

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 624/MUM/2019 (A.Y: 2014-15)

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| Shri Sudeep Baburao Suryawanshi 1004, C-1, Sunflower Runwal Garden City Kolshet Balkum, Thane-400607 PAN: AYLPS9554J | v. | Income Tax Officer Ward -3(5) Thane |
| (Appellant) | | (Respondent) |

Assessee by : Shri Abhay A Shastri

Department by : Shri Anoop Hiwase

Date of Hearing : 28.01.2020

Date of Pronouncement : 23.10.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 2, Pune [hereinafter in short "Ld.CIT(A)"] dated 03.10.2018 for the Assessment Year 2014-15.

2. Assessee in his appeal has raised following grounds: -

"1. The learned Assessing Officer & CIT (A) has erred in law by not referring the matter to DVO even after requested by the assessee.

2. *The learned Assessing Officer & CIT(A) has erred in not considering the fact about the disadvantaged to the location of the property in question.*

3. *The CIT(A) has erred in passing the Enhancement Order."*

3. Briefly stated the facts are that, the assessee sold property namely Sidhivinayak Darshan, Satrast, Mumbai on 06.05.2013 for an amount of ₹.30,00,000/-. After arriving at indexed cost at ₹.11,99,224/- assessee has reported long term capital gain of ₹.18,00,776/-. The long term capital gain was invested for purchase of new property and exemption u/s. 54 of the Act was claimed. However, the Assessing Officer noticed that the market value of the property is at ₹.61,00,000/- and sale consideration was reported only at ₹.30,00,000/-. Therefore, applying provisions of section 50C of the Act the stamp duty value of the property was considered as full value of consideration received as a result of transfer and accordingly the claim for exemption of ₹.18,00,776/- u/s. 54 of the Act was disallowed.

4. Assessee carried the matter before the Ld.CIT(A) and the Ld.CIT(A) held that valuation adopted by the stamp valuation authority at ₹.61,00,000/- has to be considered as the full value of consideration received and since the Assessing Officer in the assessment order has failed to add the differential amount of ₹.31,00,000/-, he directed the

Assessing Officer to make an addition of ₹.31,00,000/- while computing the capital gain as against the action of the Assessing Officer in denying the exemption claimed u/s. 54 of the Act.

5. Ld. Counsel for the assessee before us submitted that in the course of the assessment proceedings the assessee filed a letter on 28.12.2016 explaining how the assessee has arrived at the long term capital gain and made claim for exemption u/s. 54 of the Act. Ld. Counsel for the assessee referring to the said letter submitted that it was also brought to the notice of the Assessing Officer that the Ready Reckoner value of the said property is ₹.61,00,000/- which is very high since the market price is low as the property is in the vicinity of the Central Jail. In the circumstances no market value was received as per the Ready Reckoner. Ld. Counsel for the assessee further referring to the statement made before the Assessing Officer submitted that if the explanation of the assessee is not accepted, it was requested to review the valuation through Income Tax Office's Valuation Department to calculate the actual market value as on June 2013 for the said property. Therefore, Ld. Counsel for the assessee submits that in spite of request made by the assessee the lower authorities failed to refer the matter to the valuation in contravention of sub-section (2) of section 50C of the Act. Ld. Counsel for the assessee

also relied on the decision of the Mumbai Bench of the Tribunal in the case of Shri Abbas T. Reshamwala *v.* ITO in ITA.No. 3093/Mum/2009 dated 30.11.2009 in support of his contention.

6. Ld. DR vehemently supported the orders of the authorities below.

7. On hearing both the parties and perusing the orders of the Authorities below, we find that the assessee made a request before the Assessing Officer that if the explanation of the assessee is not accepted that the market value is less than the stamp duty valuation the valuation of the property may be referred to the valuation cell of the department to compute the market value. This was completely ignored by the Assessing Officer and also the Ld.CIT(A). Sub-section 50C(2) of the Act is very clear if the valuation of the property as arrived at by the stamp valuation authority is disputed by the assessee the Assessing Officer is duty bound to refer the valuation of the capital asset to valuation officer. In the case of Shri Abbas T. Reshamwala *v.* ITO (*supra*) the Tribunal had considered a similar situation and held as under:

"8. It is the submission of the learned DR that the Assessing Officer can refer the matter to the DVO only if the assessee claims that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property on the date of transfer and the value was adopted or assessed by the stamp valuation authority has not been disputed in any appeal or revision or no

reference has been made before any authority. According to him the twin conditions as per clauses (a) and (b) subsection (2) of section 50C are to be fulfilled for referring the matter to the DVO. Since there is no word "or" between sub clause (a) and (b) of subsection (2) of section 50C, therefore, the Assessing Officer was justified in not referring the matter to the DVO. However, we do not find much force in the above argument of the learned DR. It has been held by the various decisions of the co-ordinate Benches of the Tribunal that the word "may" used in sub-section (2) of section 50 has to be read as "should" and the Assessing Officer has no discretion but to refer the matter to the DVO for the valuation of the property when the assessee has raised an objection that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property. Since the assessee in the instant case has objected before the Assessing Officer in writing for substituting the value adopted by the stamp valuation authority, therefore, in our opinion the Assessing Officer should have referred the matter to the DVO as per the provisions of subsection (2) of section 50C of the Act. We, therefore, deem it proper to restore the matter back to the file of the Assessing Officer with a direction to refer the matter to the DVO and decide the issue afresh as per law. The Assessing Officer shall give adequate opportunity of being heard to the assessee while deciding the issue. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. Facts being identical respectfully following the said decision, we direct the Assessing Officer to refer the matter to the DVO for valuation of the property as per the provisions of sub-section (2) of Section 50C of the Act and to determine the capital gains in accordance with law. Grounds raised by the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

10. Before parting, we noticed that this appeal was heard on 28.01.2020 and the pronouncement is delayed due to lockdown in view of COVID-19

pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 23.10.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 23/10/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum