

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'C' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Ravish Sood (Judicial Member)**

ITA No. 4732/Mum/2017
Assessment year: 2011-12

Wenceslaus Joseph D'souza **Appellant**
*D'souza House, R No. 111,
Oshiwara Village, S.v. Road,
Jogeshwari (W), Mumbai 400102.
[PAN:AFUPD3823R]*

Vs

Income Tax Officer (1) (2) **Respondent**
Mumbai

Appearances by

Ajay R. Singh *for the appellant*
Kumar Padmapari Bohra *for the respondent*

Date of concluding the hearing: October 3rd, 2019
Date of pronouncement : December 26th, 2019

ORDER

Per Pramod Kumar, VP:

1. When the hearing of this appeal was concluded on 3rd October, 2019. The bench passed the following order:

"The appeal is allowed so far as ground no 1 and 2 are concerned. The other issues were not pressed. Pronounced in the open court. The detailed reasons to follow.

Ravish Sood
JM

Pramod Kumar
VP

2. The detailed reasoned order is now set out as follows.

3. This appeal is directed against the order dated 27.04.2016 passed by the CIT(A) in the matter under section 143(3) of the Income Tax Act 1961 for the assessment year 2011-12.

4. In ground no 1 and 2, which we take up together, the assessee has raised the following grievances.

I. D.V.O adopted higher value instate of deficiencies in the property:

1. The Learned CIT(A) erred in confirming addition of Long term Capital Gain towards sale of property by adopting value determined by the DVO at higher rate as against actual sale price, without considering that the said property had major deficiencies which resulted in no buyer for the property and the assessee had no option but to sell at a lower price . Therefore, value adopted by the DVO was unreasonable and hence addition made on the basis of same is not justified.

2. Without prejudice, mere report of DVO estimating higher value of property cannot be considered as an evidence of actual full value of consideration received or accruing as a result of transfer of capital asset moreso when the assessee had provided the details of land locked plot alongwith supporting evidence of adjoining plot.

5. To adjudicate on the above grievences, only a few material facts need to be taken note of. The assessee before us is an individual who had sold a piece of land at Goregaon (E), Survey No. 83, Hissa No. 4, for a total consolation of Rs. 50 lac. The deed of conveyance was registered on 20.08.2010 and the stamp duty valuation for the purpose of the said deed of conveyance was Rs. 2,31,70,000/-. As the assessee

challenged this stamp duty valuation being adopted for the purpose of competition of capital gains, the matter was referred to Departmental Valuation Officer. The Departmental Valuation Officer valued the fair market value of said land as on 20.08.2010 at Rs. 1,11,30,000/- . Accordingly, long term capital gains were computed at Rs. 92,76,967/-. Aggrieved, inter alia, by the deemed sale consolation being adopted at Rs. 1,11,30,000/- under section 50(C), The assessee carried the matter in appeal before the CIT(A). It was pointed out by the assessee that the said property was fully occupied and possessed by M/s. Haldyn Glass Ltd., for more than 20 years, that the said property was landlocked property in as much as it did not have reasonable passage, that the adjoining plot, through which an access was owned by M/s. Raheja Universal Ltd., i.e. the buyer, and that under these circumstances the valuation at Rs. 1,11,30,000/- was highly excessive and unreasonable. Learned CIT(A) however did not accept the plea. Rejecting the said plea and confirming the action of the Assessing Officer on this point learned CIT(A), inter alia, observed as follows:-

The above contentions of the assessee are not acceptable. There is no evidence that the property was fully occupied and possessed by M/s Haldyn Glass Ltd. The DVO has also commented that no proof was submitted by the assessee to support his claim that the property was encroached upon since 1965 and no details of the extent of encroachment was submitted for as on 01.04.1981 and 20.08.2010. The assessee has also claimed that the property did not have any access to the road and this impacts its marketability. This claim of the assessee has no force since the Indian Easements Act, 1882 also mandates right of passage to a landlocked plot. The assessee has claimed that the property was reserved for recreational activity but no evidence has been shown and the DVO has reported that on the date of inspection a huge basement was under construction in that area. This does not support the claim of the assessee. Further the claim of the assessee that the land was occupied and full of encumbrances etc.

is not relevant and it is seen that M/s Raheja Universal Ltd. never acquired the possession over the assessee's property when it purchased the land of M/s Haldyn, Glass Ltd. in 2007. It is also noted that all such objections had been taken by the assessee before the DVO also and the DVO's report has factored in all the objection of the assessee in para 8 of his final report wherein the DVO has mentioned that he has given a 50% discount for all the potential grounds for lowering the value of the property. The DVO has rebutted/answered all the arguments of the assessee in detail.

