

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD**

BEFORE, SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.69/AHD/2017

ढथाण वष/Asstt. Year: 2012-2013

Income Tax Officer, Ward-3(2)(4), Ahmedabad.	Vs.	Shri Rambhai Ambalal Patel, 5, Twin Payal Park Co-op., Housing Society, Vasant Vihar, Bopal, Ahmedabad PAN: AOSPP2463E
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(Applicant)		(Respondent)
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Revenue by :	Shri L.P. Jain, Sr. D.R
Assessee by :	Shri Deepak R. Shah, A.R

सुनवाई क ताराख/Date of Hearing : 12/06/2019

घोषणा क ताराख /Date of Pronouncement: 26/06/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad [Ld.CIT(A) in short], dated 08/12/2016 arising in the matter of assessment order passed under s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 27/01/2016 relevant to Assessment Year (AY) 2012-13.

The revenue has raised the following grounds of appeal:

1. *The CIT(A) has erred in law and on facts in deleting the addition of Rs.1,01,95,500/- made u/s. 50C of the Act on account of sale of immovable property.*
- 1.1.1 *The Ld. CIT(A) has erred in law and on facts in not appreciating that the assessee has not claimed that the value adopted by the sub registrar was more than the fair market value of the property.*
2. *On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the order of the Assessing Officer.*
3. *It is, therefore, prayed that the order of the Ld. Commissioner of Income tax (A) may be set-aside and that of the Assessing Officer be restored.*

The only issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO for 1,01,95,500.00 representing the amount of stamp duty valuation which was not considered by the assessee as the sale consideration under the provisions of section 50C of the Act.

2. Briefly stated facts are that the assessee in the present case is an individual and deriving his income under the head house property. The assessee in the year under consideration has transferred an immovable property in which he was the owner to the tune of 50% for consideration of 58,26,000.00 only whereas the stamp duty valuation was determined at Rs. 2,03,91,000.00 only. Thus the AO was of the view that the sale consideration at 2 0391000.00 only should be taken for the working of the capital gain, but the assessee has wrongly taken the sale consideration 58,26,000.00 only.

2.1 However, the assessee claimed that he had sold the immovable property vide registered agreement (Banakhat) dated 15-07-2003 at 20,51,630.00 only and received a sum of 1 lakhs through cheque at the time of the agreement. Accordingly, the stamp duty value as declared in the sale deed cannot be treated as sales consideration under section 50C of the Act.

2.2 However, the AO disagreed with the contention of the assessee by observing that the assessee has made a power of attorney for the sale of the immovable property on 31 March 2008 without making the payment of the stamp duty. Therefore, the same (Rs. 20,51,630.00) cannot be treated as the sale consideration. Accordingly, the AO held that the transaction made by the assessee by way of power of attorney is nothing but the colorable device to avoid the tax liability. Thus the AO treated the sum of Rs. 1,01,95,500.00 being 50% of the stamp duty value as income and accordingly added to the total income of the assessee.

The aggrieved assessee preferred an appeal to the learned CIT (A).

3. The assessee before the learned CIT (A) submitted that he had sold the immovable property vide agreement dated 15th July 2003 at 11,64,000.00 which is higher than the stamp duty valuation of the relevant period, i.e. 15th July 2003. Therefore, the Stamp Duty value at the time of registration of the sale deed cannot be adopted.

3.1 The assessee also claimed that he had not received anything over and above the consideration determined on the date of the agreement.

4. The learned CIT (A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

“The receipt of part payment by cheque is an independent evidence giving much credence to the contention raised by the appellant. Once payment is received and terms and conditions are reduced in writing in banakhat dated 15.07.2003, there is no chance of receiving any additional amount unless and until corroborative evidences are gathered by the department. Though not relevant but the sale of land was effected by the appellant at the rate which was higher than the prevailing jantri rate as evident from the evidence placed on record. It is also observed that the facts including the payment details of banakhat dated 15.07.2003 are highlighted in the

sale deed which is now registered on 20.05.2011. Therefore, I am of the opinion that the sale has been effected in F.Y.2003-04. In view of facts as above and the ratio laid down by Hon'ble Supreme Court (supra), there does not appear to be any justification for invoking provisions of section 50C of IT Act, 1961.

4.2.1 The appellant has further contended that the addition has been made without referring the matter to DVO, therefore, the addition is not having valid legal justification as per ratio laid down in various case laws:

- a) Manjeet Singh Mokha Vs. ACIT - ITA No.182/Jab/2014 (ITAT, Jabalpur)*
- b) ShriAni Jain Vs. ITO - ITA No.5331/Del/2012 (ITAT, Delhi)*
- c) Anilkumar Jain Vs. ITO-36CCH 0397 (ITAT, Delhi)*
- d) Appadurai Vijaraghavan Vs. JCIT (Osd) - 90 CCH 0029 (Mad. HC)*
- e) Meghraj Baid Vs. ITO - 27 CCH 0126 (ITAT, Jodhpur)*
- f) Nikunj Kumar H. Jariwala Vs. ITO Wd.1(4), Surat- ITA No.2404/Ahd/2011 dt.19.03.2015 (ITAT, Ahmedabad)*
- g) ITO Ward 3(2), Surat Vs. Bharatbhai K. Malvia - ITA No.2227/Ahd/2011 dt.10.04.2015 (ITAT, Ahmedabad)*

I have gone through the judgements relied by the appellant. Hon'ble Calcutta High Court decision in the case of Sunil Kumar Agrawal Vs. CIT-372 ITR 83 (Cal.), has held that reference to DVO was mandatory and the relevant portions of judgment is reproduced as under:

"7. We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs. 10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

8. For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide

adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law."

It is understood that the appellant raised objections to the Stamp Duty Valuation and the AO failed to send the matter for valuation to DVO as per provisions of section 50C(2). To my mind the AO overburdened himself with avoidable responsibility by not sending the issue for expert opinion to the DVO as per specific provisions of sub section 2 of section 50C of IT Act, 1961. In view of above facts and the ratio laid down by various High Courts and ITATs, the addition is also unsustainable.

In view of facts on record and as per relevant case laws quoted above, it is that the addition is untenable on both the counts. The contention of the appellant is found to be correct. The addition of Rs.1,01,95,500/- made by AO u/s.50C is hereby deleted. The ground No.3 & 4 of appeal are allowed.

Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

5. The learned DR before us vehemently supported the order of the AO. On the other hand, the learned AR before us filed a paper book running from pages 1 to 190 and reiterated the submissions as made before the learned CIT (A). The learned AR vehemently supported the order of the learned CIT (A).

6. We have heard the rival contentions and perused the materials available on record. The assessee in the instant case has entered into an agreement for sale dated 15th July 2003 for the consideration of 11,64,000.00.00 only. The assessee against such agreement has received consideration of 1 lakh through the cheque bearing No. 197104 dated 16th July 2003 drawn on Bank of Baroda and 9 lakhs in cash. However, the sale deed was registered on 20th May 2011 at 58,26,000.00 only. The assessee further claimed that he had received only 11,64,000 as the sale consideration and the purchaser directly

deposited the balance amount to the Government treasury for converting the status of the land as non-agricultural. The breakup of the sales consideration stands as under:

<i>Rs.46,60,800/-</i>	<i>Rupees forty six lakh thousand eight hundred only which deposited with government vide Challan No.17 dated 17.01.2011</i>
<i>Rs.1200/-</i>	<i>Rupees one thousand two hundred only deposited in the office of DILR vide challan No.6919 on dated 09.04.2011.</i>
<i>Rs.11,64,000/-</i>	<i>Rupees eleven lakhs sixty four thousand only received by the seller.</i>
<i>Rs.58,26,000/-</i>	<i>Rupees fifty lakhs twenty six thousand only.</i>

6.1 Now the issue before us, arises for our adjudication what should be the sales consideration for working out the capital gain in the given facts and circumstances so as to whether the stamp duty value as on 15th July 2003 stamp duty value as on 20-05-2011 should be adopted as the sale consideration.

6.2 It is an undisputed fact that the assessee has received part consideration of 1 lakh at the time of the agreement dated 15th of July 2003 through banking channel. Similarly, there is no evidence suggesting that the assessee has received anything over and above the value agreed as sale consideration in such agreement. In such circumstances, we are of the view that the value determined at the time of agreement which is more than the stamp duty valuation should be treated as sale consideration for the working of the capital gain. It is because had the sale deed been made at the time of the agreement, then the stamp duty value was to be considered as the sales consideration or the actual sale value whichever is higher of that time. Thus, the sale consideration cannot be substituted with the stamp duty valuation determined at the time of registration of the sale deed i.e. 20-5-2011.

6.3 In this regard, we find support and guidance from the judgment of Honøble Apex Court in the case of Sanjeev Lal versus CIT reported in 365 ITR 389 wherein it was held as under:

23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.

24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.

We also find support and guidance from the order of this Tribunal in the case of Rahul G. Patel DCIT, Cir.1(2)in ITA ITA No. 2767/Ahd/2016 for the Assessment Year 2013-14 vide order dated 26/09/2018 wherein it was held as under:

14. It is pertinent to observe that an agreement to sale was executed by the assessee on 8.2.2010 which is followed by payment through account payee cheque. Details of payments have been duly noticed by the ld.AO as well as by the ld.CIT(A). First cheque was received on 1.4.2011 for a consideration of Rs.10 lakhs; then Rs.30 lakhs on 23.7.2011; Rs.15 lakhs on 28.12.2011 and Rs.50 lakhs on 26.3.2012. Similarly on 1.5.2012 Rs.45 lakhs was received through account payee cheque. It means that sale consideration were received by the assessee before the registration of sale deed regularly on different intervals. As observed earlier, section 50C provides that where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall for the purposes of section 48, be deemed to be the full value of the consideration. The question before us is, what could be the full value of sale consideration i.e. whether the value on which stamp duty was paid at the time of sale deed or the value declared in the sale agreement ? In such a situation where the assessee is not

satisfied with adoption of sale value on which stamp duty was paid, then scheme of the Act prescribes a mechanism under sub-section (2) of section 50C for making a reference to the DVO to determine fair market value of the property. The reasons for such a mechanism is that stamp duty fee is only 4.95% (herein Gujarat) on the total sale consideration, which is a small amount and can be borne by any vendor/vendee. But for the purpose of Income Tax Act, the liability would enhance multi fold, and due to this reason, mechanism has been provided in the Act for the assessee to demonstrate that the value received by him was far less than one adopted for the purpose of stamp duty valuation. For this, he can make a request to the AO under section 50C(2) for making a reference to the DVO. It is pertinent to observe that the assessee entered into an agreement to sell on 8.2.2010. The AO has not disputed this agreement. The assessee has received payment in pursuance of this agreement through account payee cheque. Let us take a situation where a vendee fails to get the sale deed executed. The assessee being vendor has a remedy for filing a suit for specific performance under the Specific Relief Act. The time limit to file a suit for specific performance has been provided in Indian Limitation Act, which is three years. In such situation, when the vendor files a suit for specific performance to force the vendee to purchase the property. In that situation, he will not pay anything over and above, the amount stated in the sale agreement. In that situation, the assessee would not get anything more than the amount mentioned in the agreement, though such situation may arise after three-four years on execution of the decree passed in a suit for specific performance. In between there may an appreciation or depreciation in the said property. Circle rate may rise or reduce. In other words, at the time of an agreement in respect of an immovable property, a right in persona is created in favour of the transferee/vendee. When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because vendee in whose favour right in persona is created has legitimate right to enforce such specific performance of the agreement, if the vendor for some reason is executing the sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. It is encumbrance on the property. At this stage, we would like to make reference to new proviso appended to section 50C by way of Finance Act, 2016 and the background, under which such provision has been incorporated. In 2015, Government of India has set up Income Tax Simplification Committee headed by Justice R.V.Easwar, former judge of Delhi High Court. The Committee in its reported observed as under:

"6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERATION FIXED UNDER AGREEMENT TO SELL Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section 48 of the Income-tax Act. The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the

transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" alongwith words "the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers.

The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar provision inserted by way of section 43CA does take care of such a situation.

6.2 It is therefore proposed to insert the following provisions in section 50C:

(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(5) The provisions of sub-section (4) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.

15. Taking a clue from the report, a proviso has been appended by way of Finance Act, 2016 to section 50C and such proviso reads as under:

"Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer."

16. This amendment was explained in the Memorandum explaining the provisions of Finance Bill 2016. It reads as under:

Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains.

Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of

transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade. It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property. 30 These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years."

17. If we take all these aspects in their settings as a whole, then it would indicate that earlier whenever an assessee disputed adoption of sale equivalent to the amount on which stamp duty is paid, then reference to the DVO is made under section 50C(2). Normally, as observed earlier, when a sale agreement was executed, payment was received in part performance of the agreement, then vendor would not get anything more than the amount agreed in the sale agreement. There may be a time gap between execution of agreement to sell and execution of sale deed. In between if circle rate is being enhanced, then he would like to challenge adoption of higher sale value on the strength of sale agreement. In that situation, unnecessary energy would be devoted in ascertaining fair market value of the property on the date of sale. The encumbrance on the property by virtue of sale agreement would also goad the DVO to determine the fair market value of the property on the date of sale at a lesser amount than the value adopted for the purpose of payment of stamp duty. We have already made a reference to Specific Relief Act and how a vendor or vendee could enforce the sale agreement under Specific Relief Act. Under such enforcement, they would settle their right on the basis of agreed terms in the sale agreement. This proviso would only simplify this exercise i.e. instead remitting the matter to the DVO under section 50C(2), he would conduct an inquiry as to what could be value of the property on the date of execution of the agreement, and whether such agreement has created any encumbrance or not. There could be a difference in the actual sale consideration than the amount on which stamp duty was paid. This proviso has simplified this thing. It contemplates that stamp duty valuation of the property for the purpose of stamp duty payment on the date of agreement can be deemed as full consideration of the capital asset. Thus, in this way, the proviso can be construed as clarificatory in nature, and can be applied on pending matters as already held by the ITAT in the case of Dharamshibhai Sonani (supra).

18. In the present case, we find that the assessee has contended that consideration of Rs.3,00,11,000/- is more than the valuation for the purpose of stamp duty as on 8.2.2010. No where the assessee has pointed out specific rate on the date of agreement. Therefore, we allow these two grounds of appeal for the statistical purpose. We set aside this issue to the file of the AO. The ld.AO shall call for circle

rate for the purpose of stamp duty valuation of this property as on 8.2.2010. He shall determine the sale value of the property on the basis of circle rate applicable on this property on 8.2.2010, and thereafter compute long term capital gain assessable in the assessment year 2013-14. In other words, transfer of this property would be construed on 5.6.2012, but the full value of consideration is to be equivalent to the amount on which stamp duty was payable on 8.2.2010.”

The principles laid down by this Tribunal in the above case apply to the facts of the case on hand. The learned DR has also not brought anything on record contrary to the finding of the learned CIT (A). In view of the above, we do not find any reason to interfere in the finding of the learned CIT (A). Hence the ground of appeal of the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 26/06/2019 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 26/06/2019
Manish