

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

| |
|---------------------------|
| ITA No. 368/Bang/2019 |
| Assessment year : 2016-17 |

| | | |
|---|-----|---|
| Shri Basavaraj Gurunanjaiah Hiremath, H.No.1-891/70/98, Om Nilaya, Corporation Layout, Gulbarga – 585 102. PAN: ABBPH 6333B | Vs. | The Income Tax Officer, Ward 1 & TPS, Gulbarga. |
| APPELLANT | | RESPONDENT |

| | | |
|---------------|---|--|
| Appellant by | : | Shri K. Mallaha Rao, Advocate |
| Respondent by | : | Shri Priyadarshi Mishra, Addl. CIT(DR)(ITAT), Bengaluru. |

| | | |
|-----------------------|---|------------|
| Date of hearing | : | 15.09.2021 |
| Date of Pronouncement | : | 27.09.2021 |

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals), Kalaburagi dated 27.12.2018 for the assessment year 2016-17.

2. The first issue for consideration is with regard to sustaining the addition of Rs.36 lakhs by invoking the provisions of section 50C of the Income-tax Act, 1961 [the Act] sustained by the CIT(Appeals).

3. In the assessment year under consideration, the assessee sold a property bearing 4/94 admeasuring 7787.14 sq.m. situated at Sy.No.61/2 & 61/3 of Sirnoor Village, Kalaburagi Taluk & Dist. On 23.11.2015 for a consideration of Rs.48 lakhs. However, it was noticed by the AO that the said property was registered at a stamp duty valuation of Rs.84 lakhs. The AO brought this difference as additional capital gain by invoking the provisions of section 50C of the Act.

4. The assessee has filed application for admission of the additional evidence of the copy of Cash Book statement for the period 1.4.2016 to 31.3.2017 and the following documents:

| Sl. No. | Description |
|---------|---|
| 1 | The Copy of the Income Tax Returns for the Assessment Year 2015-16 along with Statement of Income. |
| 2 | The Copy of the Income Tax Returns for the Assessment Year 2016-17 along with Statement of Income. |
| 3 | The Copy of the Balance Sheet and Profit and Loss Account for the Assessment Year 2015-16. |
| 4 | The Copy of the Loan Ledger Statement for the relevant for Period. |
| 5 | The Copy of the Bank Account of Vijaya Bank for the Assessment Year 2015-16 along with Statement of Income. |
| 6 | The Copy of the Agreement For Sale dated 03.06.2013 between Basavaraj and Raghavendra. |
| 7 | The Copy of the SaleDeed dated 23.11.2015 between Basavaraj and Raghavendra. |

5. In the application under Rule 29 of the Appellate Tribunal Rules, 1963 the assessee has submitted that due to inadvertence the above documents were not filed before the lower authorities and prayed for

admission of the same. We have gone through the additional evidence and admit the same for the purpose of adjudication.

6. The assessee submitted that the assessee entered into agreement for of sale of property on 3.6.2013 under which the property was agreed to be sold by the assessee for a consideration of Rs.48 lakhs out of which Rs.51,000 has been received by the assessee as advance in cash from the Purchaser. According to the assessee, the transfer took place vide sale agreement on 3.6.2013 and not vide Sale Deed dated 23.11.2015. He placed reliance on section 47 of the Indian Registration Act, 1908 which provide that registered document shall operate from the time when it would have commenced to operate, if no registration thereof had been required or made, and not from the time of its registration. According to him, in the assessment year under consideration the provisions of section 50C cannot be invoked. For the purpose he relied on the order of the Tribunal in the case of *Sri Ayi Vaman Narasimha Acharya in ITA No.1527/Bang/2019 dated 10.2.2021* wherein it was held as under:-

“8. I have given a careful consideration to the rival submissions and I find that the sale deed in the present case was executed by the assessee selling two shops at Cavalry Road on 10.08.2009. The sale deed operates from the date on which it was executed and there are no covenants regarding the period of operation of sale under the sale deed to have been postponed. Because of dispute with regard to valuation, the registration could be completed only on 26.06.2010. That will not postpone the date of vesting of title in favour of the transferee from the date of sale. As per section 47 of the Indian Registration Act, 1908, the sale by the assessee to the transferee would operate from 10.08.2009. Therefore transfer by way of sale of the property took place on 10.8.2009.

9. Under section 45(1) of the Act, the charge on capital gain is in the year of transfer. Section 45(1) of the Act clearly lays down that any gain arising on the transfer of the capital asset effected in

the previous year shall be chargeable to income tax under the head "capital gain" and shall be deemed to be the income of the previous year in which the transfer took place. Section 2(47) of the Act defines transfer which includes a sale. The transfer in the present case is "sale" and since sale in the present case has taken place in the previous year relevant to Assessment Year 2010-11, the capital gain in question cannot be brought to tax in Assessment Year 2011-12. This aspect has been accepted by the AO in the order of assessment. Because the assessment for Assessment Year 2010-11 was barred by time and could not be reopened, he resorted to the provisions of Sec.50C of the Act and taxed deemed accrued capital gain. Section 48 of the Act lays down that capital gain has to be computed by reducing from the full value of consideration received or accruing as a result of transfer expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of improvement if any. Sec.50C of the Act is a Special provision for full value of consideration certain cases and it lays down that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority:") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Sec.50C of the Act substitutes the full value of consideration received or accruing on transfer which otherwise would be the value as envisaged u/s.48 of the Act. Sec.50C of the Act is therefore an exception to Sec.48 of the Act in certain circumstances. Section 50C of the Act does not operate to change the year of transfer as laid down in section 45(1) of the Act.

10. Section 45 of the Act is a charging section as far as capital gain on transfer of capital asset is concerned. Section 48 is a machinery or computation provision. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 of the Act to be a subject of charge. This inference flows from the general arrangement of the provisions in the Act whereunder each head of income the charging provision

is accompanied by a set of provisions for computing the income subject to that charge. Referring to the fundamental integrality of the statutory scheme provided for capital gains, the Supreme Court observed in B.C. Srinivasa Betty's case 128 ITR 294 (SC) at p. 299 of the report;

"Section 45 charges the profits or gains arising from the transfer of a capital asset to income-tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings s. 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge, Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by s. 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by s. 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income-tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. **Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section.** Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the

construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head.” (emphasis supplied)

The reverse inference that can be drawn on the basis of the aforesaid observations underlined, is that if there is no charge to tax on capital gain in AY 2011-12 u/s.45(1) of the Act, the computation provision u/s.48 of the Act, cannot operate to create a charge.

11. The decision referred to by the learned Counsel for the Revenue of the Calcutta High Court is on different facts and not applicable to the present case. In the case of Bagri Impex (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-9, Kolkata, (2013) 31 taxmann.com 39 Calcutta, the facts were that the Assessee was owner of 2/5th share in a land situate at Kolkata. The case of the assessee was that the land in question or the interest of the assessee was agreed to be sold on 15th October, 1996 to 15 several buyers. Deeds of conveyance in favour of five buyers were executed on 15.1.1998. The balance 10 deeds of conveyance were executed on 26th May, 2006 and registered on 27th November, 2007. The stamp duty was assessed on 27th November, 2007. The assessee offered capital gain on sale for taxation in AY 2006- 07. Therefore in AY 2006-07 neither the sale deed was executed nor registered. The AO applied the provisions of Sec.50-C of the Act and determined capital gain based on the value adopted by the registering authority for the purpose of stamp duty and registration charges. Case of the assessee was that it had received money before executing the deed of conveyance and therefore the provisions of Sec.50C of the Act were not applicable. Sec.50C of the Act was inserted by the Finance Act, 2002 w.e.f 1-4-2003 and was as follows:

"Special provision for full value of consideration in certain cases. 50C.(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority:") for the purpose of payment

of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."

The provisions were amended by the Finance Act, 2009 w.e.f 1-10-2009 by adding the word "Assesseable" after the word adopted or assessed. After the amendment with effect from 1st October, 2009 the provision of Section 50C stood as follows:

"Special provision for full value of consideration in certain cases. 50C.(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority:") for the purpose of payment of stamp duty in respect of such transfer, **the value so adopted or assessed [or assessable]** shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."

The case of the assessee was that the provision of Section 50C has no manner of application because on the date when he received the money by way of sale proceeds neither the deed of conveyance had been executed and naturally it could not have been registered on that date. The Hon'ble Calcutta High Court had to decide the following substantial question of law: viz.,

"Whether, on the facts and circumstances of the case, the learned Tribunal was justified in law in not considering that the words "or assessable" was introduced in section 50C(1) of the Income Tax Act, 1961 with effect from 1st October, 2009 and thus erred in taking the value of the capital asset as assessed by the Stamp Valuation Authority on 27th November, 2007 instead of actual transfer price for the relevant assessment year 2006-07?"

The Court held as follows:

"7. We have not been impressed by this submission. It is true that 'Transfer' has been defined in Section 2(47) quoted above. But the aforesaid definition was made before Section 50C was introduced to the Income Tax Act.

After section 50C was introduced in the year 2003, the value of the land or building or both sold or otherwise transferred has to be the value assessed by the authority of the State Government for the purpose of stamp valuation. The submission that in the financial year 2005-06 when the consideration was received, the Deed of Conveyance had not even been executed has not found favour with us for the simple reason that the intention of the Parliament is that in a case where the land or building or both are sold or otherwise transferred, such transfer shall be deemed to have taken place only after the stamp duty has been assessed by the State Government, because it is on the valuation made for the purpose of stamp duty that the tax is payable under the Income Tax Act. The amendment made in the year 2009 may have made the things simpler, but the intention of the legislature was very clear from the beginning that the value for the purpose of income tax shall be the same as the value for stamp duty. By adopting devices to defeat the provision, the assessee cannot be heard to contend that section 50C would not be applicable merely because the Deed of Conveyance had not at that time been executed or registered. The contention that the property stood transferred in the financial year 2005-06 when the sale proceeds were received on the basis of the definition appearing from s.2(47)(v) of the I.T. Act is without any substance for reasons already discussed. The assessee itself did not follow s.2(47)(v) of the I.T. Act because it did not offer the transfer for taxation in the year 1996 when the possession is claimed to have been made over on the basis of the agreements for sale in accordance with s.2(47)(v) quoted above. Designs to evade tax cannot be permitted. The Assessing Officer on the date of assessment for the assessment year 2006-2007 had before him the valuation made by the State for the purpose of stamp duty and rightly applied the same.”

12. The aforesaid decision is not applicable to the facts of the present case as there was no device adopted by the Assessee to ensure that provisions of Sec.50C of the Act were not applicable to his case. Secondly, the registration was completed in the case before the Hon’ble Calcutta High on 27.11.2007 i.e., in AY 2008-09 but the case before the Hon’ble Court related to AY 2006-07. The Court was interpreting the term “assesseeable” and countered the contention of the Assessee that prior to the amendment of

Sec.50C of the Act w.e.f 1-10-2009, it is only cases where the valuation is completed in the relevant AY that provisions of Sec.50C of the Act can be applied. In the present case, no such device to evade tax has been pleaded by the revenue nor a plea has been taken by the Assessee that sale having taken place earlier to the execution or registration of sale , provisions of Sec.50C of the Act are not applicable. As rightly contended by the learned Counsel for the assessee, it was a decision rendered on the scope of amendment to section 50C of the Act w.e.f. 01.10.2009.

13. The decision referred to by the learned DR in the case of J.Appa Rao(supra) is a case where it was held that applicability of the provisions of Sec.50C of the Act is mandatory w.e.f .1-4-2003. This decision does not in any way support the case of the revenue regarding the year in which capital gain is liable to be taxed.

14. For the reasons given above, I hold that the capital gain in question cannot be brought to tax in Assessment Year 2011-12. The Revenue authorities erred in bringing to tax the capital gain in Assessment Year 2011-12. The addition made by the AO is accordingly directed to be deleted.

15. In the result, appeal by the assessee is allowed.”

7. According to him, if it is considered that the transfer took place on the date of agreement i.e., 3.6.2013, the difference between actual sale consideration and Sub-Registrar valuation is negligible, as such there cannot be any addition u/s. 50C of the Act. For this purpose, he relied on the decision of *Sri Sandeep Patil in ITA No.924/Bang/2019 dated 9.9.2020* wherein it was held as under:-

“8. We heard the rival contentions and perused the record, A specific query was put to Ld. A.R. as to whether the third proviso to section 50C(1) of the Act can be applied to section 56(2)(vii)(b) of the Act in the absence of such proviso in that

section. The Ld. A.R. submitted that the provisions of section 50C of the Act are applicable in the hands of the seller and provisions of section 56(2)(vii)(b) are applicable in the hands of buyer in respect of very same transaction of transfer of land or building. Hence, there could not be two different "fair market value" in respect of the very same property, i.e. one in the hands of the seller and another in the hands of the buyer. Accordingly, he submitted that the principles applied to determine the fair market value of the property in the hands of the seller should equally be applied in the hands of buyer also. 9. We find merit in the explanations given by Ld. A.R. We notice that the Mumbai bench of Tribunal has examined an identical issue in the hands of John Fowler India Pvt. Ltd. (supra) and, by following the decision rendered by Jaipur Bench in the case of Smt. Sita Bai Khetan Vs. ITO (ITA No.823/JP/2013 dated 27.7.2016), the Tribunal has held that the difference between the value adopted by stamp valuation authority and actual consideration is to be ignored as the same is less than 10%. For the sake of convenience, we extract below operative portion of the order passed by Mumbai bench. "We have heard the rival submissions and perused the orders of the authorities below and the case law relied on. Considering the entire facts of the assessee's case, the submissions of the assessee cannot be ignored. The sale consideration of these two plots sold on the same day though be separated agreements, is more than the stamp duty valuation by Rs. 3,00,00,000/-. Even assuming for a movement that the sale consideration in respect of Plot in survey No. 22 and 42 is less than the stamp valuation it is Rs. 33,48,284/- which is less than 10% of the stamp duty valuation of the said plot. Therefore, in view of the ratio of the decisions relied on by the assessee, the assessee should succeeded in its appeal. The Jaipur Bench in the case of Smt. Sita Bai Ketan (Supra) held as under:-

"4.2 We have heard rival contentions and perused the material available on record We find that the Hon'ble coordinate Bench in ITA No. 1,543/PN/2007 in the case of Rahul Constructions Vs. DCIT (Supra) has held as under:-

"We find that the Pune Bench of the Tribunal in the case of Asst. vs. Harpreet Hotels (P) Ltd. Vide ITA No. 1156- 1160/Pn/2007 and relied on by the learned counsel for the assessee had dismissed the filed by

the Revenue where the CIT(A) had deleted the Unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. KaadduJayghoshAppasaheb, the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. Vs, UT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs. 20,55,000/- as against the actual sale consideration of Rs. 149,00,000 disclosed by the assessee. We, therefore, set aside the order of the CIT(A) and direct the AO to take Rs. 19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed"

In the instant case, the difference between the valuation adopted by the Stamp Valuation Authority and declared by the assessee is less than 10%. Therefore, respectfully following the decision of the Hon 'file Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessed is allowed".

8. Therefore, respectfully following the said decision we direct to AO to adopt the valuation of sale consideration as declared by the assessee. The additions made by the Assessing Officer u/s. 50C is deleted and as grounds raised by the assessee are allowed. “

10. We also notice that the Parliament has introduced third proviso in section 50C(1) of the Act, as per which the difference in stamp duty valuation and actual consideration should be ignored, if it is less than 5%/10%. Even though the said provision has come into effect from 1.4.2019/1.4.2021, we notice that the Kolkata Bench of Tribunal has held it to be curative in nature in the case of Chandra Prakash Jhunjhunwala (supra) and accordingly held that the proviso shall apply since the date of insertion of sec.50C of the Act. Accordingly, the above said reasoning given by the Kolkata bench of ITAT also supports the contentions of the assessee.

11. In view of the foregoing discussions we find merit in the prayer of the assessee. We notice that the addition of Rs.15,92,800/- sustained by Ld CIT(A) works out to less than 10% of the actual consideration of Rs.2,33,00,000/- paid by the assessee. Accordingly, we modify the order passed by Ld. CIT(A) and direct the A.O. to ignore the difference between fair market value determined by CIT(A) and the actual consideration as the same is less than 10% of the actual consideration.

12. In the result, the appeal filed by the assessee is allowed.”

8. On the other hand, the Id. DR submitted that the sale agreement produced before the lower authorities dated 13.6.2013 cannot be relied upon wherein the assessee received Rs.51,000 by way of cash out of sale consideration of Rs.48 lakhs. Further he submitted that payment shown in the sale agreement at Rs.51,000 which proves that this agreement is not genuine which was executed on Rs.2/- non-judicial stamp paper. According to him, it is a made believe story which cannot be given any credence to hold that assessee entered into sale agreement with the buyer on 3.6.2013. He relied on the orders of lower authorities.

9. We have heard both the parties and perused the material on record. The first proviso to section 50C of the Act reads as follows:-

“Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:”

10. The case of the assessee is that the capital asset in question was sold by the assessee vide agreement dated 3.6.2013 and not by Sale Deed dated 23.11.2015 and the value mentioned in sale agreement dated 3.6.2013 to be adopted instead of value shown in Sale Deed dated 23.11.2015 for determining the capital gain.

11. In the present case, the assessee wants take advantage of first proviso to section 50C of the Act that transfer took place vide sale agreement dated 3.6.2013 and not on 23.11.2015. The date mentioned in the sale agreement to be considered and corresponding valuation on that date to be valued. In our opinion, the assessee adopted colourable device to avoid tax by producing the sale agreement dated 3.6.2013 which is executed on Rs.2/- non-judicial stamp paper and payment of Rs.51,000 was made by cash. Being so, we cannot give any credence to this agreement, though it was in writing. The plea of the assessee that transfer having taken place earlier to execution and registration of sale deed cannot be appreciated. Accordingly, we are of the opinion that the facts and circumstances of the case shows that the assessee has actually has executed the transfer of impugned property only through Sale Deed dated 23.11.2015, as such the AO rightly applied the valuation as applicable on this date. We do not find any infirmity in the order of the lower authorities and the same is confirmed.

12. The next ground is with regard to sustaining addition of Rs.27,80,163 u/s. 68 of the Act. The assessee has shown cash deposit into bank account for the demonetization period from 9.1.2016 to 30.12.2016 at Rs.23,61,630. The cash balance of assessee shown in the return of income was Rs.27,80,183 as on 31.3.2016. The AO considered this amount as unexplained u/s. 68 of the Act.

13. Before us, the assessee submitted that the assessee availed the following loans and deposited into the bank account and withdrawn the same for redeposit into bank account :-

| S. No. | Name of the bank / Financer/Lenders | Loan A/c No. | Date of loan | Loan amount | Outstanding as on 31.3.16 | Mode of loan taken | Purpose of loan |
|--------|-------------------------------------|--------------|--------------|-------------|---------------------------|--------------------|------------------------|
| 1 | Karnataka Credit Co-op. Bank | 402 | 30.12.20 | 20,00,000 | 20,00,000 | Ch No.850413 | Family and/or business |
| 2 | Shree Samarth Finance | CD/28/15 | 26.05.2015 | 5,00,000 | 5,00,000 | Transfer | Family and/or business |
| 3 | Suvarna Financers & Invest Corp | CD/113/15 | 30.11.2015 | 5,00,000 | 5,00,000 | Transfer | Family and/or business |
| 4 | Suvarna Financers & Invest Corp | CD/119/15 | 17.12.2015 | 6,00,000 | 6,00,000 | Transfer | Family and/or business |
| 5 | Suvarna Sai Finance | CD/23/15 | 27.05.2015 | 5,00,000 | 5,00,000 | Transfer | Family and/or business |

14. He also drew our attention to cash book filed before us to show that it was duly reflected in the cash book and redeposited in the bank account. In our opinion, these are additional evidence to be examined at the end of the AO. Therefore, we set aside the orders of lower authorities and remit the issue to the AO for re-examination and fresh decision in accordance with law.

15. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 27th day of September, 2021.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th September, 2021.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.