In view of the above and considering the technical nature of the job of valuation, it is held that the expert's opinion cannot be tinkered with by the undersigned without any valid reason. In the instant case all the objections have been considered by the DVO or have been rebutted as above and there is therefore no need to defer from the valuation report which is based on specific sale instances of the relevant period in the vicinity of the plot of the assessee. The Supreme Court in the case of CIT vs. Bharti Cellular Ltd. [2011] 330 ITR 239 (SC) has already held that the role of technical experts is very important in matters of taxation. Therefore the ground of appeal no. 2 of the assessee is dismissed.

6. The assessee is not satisfied that the stands were taken by the learned CIT(A) and as in further appeal before us.

7. We have heard the rival contentions, perused the material in record and duly considered facts of the case in the light of the applicable legal position.

8. We find that fact that the land had serious encumbrances is not an even in dispute. The land in question was all along occupied and possessed by M/s. Haldyan Glass Ltd. which incidentally is a confirming party in the sale deed. As the matter of fact at page 2 sale deed specifically notes this possession as follows:-

B. However, for the last more than 22 years, the Confirming party was not in possession of any portion of the Said Property; and the same was in absolute and uninterrupted use, possession and occupation of Haldyn

Glass Ltd., (hereinafter, for the sake of brevity, referred to as "Haldyan"), along with the adjoining properties belonging to Haldyan, bearing CIT Nos. 213A/1B, 218 abd 218/1 to 29, of revenue village Goregaon, shown by green wash on the said plan being Annexure "A" hereto (hereinafter referred to as the "Haldyn Property") Haldyn was, for the last more than 22 years, also in possession of other two adjacent plots bearing CTS Nos. 216 and 217 of revenue village Goregaon, which were shown by pink and yellow wash respectively on the said plan being Annexure "A" hereto (hereinafter referred to as "Properties 216 & 217"). Haldyn was in possession of the Haldyn Property, the Said Property and Properties 216 & 217, as on composite property, which is shown by blue outline on the plan being Annexure "A" hereto. The Said Property has no direct access from any public road; and the access thereto is only through the Haldyn Property and Properties 216 & 217 only.

9. As evident from the above observation in the sale deed, not only the property in question was in possession of a third party, it also did not have any direct access from the public road and the access thereto was only through a property which the end buyer had already purchased. Given these serious restrictions on the right of the seller, which are also fully recognized in the DVO's report, the stamp duty valuation report can indeed not be adopted as a fair market price in this case. The DVO himself has given a discount of 50% on account of deem and these encumbrances. In annexure 2A of the DVO report, it is specifically stated that "as the same encumbrances were prevailing hence similar discount at the rate of 50% is considered reasonable as on 20.08.2010". In annexure 2 these encumbrances are described as "1. the property was land locked and located in the interior side from the main road, 2. The plot is irregular in size and tapering in shape, 3. The plot was not is possession of the Assessee etc. hence on the facts an circumstances of the case cumulative discount of 50% is considered reasonable for deduction on account of the above encumbrances". The short

question before us is whether in these circumstances, there is any good reasons reject valuation of Rs. 50 lac on which the sale deed as entered into and adopt 50% of the fair market value as deem sale consideration. In our humble understanding there is no basis whatsoever for adoption of 50% of the fair market value as deed sales consideration, and this deemed sale consideration is purely based on the estimation. In a situation in which the assessee has no choice but to sell the land to a particular person and take on board a consenting party which is in possession and control of the said property the assessee has no choice but to accept whatever is being offered to him in consideration of parting with the legal title over said property. The entire basis of valuation of evaluation adopted by the DVO is devoid of any legally sustainable foundation in as much as there is nothing sacrosanct about discounting at the rate of 50% for arriving at fair market value. Given these peculiar facts of the case the sale consideration on which the transaction is actually taken place should be accepted, being an arms length transaction on these peculiar facts, as the fair market value of the said property as on the date of the transaction. In view of these discussions bearing in mind entirety of the case we deem it fit and proper to direct the Assessing Officer to adopt the deed sale consideration at Rs. 50 lac and compute in long term capital gains on that basis. Order accordingly. Ground no 1 and 2 are thus allowed in the terms indicated above.

10. Ground no 3 and 4 were not pressed before us. And are accordingly, dismissed for ground of prosecution.

11. In the result, the appeal is allowed, in the terms indicated above. Pronounced in the open court today on the 26th day of December, 2019

Sd/-

Ravish Sood
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 26th of December, 2019

Nishant Verma Sr.PS

Copies to: (1) The appellant (2) The respondent
 (3) CIT (4) CIT(A)
 (5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai