

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2743/Mum/2019

(A.Y: 2012-13)

Vivek Agnihotri 1505/1506, Amarnath Tower, Yari Road, Versova, Andheri (W), Mumbai.	Vs.	ITO 16(1)(5) Rm No. 439, 4 th Floor, Aayakar Bhavan, MK Road, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADYPA6052B		
Appellant	..	Respondent

Appellant by :	Shri Chetan Karia, AR
Respondent by :	Shri Sanjay Sethi, DR

Date of Hearing	17.02.2021
Date of Pronouncement	18.03.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 4, Mumbai, passed u/s. 143(3) r.w.s 147 and 250 of the Income Tax Act, 1961. The assessee has raised the only ground of appeal:

- 2 -

“ The Ld. CIT(A) is not justified in upholding the addition of long term Capital gains of Rs. 26,73,600/- on the sale of property at Bhopal.

2. The brief facts of the case are that, the assessee is engaged in the business of producing motion pictures and feature films. The return of income was filed for the A.Y 2012-13 on 13.04.2016. Subsequently, the case was selected for scrutiny and notice u/s 143(2) of the Act was issued and the assessment was completed u/s 143(3) of the Act on 28.02.2015. Whereas, the A.O. has received information from the office of I&CI, Bhopal that the stamp duty valuation determined in respect of property sold by the assessee by the SDVA authorities was Rs. 2,68,05,200/-as against Rs. 2,07,00,000/- disclosed by the assessee as the sale consideration. Therefore, the A.O has reason to believe that the income has escaped assessment and the notice u/s 148 of the Act was issued. In response, the assessee filed a letter mentioning that the return of income filed u/s 139(1) of the Act has to be treated as the return of income filed in compliance to the notice u/s 148 of the Act.

- 3 -

3. The A.O has issued the notice u/s 143(2) and u/sec142 (1) of the Act. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details. The A.O found that the assessee has sold the property below the market value and disclosed the consideration of Rs. 2,07,00,000/-,whereas the market value of property as per Sub-Registrar, Bhopal is Rs. 2,68,05,200/-. Hence the A.O. has issued show cause notice for applying the provisions of Sec. 50C of the Act on sale transaction. The assessee has filed a letter dated 22.06.2016 mentioning that the stamp duty valuation of the property does not reflect the true fair market value of the property and therefore sale consideration disclosed in the sale deed is correct value. Subsequently, the A.O. finds that the assessee is agitated against the value determined by the registering authorities. Therefore A.O. has sent the details to Department Valuation Officer (DVO) Bhopal u/sec 55A(a) of the Act for proper valuation of the property. Whereas, the valuation officer of the Income Tax Department Bhopal vide letter dated 28.11.2016 has intimated that the fair market

value of the property is Rs. 2,39,73,600/-Finally the A.O. relied on market value determined by the valuation officer, and has worked out taxable long term capital gains of Rs. 26,73,600/-and assessed the total income of Rs. 46,33,740/- and passed the order u/s 147 r.w.s 143(3) of the Act on 08.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal with the Ld. CIT(A). In the appellate proceedings the CIT(A) considered the grounds of appeal and findings of the A.O and the submissions of the assessee and placed reliance on the judicial decisions and confirmed the action of the A.O and dismissed the assessee's appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal with the Hon'ble tribunal.

5. At the time of hearing, the Ld. AR of the assessee submitted that the CIT(A) has erred in dismissing the appeal irrespective of the fact that the market value as determined by the valuation officer (DV)) is not applicable as the schedule property is in litigation and cross claims suits are filed before the District

- 5 -

Court Bhopal. The Ld.AR submitted that the assessee father has expired on 05.06.2008 and by virtue of his will, the assessee became the owner and the said will was disputed by other family members, but both the cross suits filed were dismissed on 28.01.2014. Further the valuation officer estimated the fair market value of the property of Rs. 2,39,73,600/-which cannot be adopted as the property fetches lower value than the stamp duty value. The disputed property was occupied by the bother-in-law of the assessee and refused to vacate the property. The assessee did not wish to keep the property at Bhopal as both his parents were expired and decided to sell the property as it is basis. As the property is occupied by the assessee's brother-in-law and the assessee has filed a suit in the District court and nobody was coming forward to purchase the property. The assessee was forced to make a distress sale and the A.O has not accepted the assessee's contentions. Further, Ld.CIT(A) has not accepted the registered Valuer report Dt12-02-2018 filed by the assessee in the appellate proceedings, which has a significant effect on determining the value

considering the litigation and distress sale. The Ld. AR supported the submissions with paper book and judicial decisions and prayed for allowing the appeal.

6. Contra, the Ld. DR supported the order of the CIT(A) and emphasized that the value adopted by the A.O. as per DVO valuation report is correct and final.

7. We heard rival submissions and perused the material on record. The sole crux of the disputed issue being applicability of provisions of section 50 C of the act and adoption of the market value as per valuation report of DVO Bhopal. The Ld.AR contentions are that the A.O has adopted fair market value as determined by the valuation officer Income Tax Department, Bhopal of Rs. 2,39,73,600/.Where as the assessee considering the facts, district court suits filed and distress sale has sold the property for a sale consideration of Rs. 2,07,00,000/-. The Ld.AR referred to page 87 of the paper book, where the order dated 28.11.2016 u/s 50C(2) of the Act r.w.s 16A(4) of the Wealth Tax Act

was passed by the valuation officer income tax department Bhopal. The Ld. AR emphasized that the assessee was not provided with information and the court litigation was overlooked by the Authorities. We find that the Ld. AR submissions are supported with the litigations filed before the court of law. Further the Ld.AR referred to registered valuation report dated 12-02-2018 at page 93 of the paper book filed before the Ld.CIT(A) in the appellate proceedings and additional evidence was not accepted. The Ld.AR mentioned that many factors are not considered by the valuation officer and the assessing officer and therefore prayed for an opportunity be provided to substantiate the claim with evidences before the income tax authorities. Therefore to meet the ends of the justice, we shall provide one more opportunity to the assessee to substantiate his claim. Accordingly the order of the CIT(A) is set aside and for the limited purpose, we restore the disputed issue to the file of the A.O to consider the submissions and evidences and the assessee should be provided with adequate opportunity of hearing and cooperate in submitting

- 8 -

the information and allow the ground of appeal of the assessee for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.03.2021

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 18.03.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	09.03.21		PS
2.	Draft placed before author	10.03.21		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			