



Appellant (s) by	Shri Nikhil S. Pathak
Respondent by	Shri Rajesh Gawli
Date of hearing	20-02-2019
Date of pronouncement	21-02-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These four appeals by related but different assessees relate to assessment year 2009-10. Since common issue is raised in these appeals, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

ITA No.786/PUN/2018 – Jayant N. Akolkar (HUF) :

2. The assessee filed return declaring sale of 1/10<sup>th</sup> undivided interest in land admeasuring about 10444 sq.mtrs at Survey No.34, Bavdhan Khurd, Taluka Mulshi, Pune. Nil capital gain was computed by taking full value of consideration at Rs.43.60 lakh. After deducting indexed cost, the assessee computed long term capital gain at Rs.41.96 and exemption was claimed u/s.54EC of the Income-tax Act, 1961 (hereinafter also called `the Act') for a sum of Rs.42 lakh, thereby giving Nil income chargeable under the head "Capital

gains”. The AO observed that the property transferred by the assessee at 1/10<sup>th</sup> was held by members of Akolkar and Vaidya family each having five members with equal share. It was stated on behalf of the assessee that a MOU was executed on 07-08-2006 between five members each of Akolkar family and Vaidya family on one hand and S.R. Kulkarni, partnership firm, a Developer, on the other, for transfer of the land in question. As per this MOU, the rate of the said developable land was agreed at Rs.387.83 per sq.ft. by which total consideration was determined at Rs.10.20 crore. In the MOU, it was agreed to execute 3 Development Agreements and Power of Attorneys in favour of the Developer. The first development agreement was executed on 08-03-2007 and capital gain thereon was disclosed by the assessee at 1/10<sup>th</sup> share in his return for the A.Y. 2007-08 by taking full value of consideration at the rate of Rs.387.83 per sq.ft. The second development agreement was executed during the previous year relevant to the assessment year under consideration on 30-04-2008 wherein the consideration received by all the parties was shown at Rs.4.36 crore, with assessee’s share of 1/10<sup>th</sup> at Rs.43.60 lakh. The AO invoked the provisions of section 50C

of the Act and found stamp value of the land as on the date of execution of the second agreement at Rs.8.04 crore. On being called upon to explain as to why such stamp value of Rs.8.04 crore should not be considered in respect of the second development agreement, the assessee raised certain objections. The matter was referred to the DVO, who determined the fair market value of the property on such date at Rs.4,99,22,320/-. The AO substituted the assessee's share in such determined value with the full value of consideration declared by the assessee at Rs.43.60 lakh. In this way, the AO computed long term capital gain at Rs.6,28,662/-. The assessee remained unsuccessful before the Id. CIT(A), against which the instant appeal has been preferred before the Tribunal.

3. I have heard both the sides and gone through the relevant material on record. There is no dispute on any aspect of the matter except the determination of full value of consideration for the purposes of computing capital gain from the transfer of the land in question. The undisputed facts are that the assessee and other nine co-owners of the property entered into MOU with M/s. S.R. Kulkarni on 07-08-2006, a copy of such agreement has been placed at page 2 onwards of the paper

book. As per this MOU, the total sale consideration was settled at Rs.10.20 crore in respect of 2,63,002.19 sq.ft. of area giving rate of Rs.387.83 per sq.ft. Clause 6 of the Agreement provides that the Developer has, at the time of execution of this MOU, paid a sum of Rs.75 lakh individually to all the co-owners by way of 10 separate cheques of Rs.7.50 lakh each. The total area was to be sold in 3 trenches. First development agreement was executed on 8-03-2007 in respect of 80,190 sq.ft. A copy of such agreement is available at page 12 onwards of the paper book. The assessee along with other co-owners computed long term capital gain by adopting full value of consideration at Rs.387.83 per sq.ft., being, the rate determined as per the MOU dated 07-08-2006. It is in respect of the second development agreement executed during the year in question, for which the assessee adopted the full value of consideration at Rs.387.83 per sq.ft., being, the same rate determined as per the MOU dated 7.8.2006. The AO disputed the adoption of this rate as full value of consideration. He invoked the provisions of section 50C and referred the matter to the DVO, who, in turn, computed a higher fair market

value at Rs.49.92 lakh as against Rs.43.64 lakh declared by the assessee.

4. The case of the assessee is that the two provisos to section 50C(1) inserted by the Finance Act, 2016 w.e.f. 01-04-2017 should be retrospectively applied with the effect that, if the date of agreement fixing the amount of consideration and the actual registration for the transfer of capital asset are not same, then the value should be considered with reference to the date of agreement fixing the amount of consideration of an anterior date and not the stamp value on the date of registration of sale deed. The other proviso provides that such substitution would be allowed only if full consideration or part thereof was received by means of banking channel at the time of execution of the agreement for transfer.

5. In my considered opinion, the contention of the Id. AR deserves to be accepted. First proviso to section 50C(1) of the Act categorically provides that where the date of agreement fixing the amount of consideration and the date of registration of the transfer of capital asset are not the same, the value adopted or assessed or assessable by the Stamp Valuation

authority on the date of the original agreement may be taken for the purpose of computing full value of consideration for such transfer. Admittedly, the MOU was entered on 07-08-2006, fixing the price at Rs.387.83 per sq.ft. even though the actual transfer took place on 30-04-2008. Prescription of the second proviso is admittedly fulfilled in as much as the assessee along with other nine co-owners received part consideration of Rs.75 lakh pertaining to the MOU dated 07-08-2006 through banking channel. The question as to whether or not the two provisos to section 50C(1) should be given retrospective effect, came up for consideration before the Pune Benches of the Tribunal in *Shri Dinar Umeshkumar More Vs. ITO*. Vide order dated 25-01-2019, the Tribunal in ITA No.1503/PUN/2015 has held that the provisos to section 50C(1) are to be given retrospective effect. Going by the mandate of the order rendered by the Tribunal in the case of *Shri Dinar Umeshkumar More (supra)*, it is apparent that the provisos to section 50C(1), substituting full value of consideration with the stamp value, can be invoked only by considering the stamp value as on the date of MOU dated 07-08-2006 and not when the date of registration for the transfer

was actually executed, i.e. on 05-05-2008. Thus the view taken by the authorities in firstly considering the stamp value of the property w.r.t. 5.5.2008 and then causing the fair market value determined from the DVO for such date, cannot be sustained. The stamp value has to be considered with reference to the date of the original MOU of 07-08-2006. On a specific query, it was admitted that the stamp value of the property on such date is not available. Under these circumstances, I set-aside the impugned order and remit the matter to the file of AO for computing the capital gain by taking into consideration the stamp value u/s.50C(1) as on the date of MOU, namely, 07-08-2006 and not the date of second registered sale deed, namely, 05-05-2008. If such a value is found to be lower than the actual sale consideration at the rate of Rs.387.83 per sq.ft., then that should be ignored and the capital gain should be computed by considering the full value of consideration at Rs.383.73 per sq.ft. and *vice-versa*. Needless to say, the assessee will be given a reasonable opportunity of hearing in such fresh proceedings.

**ITA No.787/PUN/2018 – Yashwant N. Akolkar (HUF)**  
**ITA No.788/PUN/2018 – Chandrashekhar N. Akolkar (HUF)**  
**ITA No.1131/PUN/2018 – Makrand N. Akolkar (HUF)**

6. Both the sides are in agreement that the facts and circumstances of the instant three assesseees are *mutatis mutandis* similar to those of Jayant N. Akolkar (HUF), whose appeal has been disposed off hereinabove. Following the view taken in earlier paras, I set aside the impugned orders and remit the matter to the file of AO for deciding the issue in conformity with the directions given supra in the case of Jayant N. Akolkar (HUF).

7. In the result, all the four appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 21<sup>st</sup> February, 2019.

**Sd/-**  
**(R.S.SYAL)**  
**उपाध्यक्ष/ VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 21<sup>st</sup> February, 2019  
सतीश

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	20-02-2019	Sr.PS
2.	Draft placed before author	21-02-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

\*