

आयकर अपील अाधिकरण, अहमदाबाद ढायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.134/AHD/2018

अाधरण वष/Asstt. Year: 2013-2014

Galaxy Global Pvt. Ltd., 4 th Floor Commercial House, Opp. Rajvansh Tower, Near Surel Bunglows, Bodakdev, Ahmedabad. PAN: AACCG1840P	Vs.	D.C.I.T., Circle-2(1)(2), Ahmedabad.
--	-----	--

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Biren Shah, A.R
Revenue by :	Shri Deelip Kumar, Sr. D.R

सुनवाई का तारख/Date of Hearing : 13/01/2020

घोषणा का तारख /Date of Pronouncement: 28/01/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2, Ahmedabad dated 10/11/2017 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt. 28/03/2016 relevant to the Assessment Year 2013-2014.

The assessee has raised the following grounds of appeal.

1. *On the facts and circumstances of the Appellant's case, the learned CIT (Appeals) ought to have deleted the deemed addition under Section 50C of the Act and ought to have quashed the Assessing Officer's order.*
2. *Without prejudice to the above, on facts and in the circumstances of the Appellant's case, the Ld. CIT (Appeals) has erred in confirming disallowance of Rs.1,17,12,000/- made applying deeming provisions of section 50C of the Act without making reference to DVO, when no such disallowance is called for. The same may be deleted.*
3. *On the facts and in the circumstances of the case, the Assessing Officer has erred in charging interest u/s 234A, 234B and 234C of the Act.*
4. *On the facts and in the circumstances of the case the Ld. Assessing officer has erred in initiating penalty u/s.271(1)(c) of the Act.*
5. *The appellant craves leave to add to, alter, amend and /or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

2. The only effective issue raised by the assessee in ground no.1 and 2 is that the "Ld.CIT (A)" erred in confirming the order of the AO by adopting deemed amount as sale consideration provided u/s 50C of the Act.

3. The facts in brief are that the assessee is a private limited company and engaged in the business of imported ceramic, bathroom accessories and trading in toys and furniture. The assessee in the year under consideration has sold three adjoining units of commercial office for Rs. 29,00,000/- only each which was shown as sale consideration for computing capital gain. However, the AO found that the assessee has paid stamp duty for Rs. 3,30,200/- for each commercial units. Accordingly, the AO determined the stamp valuation of each commercial unit for Rs. 66,04,400/- only. Thus there was a difference of Rs. 39,04,000/- between amount of sale consideration offered by the assessee vis-à-vis computed by the AO under the provision of section 50C of the Act.

3.1 On question by the AO, the assessee submitted that there are various defects in the title of the property. Therefore, the assessee claimed that the sale price of the properties sold by it represent the fair market value.

3.2 However, the AO disregarded the contention of the assessee by observing that the provisions of section 50C of the Act mandate to adopt the sale consideration as the value determined for the purpose of stamp duty. Accordingly the AO worked out the amount of difference for Rs. 1,17,12,000/- as under reported sale consideration and further treated the same as deemed sale consideration/ income under section 50C of the Act,.

4. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" who has dismissed the appeal of the assessee by observing that the assessee has not made any request to the AO during the assessment proceedings to refer the matter to the DVO as provided under section 50C(2) of the Act.

5. The "Ld.CIT (A)" also found that the assessee has furnished the valuation report dated 13/07/2017 after 18 months of Assessment Order. Accordingly, the "Ld.CIT (A)" did not refer the matter to the DVO and confirmed the order of the AO.

Being aggrieved by the order of the "Ld.CIT (A)" the assessee is in appeal before us.

6. Ld.AR, before us filed a paper book running from pages 1 to 88 and submitted that the title of the property was not clear therefore the property in dispute was sold less than the stamp duty valuation. Accordingly the Ld. AR. prayed before us to set aside the issue to the file of the AO with the direction to refer the matter to the DVO to determine the fair market value of the property.

7. On the contrary the Ld. DR did not raise any objection if the matter is set aside to the file of AO for fresh adjudication as per the provision of law.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion we note that the AO is under the obligation to refer the matter to the DVO in a situation where the assessee objects to treat the stamp duty valuation as sale consideration in pursuance to the section 50C of the Act. Undisputedly, the assessee has pointed out certain infirmity/defect in the title and marketable of the property during the assessment proceeding therefore we are of the considered view that the AO was to refer the matter to the DVO for determining fair market value of the property.

8.1 The fair market of the property depends upon the various factors such as location, area, access, availability of public conveyance, surrounding public amenities, neighbors, free hold position, Legal and marketable title of the property. Thus the value determined for the purpose of stamp duty cannot be considered as fair market value in all such cases. As such it becomes imperative for the AO to refer the matter to the DVO if the assessee objects to adopt the stamp value as the sale consideration.

8.2 We also find that the AO in the instant case has worked out stamp duty by calculating the same based on the stamp duty paid by the assessee. As such the AO has not referred in his order pointing out any document to determine the stamp duty valuation. In fact the Act does not permit to work out the stamp duty value by doing reverse calculation. Thus in our considered view, the matter in the interest of justice and fair play, needs to be decided afresh by the AO after referring the matter to the DVO for the purpose of valuation of the property in pursuance to the provision of section 50C of the Act in accordance with the provision of law. Hence the ground of appeal of the assessee is allowed for the statistical purpose.

9. The issue raised by the assessee in ground no.3 is consequential in nature and therefore no separate adjudication is required for the same. Accordingly we dismiss this ground of appeal.

10. The next issue raised for initiating penalty u/s.271(1)(c) of the Act is premature to decide accordingly we dismiss the same.

11. In the result, the appeal of the assessee is **partly allowed** for the statistical purposes.

Order pronounced in the Court on 28/01/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
VICE PRESIDENT**

Ahmedabad; Dated
manish

(True copy)
28/01/2020

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