the assessee and adopted the sale consideration at Rs.52,28,000/-.

5. The CIT(A) upheld the order of Assessing Officer. Now, aggrieved by the order of CIT(A), assessee is in appeal before the Tribunal.

6. The Ld. AR for the assessee submitted that the assessee is in appeal. He further pointed, that, before the Assessing Officer oral submissions was made for making reference to the Government Valuer to verify the fair market value of the property, as provided under the provisions of section 50C of the Act. He then referred to the order of CIT(A) where the said plea of the assessee has been noted. However, both, the Assessing Officer and CIT(A) failed to make any reference to the Government Valuer. The Ld. AR for the assessee, thus, stressed that the provisions of section 50C of the Act have not been applied in entirety to the facts of the present case, hence, the matter may be sent back to the file of Assessing Officer for making reference to the Government Valuer in order to ascertain fair market value of the property as on the date of sale.

7. On the other hand, Ld. DR for the Revenue has placed reliance on the order of Assessing Officer and CIT(A).

8. On perusal of the record and after hearing both the Authorized representatives, the issue raised for adjudication is in relation to the provisions of section 50C of the Act. The said section provides that in case of registered document, the valuation assessed by the Registration Authority shall be adopted as deemed sale consideration for computing income from capital gain. Section 50C(2) of the Act provides that if the Assessing Officer, so desires, he can make reference to Government Valuer to determine fair market value of the property as on the date of sale of property and if the said value so determined is less than the value which was assessed by the State Registration Authority, then the reduced value is to be adopted in the hands of the assessee.

9. In the facts of present case, the assessee had sold eight flats at Chiplun for total consideration of Rs.30,00,000/-. The said sale consideration was agreed consideration as per the sale deed dated 30.09.2008. However, the State Registration Authority valued the said property sold by the assessee at fair market value of Rs.52,28,000/-. The assessee claimed that the said flats were under construction and had not been completed on the date of agreement for sale i.e.29.03.2008 and hence, difference in the price. In order to support its case, the assessee furnished valuation report of approved valuer where the value of the property was determined at Rs.31,08,000/-. The Assessing Officer noticed that the assessee also furnished some certificate from the Chiplun Municipal Corporation dated 06.09.2007. The Assessing Officer observed that since the date of agreement for sale was 29.03.2008, then the said certificate prior to the date of agreement could not be accepted as proof of incomplete construction as on the date of agreement.

10. Sub section (2) of Section 50C of the Act, provides that where the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer and where the value so adopted or assessed 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, then the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer. Since the assessee had furnished certificate from Chiplun Municipal Corporation and also furnished valuation report to justify its sale consideration of Rs.30,00,000/-, then I am of the view that the matter should be sent back to the file of Assessing Officer to make reference to Government Valuer in order to ascertain fair market value as on the date of sale. The assessee claims to have made request by way of oral submissions and other documents filed by assessee which have been

acknowledged by the CIT(A). However, both the Authorities below failed to comply with the provisions of the Act. Hence, following the principle of natural justice, the matter is restored back to the file of Assessing Officer with direction to make reference to the Government valuer to determine fair market value of the property, in order to compute the income of the assessee from capital gain. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee in accordance with law. Accordingly, grounds raised by the assessee are allowed for statistical purpose.

11. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 12th day of October, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th October, 2018.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-2, Kolhapur.
4. The Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.