



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA no.2256/Mum./2016  
(Assessment Year : 2011-12)

M/s. Aavishkar Film Pvt. Ltd.  
(Now know as M/s. Mangal  
Murti Films Pvt. Ltd.)  
802, Lodha Supremus  
Dr. E. Moses Road, Worli  
Mumbai 400 018  
PAN – AAFCA2408N

..... Appellant

v/s

Income Tax Officer  
Ward-11(1)(1), Mumbai

..... Respondent

Assessee by : Shri Deepak Tralshwala  
Revenue by : Ms. Jothi Lakshmi Nayak

Date of Hearing – 17.06.2019

Date of Order – 21.06.2019

**ORDER**

**PER SAKTIJIT DEY. J.M.**

Aforesaid appeal has been filed by the assessee challenging the order dated 7<sup>th</sup> January 2016, passed by the learned Commissioner (Appeals)-4, Mumbai, pertaining to the assessment year 2011-12.

2. The grounds raised by the assessee converge on the common issue of computation of capital gain by applying provision of section 50C(1) of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, for the impugned assessment year the assessee filed its return of income on 19<sup>th</sup> September 2011, declaring total income of ₹ 12,94,930. In the course of assessment proceeding while examining the return of income filed by the assessee, the Assessing Officer noticed that in the previous year relevant to the assessment year under dispute, the assessee has sold a flat in Galaxy Heaven, JVPD Scheme, Vile Parle, Mumbai, for a declared sale consideration of ₹ 1.75 crore. After reducing the cost of acquisition of the property as on 20<sup>th</sup> February 2008 amounting to ₹ 1,54,72,963, the assessee has offered short term capital gain of ₹ 20,27,037. After calling for information from the Registrar's Office at Andheri-2, Mumbai, and examining the registered sale deed, the Assessing Officer noticed that stamp valuation authority has determined the value of the property sold for stamp duty purpose at ₹ 2,51,45,500. Therefore, he called upon the assessee to explain why short term capital gain should not be computed by adopting the value determined by the stamp valuation authority for the property sold as the deemed sale consideration as per section 50C(1) of the Act. Though, the assessee vide letters dated 7<sup>th</sup> March 2014 and 25<sup>th</sup> March 2014, objected before the Assessing Officer against adopting stamp duty value as deemed sale consideration for computing the capital gain on sale of property, However, the Assessing Officer rejecting the objections of the assessee proceeded to compute capital gain by adopting the value of the

property determined by the stamp valuation authority as the deemed sale consideration as per section 50C(1) of the Act. After allowing the cost of acquisition as claimed by the assessee, he ultimately determined the taxable short term capital gain at ₹ 96,72,537.

4. Though, the assessee challenged the aforesaid decision before the first appellate authority, however, learned Commissioner (Appeals) upheld the decision of the Assessing Officer.

5. The learned Authorised Representative submitted, in the course of assessment proceedings, the assessee had objected to adoption of the value determined by the stamp valuation authority as deemed sale consideration. He submitted, on the face of such objection by the assessee, the proper course left to the Assessing Officer was to refer the valuation of the property to the Department Valuation Officer in terms of section 50C(2) of the Act and thereafter compute the capital gain following the provision of sub-section (3) of section 50C of the Act. He submitted, as per section 50C(2) of the Act, once the assessee objects to the adoption of the value determined by the stamp valuation authority, the Assessing Officer has to make a reference to the Departmental Valuation Officer (DVO) to determine the value of the property. He submitted, the Assessing Officer having not done so, the assessment order is vitiated. He submitted, the learned Commissioner (Appeals) also fell into error by upholding the action of

the Assessing Officer completely ignoring the mandate of section 50C(2) of the Act. The learned Authorised Representative submitted, before the Departmental Authorities assessee had specifically stated the reasons for which the sale consideration received by the assessee is reasonable. He submitted, since the property was encumbered, it could not have fetched the value as determined by the stamp valuation authority. He submitted, without properly considering the submissions of the assessee and implication of the statutory provisions, the Assessing Officer and learned Commissioner (Appeals) have applied the provision of section 50C(1) of the Act, which is improper. In support of his contention, learned Authorised Representative relied upon the following decisions:-

*i) Meghraj Vaid v/s ITO, [2008] 114 TTJ 841 (Jodh.);*

*ii) ITO v/s Aditya Narain Verma (HUF), [2017] 187 TTJ 114 (Del.); &*

*iii) Mohammad Usuf Trust v/s ACIT, [2019] 55 CCH 268 (Mum.).*

6. The learned Departmental Representative submitted, as per section 50C(1) of the Act, the Assessing Officer is mandated to adopt the value of property determined by the stamp valuation authority as the deemed sale consideration. She submitted, it is not mandatory for the Assessing Officer to follow the provisions of sub-section (2) of section 50C of the Act in each and every case, since, the expression used in sub-section (2) of section 50C of the Act with regard to

reference to the DVO is "may". Thus, she submitted, discretion has been vested with the Assessing Officer to make a reference to the DVO on a case to case basis. Further, she submitted, the provisions of sub-section (2) of section 50C of the Act is not mandatory is clear from the fact that under sub-section (3) of section 50C of the Act, the Assessing Officer has been empowered to adopt the value determined by the DVO only in a case where it exceeds the value determined by the stamp valuation authority. Thus, she submitted, the Assessing Officer has not committed any error by not making a reference to the DVO for determining the value of the property sold. Further, she submitted, the assessee has not furnished any supporting evidence to substantiate its claim that the declared sale consideration is actual market value of the property. Drawing our attention to the sale deed she submitted, it clearly says that the property is unencumbered. She submitted, no evidence was filed by the assessee to demonstrate that the property was encumbered or it has any deficiency. Thus, she submitted, there is no reason to interfere with the decision of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. There is no dispute between the parties with regard to the primary fact that as against declared sale consideration of ₹ 1.75 crore shown by

the assessee the Assessing Officer has adopted the value determined by the stamp valuation authority at ₹ 2,51,45,500, as deemed sale consideration under section 50C(1) of the Act. Against the adoption of the value determined by the stamp valuation authority as deemed sale consideration, assessee's argument is twofold. Firstly, on the face of objection raised by the assessee against adoption of stamp duty value, the Assessing Officer should have made a reference to the DVO for determining the value of the property. Secondly, the stamp duty valuation cannot be adopted as the deemed sale consideration considering the fact that the property was encumbered. Insofar as the first contention of the assessee with regard to making a reference to the DVO is concerned, on a schematic interpretation of section 50C of the Act as a whole, it appears that, though, under section 50C(1) of the Act the value determined by the stamp valuation authority is to be treated as deemed sale consideration and has to be substituted for the declared sale consideration, however, in a case where the assessee objects to adoption of stamp duty valuation, as per sub-section (2) of section 50C of the Act the Assessing Officer is required to make a reference to the DVO for determining the value of the property. Now, the issue before us is, whether as per section 50C(2) of the Act, it is mandatory on the part of the Assessing Officer to make a reference to the DVO to determine the value of the property. In our view, on a careful reading of the provisions contained under section 50C of the

Act and the legislative intent for enacting such a provision, it becomes clear that in a case where the assessee objects to the adoption of stamp duty value as the deemed sale consideration, the Assessing Officer is duty bound to make a reference to the DVO for determining the value of the property and thereafter proceed to compute capital gain by following the provisions of sub-section (3) of the Act. In the facts of the present appeal, undisputedly, in the course of assessment proceedings the assessee has objected to adoption of stamp duty value as the deemed sale consideration for whatever may be the reason. That being the case, it was the duty of the Assessing Officer to make a reference to the DVO for determining the value of the property sold. The contention of the Department that the reference to DVO was not made because the assessee raised the objection before the Assessing Officer purposefully at the fag end to see to it that the proceeding gets barred by limitation, in our view, is unacceptable. Further, at the first appellate stage also learned Commissioner (Appeals) could have directed the Assessing Officer to get the valuation of the property done by the DVO and thereafter proceeded in accordance with law. In case of *S. Muthuraja v/s CIT*, [2014] 369 ITR 483 (Mad.), the Hon'ble Madras High Court has held that where the assessee objects to the adoption of stamp duty valuation as deemed sale consideration during the assessment proceedings, the Assessing Officer is duty bound to make a reference to the DVO to determine the

value of the property as per section 50C(2) of the Act. The other decisions cited by the learned Authorised Representative also express similar view. In fact, the Hon'ble Calcutta High Court in Sunil Kumar Agarwal v/s CIT, [2015] 372 ITR 83 (Cal.), have gone a step further to observe that valuation by the DVO is contemplated under section 50C of the Act to avoid miscarriage of justice. It was held that when the legislature has taken care to provide adequate machinery to give a fair treatment to the tax payer, there is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. The Hon'ble Court has observed that even in a case where no request is made by the assessee to make a reference to the DVO, the Assessing Officer while discharging a quasi judicial function is duty bound to act fairly by giving the assessee an option to follow the course provided by law to have the valuation made by the DVO. The assessee's case stands in a much better footing as in the course of assessment proceedings, the assessee had objected to adoption of stamp duty value as the deemed sale consideration. Thus, in such circumstances, in our considered opinion, the Assessing Officer should have followed the mandate of sub-section (2) of section 50C of the Act by making a reference to the DVO to determine the value of the property sold. The Assessing Officer having not done so and the learned Commissioner (Appeals) also failing to rectify the error committed by the Assessing Officer, we have no hesitation in restoring

the issue to the Assessing Officer with a direction to make a reference to the DVO to determine the value of the property sold in terms of section 50C(2) of the Act and thereafter proceed to compute capital gain in accordance with law. In view of our decision herein above, we do not intend to delve into the other aspect of the issue relating to the actual value of the property on account of certain prevailing conditions like encumbrance, etc. All these issues are available to the assessee for agitating in the course of proceedings before the DVO. With the aforesaid observations, we set aside the impugned order of learned Commissioner (Appeals) and restore the issue to the Assessing Officer for fresh adjudication in terms of our direction herein above. Grounds are allowed for statistical purposes.

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

Order pronounced in the open Court on 21.06.2019

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 21.06.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai