

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.5384/Del/2016
[Assessment Year : 2012-13]**

Manjeet Singh Bali, C/o-Ravi Kumar & Co., CAs, House No.64, Sector-9, Ghaziabad-201001. PAN-ACEPB5753B	vs	ITO, Ward-1(4), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	S/Shri Gagan Kumar & Vivek Kumar, Advocate	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	11.05.2022	
Date of Pronouncement	11.05.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A), Ghaziabad dated 30.08.2016. The assessee has raised following grounds of appeal:-

1. *"Because the assessee has let out the said shop inasmuch as not having its possession with him at the time of sale. As the tenant was not vacating the said shop and the old age of the assessee was not permitting him to regularly follow up the tenant for getting the shop vacated, therefore, considering the circumstances, the assessee decided to sell the shop to the tenant at mutually agreed price of Rs.5,25,000/-. It is a general phenomenon that any occupied property will always fetch lesser price.*
2. *Because it was a case of Distress sale to old tenant in occupation for more than four years having possession of the shop. It is further evident by the fact that it is stated in the body of sale deed. Copy of the same was filed at the time of assessment which states on the page no.4 of the sale deed states as follows.*

3. *Because provisions of Section 50C of the Income Tax Act, 1961 for considering the value assessed by stamp duty authority as deemed consideration for computation of capital gain on sale of property are subjective to the facts and merits of the case. That the Assessing Authority could have referred the matter to the valuation officer u/s 50C(2) of the Income Tax Act, 1961. The facts of the case were brought to the knowledge to the learned assessing authority.*
4. *Because the assessee was not made aware by the counsel of the financial implication of paying capital gain tax based on the stamp duty valuation. It is therefore pleaded that the assessee may not be precluded from pursuing his case in the appellate authority. His obligation to pay capital gain tax based on actual valuation and relief got to be restored. It was a case of distress sale to an old tenant in possession of the shop.*
5. *Because the Counsel for the reason of his old age on a gesture though to the addition and computation u/s 50C but subject to the assurance that interest and penalty shall not be levied. However, in the assessment order itself interest u/s 234A amounting to Rs.7,026/- and u/s 234B Rs.96,022/- totaling to Rs. 1,03,048/- has been imposed. The assessee has never been personally present before the A.O. during the length of assessment proceedings.*
6. *Because further more notice u/s 271(c) for imposition of penalty has also been issued. Though reply to the penalty notice was filed on 08.09.2015 yet no order was passed on the same. Now, there is a repeat notice dated 14.09.2016 which also has been since replied. Therefore, the enforceability of the request gets diluted under the circumstances. Hence, addition in the present case does not remain on agreed basis and assessee should be free to avail the course of natural justice on the basis of better legal advice. The Appellant has filed an affidavit on record before the 1st Appellate Authority and deposed the above stated facts on oath.*
7. *That we have placed our reliance in the case of R.T. Balasubramaniam Vs. Income Tax Officer 1994 50 ITD 513 Mad. Whereat the facts has been stated as follows: "In view of certain deficiencies in some of the*

accounts, assessing officer made estimated additions to cover the defects. Aggrieved by the said additions, the assessee preferred appeals before the Deputy Commissioner (Appeals). According to the Deputy Commissioner (Appeals), at the time of the hearing of the appeals the assessee's counsel, Shri V, had pleaded that though the assessee's case was a case for addition for all the assessment years under consideration, the additions made were excessive. The Deputy Commissioner (Appeals) dismissed the appeals by observing that in the appellant's case it cannot be said that he is aggrieved as the additions made by the Income Tax Officer were agreed by the AR of the appellant whose actions are binding on the appellant.

It has been Held that: The assessee would not normally have any grievance against an assessment order if the same was made on the basis of an agreement made by himself. In the instant case the agreement with regard to the additions was not made by the assessee himself but by his authorized representative. As such, it cannot be said that no appeal lies against the order of assessment made by the assessing officer on the basis of an agreement made by the assessee's authorized representative, even if such an assessment order had caused grievance to the assessee. This being so, it cannot be said that the assessee is not aggrieved by the orders of assessment made by the assessing officer on the basis of the agreement made by the authorized representative and consequently he cannot be denied the right of vindicating his grievance before a higher forum. CIT v. Indian Express (Madurai) (P) Ltd.(1983) 140 ITR 705 (Mad applied).

8. *Because section 50C(1) uses word 'Deemed'. We refer to the Supreme Court decision in the case of Consolidated Coffee Ltd. vs. Coffee Board (198) 3 SCR 625 whereat it has been held that "A legal fiction can be utilized in several ways wherein the word "deemed" is used. However, the mere use of the word "deemed" is not itself sufficient to set us a legal fiction stating that the word 'deemed' is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purposes of creating a fiction. A*

deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision”.

9. *Because we place our reliance in the case of R. Suhasini Bheemunipatnam Vs. DCIT whereat it has been stated that: “the word “MAY” in section 50C(2) shall be considered as “SHALL” and A.O. is duty bound to refer the matter to the valuation cell”. Further C.I.T is also empowered to refer the matter to DVO, if not referred earlier.*
10. *Because in the case of distress sale if the actual sales consideration is not taken for the purpose of computing capital gain then by invoking provision of Section 50C(2) the matter is referred to DVO for the valuation and the value of sales consideration is taken accordingly. We place our reliance in the case of Appadurai Vijayaraghavan Vs. JCIT 2014.*
11. *Because in the case of CIT v. Indian Express (Madurai) (P) Ltd.(1983) 140 ITR 705 (Mad) it has been stated that: “the appellate authorities perform precisely the same functions as the assessing authority”. Quote.*
12. *Because reliance was placed in the case of C.I.T Vs. Kanpur Coal Syndicate 1965 AIR 325 SC where SC has held that “The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is coterminous with that of the Income tax officer. He can do what the Income tax officer can do and also direct him to do what he has failed to do.” The above decision has been further followed in the case of DC Sales Tax Vs. Abdul Salam 1988 69 STC 144 Ker.*
13. *Because we placed our reliance on circular no. 14(XL) 35 1955 dated 11.4.1955 of CBDT which states that Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer*

where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department.

14. *Because the Appellant has filed ample evidence and facts to substantiate the fact that it is case of distress sale. The appellant has rebutted by affidavit and other evidence that he has not agreed for assessment of Capital Gain Tax u/s 50C(2). The AO could have exercised his opinion to refer the matter to DVO based on fact and circumstances of the case.*
15. *Because the appellate authority has failed to discuss or distinguish the case laws relied upon by the appellant, the order passed by CIT (Appeals) Ghaziabad suffers from legal infirmity.*
16. *That charge of interest u/s 234A and 234B of the Income Tax Act by the A.O. is also unwarranted under the facts of the case. We submit that claim of interest may kindly be waived.*
17. *That no coercive action may kindly be taken against super senior citizen having hardly any income till disposal of this application to complete the assessment and levy of capital gain tax on the basis of deemed consideration. Furthermore any action u/s 271(c) may also be kept in abeyance till then.*
18. *That the Appellant seeks leave to add, amend, delete or alter any grounds of appeal petition at the time of hearing of appeal, if deemed necessary, in the interest of justice and equity.”*

2. The only effective ground in this appeal is against the adoption of stamp valuation in respect of the sale of shop by the assessee and computing Long Term Capital Gain (“LTCG”) at Rs.11,74,995/-.

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”) after recording of reasons placed on record and notice u/s 148 of the Act was issued to the

assessee. In response to the notice, issued u/s 148 of the Act, the assessee filed return of income on 20.01.2015 declaring total income of Rs.2,46,270/-. The Assessing Officer ("AO") noticed that during the year under consideration the assessee had sold a shop at 92, Dharampura, Ghaziabad for a sale consideration of Rs.5,25,000/- and has declared LTCG of Rs.1,09,995/- on such transfer. However, the Stamp Valuation Authority has adopted the value at Rs.15,90,000/-. Therefore, by invoking the provision of section 50C of the Act, the AO made addition of Rs.11,74,995/- as the LTCG and assessed the income at Rs.13,11,267/- by taking the fair market value of property at Rs.15,90,000/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, rejected the appeal of the assessee and affirmed the view of AO.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

6. Ld. Counsel for the assessee submitted that the assessee is an old person and is about 82 years old, suffering from several diseases and is childless. He contended that the assessee had given a small shop on rent and the tenant was not vacating the shop despite various efforts. Hence, the assessee was forced to sale the shop at a lower price. Ld. Counsel for the assessee submitted that the sale was out of distress and section 50C of the Act would not apply for such transaction. Ld. Counsel for the assessee further contended that the assessee may be given an opportunity to prove that the sale was made in distress. He submitted that merely Stamp Valuation Authority has adopted a particular value it would not *ipso facto* conclude the issue regarding fair market value of property

in question. He further submitted that the issue of valuation adopted u/s 50C of the Act is rebuttable. Ld. Counsel for the assessee placed reliance on various case laws and more particularly on the following decisions of the Division Bench of the Tribunal:-

- [i] *Smt.R.Suhasini vs DICT in ITA No.351/Vizag/2011 order dated 06.12.2013;*
- [ii] *ITO vs Southern Steel Ltd. In ITA No.1220/Hyd/2016 order dated 10.11.2017; and*
- [iii] *Krithika Lingappan vs ITO in ITA No.2959/Chny/2018 order dated 21.03.2019.*

7. Ld. Counsel for the assessee drew my attention to the decision of *Krithika Lingappan vs ITO* (supra) at paras 9 & 10. To buttress the contention, section 50C of the Act would not be applicable under the facts and circumstances of the present case. He further submitted that the assessee being a very old person, a liberal approach ought to have been adopted by the authorities below.

8. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. Ld. Sr. DR submitted that the assessee has not made any objection against the adoption of value of Stamp Valuation Authority before the AO. He contended that at such belated stage, the prayer contention of the assessee should not be allowed.

9. I have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The contention of the Ld. Counsel for the assessee is that the assessee is a very old person and under extra-ordinary circumstances, the assessee had sold his shop to the tenant which was occupied by him for many years. The assessee was not capable of taking strong steps against such person. However, the efforts made by the assessee did not bear

any fruitful result. On the pointed query regarding that what steps the assessee had taken before selling the shop to the tenant for getting the same vacated. Ld. Counsel for the assessee submitted that the matter may be restored to the AO in the interest of justice and the assessee should be given liberty to place requisite details and evidences to prove that the shop was sold in distress. To this proposal, Ld. Sr. DR has no objection. I find that the Division Bench of the Tribunal in the case of *Krithika Lingappan vs ITO* (supra) has held as under:-

9. *“Admittedly, the circumstances under which the sale deed executed by the assessee through her father Col. V.N. Lingappan is a distress sale. The Assessing Officer himself recorded the same in the impugned order at para 5 which reads as follows: —*

"5. The above submission of the assessee has been carefully perused. Though it seems that the assessee had sold the property under pressure, the provision of Section 50C is clear that if the sale value is less than the valuation adopted, assessed or assessable by the stamp duty authorities, the valuation as adopted, assessed or assessable by the stamp duty authorities will be considered for the purpose of computation of capital gains arising in transfer of property. In this case the value assessed by the SRO office was Rs. 63,14,500/-. Hence as per section 50C of Income-tax Act 1961, the sale value for calculating capital gain is taken Rs. 63,14,500/-."

10. *When the property was sold under pressure and the circumstance which was rated above, this Tribunal is of the considered opinion that adopting guideline value under Section 50C of the Act is not called for. Under normal circumstances, this Tribunal would have remitted back the matter to the file of the Assessing Officer for referring the matter to the valuation officer. In this case, we are not doing so since the Assessing Officer himself accepted that the property was sold under pressure. This Tribunal is of the considered opinion that remitting back the matter to the file of the Assessing Officer for the purpose of making reference to the valuation*

officer would tantamount not only harassing the assessee further but also rubbing the salt on the wound again and again. This Tribunal is of the considered opinion that the fact and circumstances of the case and the circumstance the assessee executed the sale deed, the apparent sale consideration disclosed in the sale deed has to be considered as market value and the same has to be adopted for the purpose of computing capital gain. Hence, this Tribunal is unable to uphold the orders of both the authorities below. Accordingly, orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.”

10. Looking to the facts and circumstances of the present case and view expressed by the Division Bench of the Tribunal in the case of *Krithika Lingappan vs ITO* (supra), I hereby set aside the impugned order and restore the assessment to the file of the AO to make assessment afresh after verifying the claim of the assessee regarding sale was done in distress and decide the issue in the light of the decision of the Division Bench of the Tribunal in *Krithika Lingappan vs ITO* (supra). Thus, grounds raised by the assessee in this appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 11th May, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

* Amit Kumar *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI