

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.2959/PUN/2016
निर्धारण वर्ष / Assessment Year : 2006-07

Shri Shashikant Birmal,
'Suryoday', Shri Navvinayak,
Sahakari Sanshta, Kothrud,
Pune – 411038 अपीलार्थी/Appellant
PAN: AAVPB4855F

Vs.

The Income Tax Officer,
Ward 3(4), Pune प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : S/Shri Nikhil Pathak and
P.D.Kudva
प्रत्यर्थी की ओर से / Respondent by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 11.10.2018	घोषणा की तारीख / Date of Pronouncement: 26.11.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-3, Pune, dated 14.06.2016 relating to assessment year 2006-07 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

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

On the facts and circumstances of the case and in law the Hon CIT(A) erred in upholding the action of the Assessing Officer:-

1. *holding that sale consideration of immovable property at Plot No.6B, CTC No.88 (Final plot No.428/13), Gultekdi, Pune was to be adopted under section 50C at Rs.72,72,000/- to determine capital gain arising from sale in place of Rs.55 lacs as per sale deed dated 21.04.2005. Without prejudice*

the AO erred in bifurcating consideration u/s 50C Rs.72,72,000/- at Rs.44,88,979/- for residential portion and Rs.27,83,021/- for non-residential portion of the subject property in place of Rs.2,46,675/- and Rs.70,25,325/- respectively as per capitalized value of the rent. The appellant pleads that the AO's action is not justified and valid.

2. *holding that the fair market value of land as on 01.04.1981 Rs.3,99,102/- was to be allocated on shops and residential property at Rs.87,384/- and Rs.3,12,447/- respectively when the correct allocation as per the registered valuer's report is Rs.2,24,497/- and Rs.1,74,604/- respectively.*
3. *holding that entire capital gain on sale of immovable at Gultekdi was to be assessed in the hands of the assessee. The appellant pleads that only his share of 73% was assessable in his case.*

3. The learned Authorized Representative for the assessee at the outset, did not press grounds of appeal No.2 and 3, hence, the same are dismissed as not pressed.

4. The issue raised vide ground of appeal No.1 is against adoption of sale consideration for working out income from long term capital gains.

5. Briefly, in the facts of the case, the assessee had furnished return of income declaring total income of ₹ 1,04,350/-. The case of assessee was picked up for scrutiny. The Assessing Officer noted that the assessee during the year had sold immovable property at Gultekdi, Pune on 20.04.2005. The assessee had not declared any income from capital gain. However, on the basis of Annual Information Return, the Assessing Officer noted that the assessee had entered into sale transaction for total consideration of ₹ 55 lakhs. The assessee explained that the said property was inherited by him and he had got 73% share in the said property. The assessee had entered into a Development Agreement. However, the developer failed to pay agreed consideration and the agreement was cancelled on 11.03.2004. The property was sold vide sale agreement dated 21.04.2005 at consideration of ₹ 55 lakhs. However, the Stamp Valuation Authority had assessed the value of property at ₹ 72,72,000/-. The assessee explained that he had purchased a plot at

Kothrud and construction activity was carried out for residential bungalow and the same was completed on 15.03.2006. The valuer had estimated the cost of construction at ₹ 34,66,811/- and the cost of land at ₹ 7,21,832/-. Thus, total investment in the house property was claimed at ₹ 44,88,643/-. The assessee also pointed out that though the sale value was assessed as ₹ 72,72,000/- for stamp duty purpose, but the actual sale consideration should be treated at ₹ 55 lakhs as the purchaser of property paid the tenancy charges of ₹ 17 lakhs in respect of two shops to the tenant. The assessee thus, computed capital gain tax liability at Nil. The Assessing Officer did not accept the plea of assessee as the sale agreement did not speak about consideration of tenancy charges to be paid in future, at the time of sale. Consequently, the Assessing Officer adopted sale consideration at ₹ 72,72,000/-. The property sold comprised of commercial property and total value of commercial property was taken at ₹ 27,83,021/- and the balance of ₹ 44,88,979/- was taken as value of residential property by the Assessing Officer. The Assessing Officer also re-worked the deduction to be allowed under section 54/54F of the Act.

6. The CIT(A) upheld the order of Assessing Officer.

7. The assessee is in appeal against adoption of sale value under section 50C of the Act at ₹ 72,72,000/-.

8. The learned Authorized Representative for the assessee pointed out that the assessee had filed report of DVO before the Assessing Officer, which is placed at pages 81 to 92 of Paper Book, under which the value of property has been determined at ₹ 56,17,316/-. He further pointed out that the Assessing Officer has adopted the value for non-residential area and residential area without any basis and the said computation is also not correct. He stressed that, before the Assessing Officer a request was made to refer to the valuation

of property as on the date of sale to the valuer and also similar plea raised before the CIT(A). Attention was drawn to written submissions filed before the CIT(A) with special reference to para 1.12 at page 96 of Paper Book. The learned Authorized Representative for the assessee also referred to sale deed which is placed at pages 43 to 69 of Paper Book, in which vide para 6 at page 54 of Paper Book, the assessee had declared that there were three tenants in the said building and the rights of said tenants were attorned in favour of purchaser. The learned Authorized Representative for the assessee requested that in view of provisions of section 50C of the Act, the valuation of property may be referred to DVO and the sale consideration be adopted accordingly.

9. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

10. On perusal of record and after hearing both the learned Authorized Representatives, the limited issue which arises in the present appeal is in relation to the assessability of capital gain in the hands of assessee, in view of provisions of section 50C of the Act. The assessee had sold the property with agreed consideration of ₹ 55 lakhs. However, the State Valuation Authorities had adopted valuation of property at ₹ 72,72,000/-. The case of assessee before the Tribunal is that part of said property was tenanted and the value of property was thus, depressed. He stated that in order to meet his claim the assessee had furnished valuation report of said property from registered valuer, who had valued the same at ₹ 56,17,316/-. A request was made to the Assessing Officer to refer to the DVO for valuation of property as per provisions of section 50C(2) of the Act. However, no such reference was made by the Assessing Officer and he proceeded to adopt the sale consideration at the stamp duty valuation of ₹ 72,72,000/-. Even before the CIT(A), same plea was

raised. The assessee has also pointed out that the factum of tenants in the property is also mentioned in sale deed which has not been considered by any of the authorities. In the totality of the above said facts and circumstances, it is deemed fit to restore the issue back to the file of Assessing Officer with direction to Assessing Officer to refer the valuation of property as on the date of sale to the DVO, in view of provisions of section 50C of the Act and thereafter, compute income from capital gain in the hands of assessee. Accordingly, the issue is set aside to the file of Assessing Officer. The Assessing Officer/DVO shall afford reasonable opportunity of hearing to the assessee. The ground of appeal No.1 is allowed for statistical purposes. The grounds of appeal No.2 and 3 are not pressed hence the same are dismissed as not pressed.

11. In the result, appeal of assessee is partly allowed.

Order pronounced on this 26th day of November, 2018.

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 26th November, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-3, Pune;
4. The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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