

THE INCOME TAX APPELLATE TRIBUNAL
"SMC-I" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 1707/Mum/2019 (Assessment Year 2014-15)

Shri Sanjiv B. Batra 105/106, B Wing 1 st Floor, Eldorado CHS, Kashinath Dhuru Street Prabhadevi Mumbai-400 025. PAN : AFLPB8113R (Appellant)	Vs.	ACIT- 3(2)(2) Aayakar Bhavan Room No. 608 6 th Floor Churchgate Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri Kailash Gaikwad
Date of Hearing	15.10.2020
Date of Pronouncement	26.11.2020

ORDER

This appeal by the assessee is directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 29.1.2019 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :-

1. On the facts and in the circumstances of the case, learned CIT(A) erred in confirming the addition made u/s. 50C of Rs. 11,27,000/- which be deleted.
2. The learned CIT(A) failed in not appreciating the provisions of section 50C are not attracted.

3. Brief facts of the case are as under :-

It was seen from the computation of income that the assessee company had incurred LTCL of Rs.25,46,523/- on the sale of property at Blue Ridge Flat, Pune. Vide notice u/s 142(1) dated 16.10.16, the assessee was asked to submit the sale agreement for the property at Blue Ridge Flat, Pune. It is seen

from the Sale agreement of the said property submitted vide letter dated 22.11.16 that the Market value of the said property is Rs.76,27,000/- while the sale consideration received is Rs.65,00,000/-.

4. In response the assessee disputed the stamp value computation and gave a detail working of computation as under :-

"The value for stamp duty taken at Rs. 76,27,000/- is a mistake. The stamp duty calculation is at page-10, clause-16 of the agreement. It will be seen that, the rate as per the Ready Recknoer is Rs. 57,100/- per sq. Mtr +15% i.e to say the effective rate is Rs. 65,665/- (57,100+15%-8565) multiplying the rate of Rs. 65,665/- with area 95.41 sq.mtr it comes to Rs. 62,65,097/-.

The value of the parking space is taken Rs. 1,08,500/-. Thus the total value of the property for the stamp duty would be Rs. 63,73,597/- (62,65,097+1,08,500). The total consideration received by our client for Sale is Rs. 65,00,000/-.

Without prejudice, the. calculation is taken as under:-

Area : 95,41 Sq.mtr.
Add: 15% i.e. : 14.31 Sq. mtr.
Total : 109.72

Taking the value of Rs. 65,665/- as calculated above, the amount for 109.72 sq.mtr it will be Rs. 72,04, 763/- the total value including parking space it will be Rs. 73,13,263/-. As per the provisions of section 55-A r.w.r 111 AA the difference if less than. 15%, between the agreement value and the stamp duty value is to be accepted and provisions of section 50-C would not be attracted.

The difference here on the base of second calculation would be Rs.8,12,263/- (73,13.263-65,00,000) with difference is less than 15% of i.e 15% of Rs. 65,00,000/- is Rs. 9,75,000/-. Further, there is Long term loss on sale of the property as per working herein below:-Index cost of Purchase : 90,46,525

(purchase value 56,07,110 purchased in 2008-09 index 939/ 582)
Less: Sale Value realized : 65,00,000
Long Term Loss : 25,4 6,523

Without prejudice, even if Stamp duty valuation is taken as "Sale Consideration" Rs. 76,27,000/- the Long Term Loss will be reduced as under:-

Index Cost	:	90,46,523
LESS: Stamp Duty valuation as sale value	:	76,27,000
Long Term Loss	:	14,19,523/-"

5. However the assessing officer rejected the above submission holding that as per section 50 C it was mandatory to adopt the valuation as per the stamp valuation authority. He held that if there was any mistake in the same assessee should have made the request to the stamp valuation stamp authority. In absence thereof he computed the capital gain adopting the value as per stamp valuation authority. Upon assessee's appeal learned CIT(A) confirmed the assessing officers order.

6. Against this order assessee is in appeal before the ITAT.

7. I have heard departmental representative. None appeared on behalf of the assessee despite notice. Upon careful consideration I note that assessee has duly disputed the valuation done by the stamp value authority. In such circumstances as per the provisions of section 50 C of the Act, it was incumbent upon the assessing officer to ask for the valuation of the concerned property by the Department valuation authority DVO. Since the assessing officer has not followed the mandate of law his order is not at all sustainable. Learned CIT(A) has also erred in upholding the same. In my considered opinion the interest of justice will be served if the issue is remitted to the file of the assessing officer. The assessing officer is directed to consider the assessee's submission and send the matter for valuation to the Department valuation authority. Thereafter assessing officer shall decide as per law. Needless to add the assessee should be granted adequate opportunity of being heard.

8. In the result appeal by the assessee stands partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 26.11.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/11/2020

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai