

**THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1456/Hyd/2016  
Assessment Year: 2007-08**

Income-tax Officer,  
Ward – 16(2), Hyderabad.

vs. Padma Vamsi Textile Market  
Pvt. Ltd., Hyderabad.

(Appellant)

PAN – AADCP 3957F

(Respondent)

Revenue by : Smt. Komali Krishna  
Assessee by : Shri B. Satyanarayana Murthy

Date of hearing : 23-04-2019  
Date of pronouncement : 03-05-2019

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

This appeal of the revenue is directed against the order of CIT(A) – 4, Hyderabad, dated 02/08/2016 for AY 2007-08.

2. Brief facts of the case are, assessee company filed its return of income for the AY 2007-08 declaring total income at Rs. Nil. Subsequently, the case was reopened u/s 147 and notice u/s 148 was issued which was served on the assessee on 25/03/2014. In response to the said notice, the assessee filed a letter on 07/05/2014 requesting to treat the return filed on 03/12/2017 as filed in response to the notice u/s 148.

2.1 The AO observed that during the previous year relevant to the AY 2007-08, the assessee company had made 36 transactions in immovable property. The total extent of the property sold was 10,244 sft and sale value of the property was declared at Rs. 35,84,000/- and after reducing the cost of Rs. 34,40,996/-, profit was admitted at Rs. 1,42,972/-. The market value of the properties sold as on that date

was Rs. 1,030/- per sft. Adopting the same, the AO worked out the sale consideration for the extent of 10,244 sft to Rs. 1,05,51,320/-. After reducing the cost at Rs. 34,40,996/-, the profit on sale of land worked out to Rs. 71,10,324/- as against Rs.1,42,972/- admitted by the assessee in the return of income. The difference amount of Rs. 69,67,352/- ( Rs. 71,10,324 – 1,42,972) was added to the returned income as per the provisions of section 50C of the Act. Accordingly, a show cause notice was issued to the assessee and the reply of the assessee was extracted by the AO at page 2 of his order. After considering the same, the AO observed that the assessee did not show the properties under stock-in-trade and the same was shown in the fixed assets schedule and regularly claiming depreciation on the same. The AO, therefore, opined that the income on sale of such assets attract the provisions of section 50C of the Act. Accordingly, the amount of Rs. 69,67,352/- being the difference amount between the market value and the sale consideration of the properties sold was brought to tax as per the provisions of section 50C of the Act, by the AO.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) partly allowed the appeal of the assessee by observing as under:

*"6. I have carefully considered the assessment order and the submissions of the appellant. As per the provisions of section 50, if the full value of consideration received on transfer of a depreciable asset or accruing as a result of the sale of assets in the block, exceeds, (i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;(ii) the written down value of the block of assets at the beginning of the previous year; and (iii) the actual cost of any asset falling within the block of assets acquired during the previous year, only if there is an excess of that consideration, it shall be treated as short term capital gain. Section 50 is thus a deeming provision and it applied to the depreciable assets. Section 50A is a special provision for determining the cost of acquisition in case of depreciable assets which was also applied by the appellant company in the computation of the cost. Further, if section 50C is to be applied in a case where capital gain on depreciable*

*asset is calculated, it does contain a provision to indicate whether the difference stamp duty and the Sale Deed value is to be treated as long term capital gain or short term capital gain. However, as per the submissions of the appellant, there is no short term capital gain resulted in the A.Y. 2007-08 and also since it is a depreciable assets, the provisions of section 50C does not apply. Therefore, the Assessing Officer is directed to work out the capital gain accordingly.”*

4. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

*“1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that section 50C does not apply to depreciable assets.*

*2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not following the ITAT Special Bench decision in the case of ITO Vs. United Marine Academy 130 ITO 113 (Mum) (SB).*

*3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

*4. The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary.”*

5. Before us, Id. DR submitted that CIT(A) erred in holding that section 50C does not apply to depreciable asset and she relied on the special bench decision of the ITAT, Mumbai in the case of ITO Vs. United Marine Academy, 130 ITD 113 (Mum.) (SB).

6. The Id. AR, on the other hand, submitted that section 50C applies to depreciable assets also and agreed with the submissions of the Id. DR. Further, he submitted that no doubt, AO adopted fair market value of the property at Rs. 1,05,51,320/- and he brought to our notice, WDV value of the assets, which is Rs. 1,02,01,998/- as on 31/03/2007. He submitted that when this value is adopted, the WDV value of the buildings will be Nil and, therefore, there will not be any capital gains during this AY.

7. Considered the rival submissions and perused the material on record. We notice that the Special Bench of ITAT, Mumbai, in the case of ITO Vs. United Marine Academy (supra) has clearly held as under:

*"As per s. 50C, when the consideration received or accruing as a result of the transfer by an assessee of capital asset, being land or building or both, is less than the value adopted or assessed by any authority of the State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall for the purpose of s. 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. There are thus now two deeming fictions created in s. 50 and s. 50C. The first deeming fiction modifies the term 'cost of acquisition' used in s. 48 for the purpose of computing the capital gains arising from transfer of depreciable assets whereas the deeming fiction created in s. 50C modifies the term "full value of the consideration received or accruing as a result of transfer of the capital asset" used in s. 48 for the purpose of computing the capital gains arising from the transfer of capital asset being land or building or both. The deeming fiction created in s. 50C thus operates in a specific field which is different from the field in which s. 50 is applicable. As rightly contended by the Departmental Representative, it does not stand to any logic as to how the same should not be applied in the case of land and building where depreciation has been claimed by the assessee. Moreover, if there was any legislative intention to exclude the applicability of the provision of s. 50C to the cases involving transfer of land and building being depreciable assets as covered by s. 50, the same could have been provided for in the provisions of s. 50C itself as the same was inserted in the statute on 1st April, 2003 when the provisions of s. 50 were already there in the statute. The legal fictions in s. 50 and s. 50C are created for definite purposes which are entirely different from each other and by applying the provisions of s. 50C in a case where s. 50 is applicable, there is no extension of the legal fiction created in the said provision beyond its legitimate field. Moreover, it is not a case where supposition is sought to be imposed on a supposition of law which is not warranted or supported by the language of the relevant provisions and in any case, the harmonious interpretation of the relevant provisions makes it clear that there is no exclusion of applicability of one fiction in a case where other fiction is applicable. As a matter of fact, there is no conflict in these two legal fictions which operate in different fields and their application in a given case simultaneously does not result in imposition of supposition on other supposition of law which is not warranted or supported by the language of the relevant provisions. A perusal of the provisions of s. 50C also shows that there is no such distinction made between a depreciable asset and a non-depreciable asset and it, therefore, cannot be said that the said provision is not applicable in a case of transfer of depreciable asset which is covered by s. 50."*

In view of the ratio laid down by the Special Bench in the said case, we are in agreement with the submission of the Id. DR and accordingly, ground Nos. 1 & 2 raised by the revenue are allowed.

7. With regard to ground no. 3, after considering the submissions of the assessee, we find force in the submissions of the Id. AR and, therefore, we are inclined to remit this issue back to the file of the AO with a direction to verify the contentions of the assessee and recalculate the capital gains afresh after giving proper opportunity of being heard to the assessee. To make it clear, the sale consideration is determined u/s 50C and since it is depreciable asset, section 50A applies, as per which, the cost of acquisition should be replaced by WDV as per clause 6 of section 43 of the Act. When WDV of the block is considered as cost of acquisition, the AO is directed to calculate the capital gains after adopting the WDV of the block as cost of acquisition. This ground is allowed for statistical purposes.

8. In the result, appeal of the revenue is allowed for statistical purposes.

**Pronounced in the open court on 3<sup>rd</sup> May, 2019.**

**Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Hyderabad, Dated: 3<sup>rd</sup> May, 2019.

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Copy to:-

- 1) ITO, Ward – 16(2), room No. 229, Block – B, 2<sup>nd</sup> Floor, IT Towers, AC Guards, Hyderabad – 500 004
- 2) M/s Padma Vamsi Textile Market Pvt. Ltd., 11-7-145/A, Main Road, Kothapet X Road, Saroor Nagar, Hyd.
- 3) CIT(A) – 4, Hyderabad.
- 4) Pr. CIT – 4, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File