

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2060/MUM/2019  
(ASSESSMENT YEAR: 2014-15)

Ashwin K Mehta,  
C-6, Sunita Apts., Bomanji Petit Road,  
Kemps Corner,  
Mumbai - 400006  
[PAN:AABPM1066D]

..... Appellant

**Vs**

Assistant Commissioner of Income Tax,  
19(1), Mumbai  
Matru Mandir, Tardeo,  
Mumbai - 400007

..... Respondent

Appearances

For the Appellant/Assessee : None  
For the Respondent/Department : Shri Mehul Jain

Date of conclusion of hearing : 17.02.2022  
Date of pronouncement of order : 11.05.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 16.01.2019, passed by the Commissioner of Income Tax (Appeals)-3 Mumbai [hereinafter referred to as 'the CIT(A)'] in appeal [CIT(A)-3/IT-10290/2017-18] for the Assessment Year 2014-15, whereby the CIT(A) had dismissed the appeal filed by the Assessee against the Assessment Order, dated 19.12.2016 passed under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].
2. Appellant/Assessee has raised the following grounds of appeal:

- “1. The learned CIT(A) failed to appreciate that the appellant has sold the office premises during October-November 2013 and has given possession of the same on 1 November 2013. The entire sale transaction was completed in 2013 itself.*
- 2. The learned CIT(A) failed to appreciate that the stamp duty valuation of the said office premises in 2013 was lower than the actual sales proceeds and hence the question of addition u/s 50C does not arise.*
- 3. The learned CIT(A) failed to appreciate that once the entire sales proceeds from sale of an immovable property are received and the possession of the property is given, the transaction is complete and the valuation u/s 50C has to be with reference to such date and not to any other later date.*
- 4. The learned CIT(A) failed to appreciate that registration of sale agreement is incidental to the sale and hence the date of actual sale (receipt of sales consideration and giving possession to the buyer) is the relevant date for the purpose of valuation u/s 50C and not the date of registration of the agreement.*
- 5. The learned CIT(A) erred in taking the stamp duty valuation of a location other than that of the aforesaid office premises.*
- 6. The learned CIT(A) failed to appreciate that the stamp duty on the property has been paid by the buyer of the property as per the terms of the agreement and the appellant, being the seller is not responsible for payment*

*of stamp duty and consequently, cannot be held responsible for lapse on the part of the buyer of the property in accepting incorrect stamp duty valuation.*

7. *The assessing additions were made on the basis of presumptions and inferences and without any concrete evidence.”*
3. Brief facts of the case are that the Assessee, an individual engaged in the business of trading in diamonds, filed his return of income for the Assessment Year 2014-15 on 09.10.2014 declaring total income of INR.77,30,970/-. The case was selected for scrutiny. During the assessment proceedings the Assessing Officer (AO) noticed that the Appellant had offered to tax the Short Term Capital Gains (STCG) on account of sale of asset being office at GE – 310, Bharat Bourse, BKC, Bandra East, Mumbai (hereinafter referred to as ‘the Office Premises’) for a consideration of INR 84,00,000/-. The Appellant was asked to furnish a copy of sale deed. On perusal of the same the AO noticed that the stamp duty valuation of the Office Premises on the date of execution of sale agreement was INR.95,00,000/- and therefore, the Appellant was asked to provide an explanation as to why the value of INR 95,00,000/- should not be adopted as full value of consideration in terms of section 50C of the Act for the computation of STCG. The Appellant, vide letter dated 10.12.2016, explained that full payment for sale of the Office Premises was received by the Appellant on 31.10.2013, and the possession thereof was handed over on 01.11.2013. Since, there was delay in receiving ‘No Objection Certificate’ (NOC) from Bharat Diamond Bourse and other documents required for the transfer and registration of the Office Premises, the agreement was executed in February, 2014. The Appellant submitted that the deal was concluded at the rate of INR 2,04,200/- per Sq. Mtr. in September, 2013. The stamp duty valuation rate increased in January, 2014 that was adopted for the purpose of stamp duty

valuation. Not being satisfied, the AO completed the assessment, vide order dated 19.12.2016, at an income of INR 86,62,926/- after making addition of INR 11,50,000/- being difference in stamp valuation INR 95,50,000/- as on the date of execution of the agreement and INR 84,00,000/- being the value adopted by the Appellant.

4. Being aggrieved, Appellant carried this issue in appeal before CIT(A) and made following submission before CIT(A). The Appellant contended that the date of transfer of the property should be taken as October/November, 2013 when the possession of the property was transferred after receiving the entire sale consideration. The stamp duty valuation on the aforesaid date was lower than the valuation of INR 84,00,000/- adopted by the Appellant and therefore, the question of applicability of Section 50C of the Act did not arise. Without prejudice to the aforesaid submission, the Appellant contended that even if the date of execution of sale agreement is taken as the date of transfer of the Office Premises, the correct stamp duty valuation rate should have been adopted. The Office Premises was located at Plot No.C-28, G Block, Bandra Kurla Complex, CTS No. 4207, Village Kolkalyan, Taluka- Andheri, Mumbai which falls in Zone:31/Sub-Zone:173A. The AO has adopted the valuation of INR.95,50,000/- by taking the stamp duty valuation rate applicable to Zone:31/ Sub-Zone:173 (North CST Road, on East, South and West Village Boundary). Accordingly, the valuation of INR.87,55,600/- should have been adopted as oppose to the valuation of INR.95,50,000/- adopted by the AO in terms of section 50C of the Act. The CIT(A) rejected the above contentions of the Appellant and dismissed the appeal.
5. Being aggrieved, the Appellant has filed the present appeal against the order of CIT(A).
6. When the matter was called and taken up for hearing none appeared for the Appellant. A perusal of order-sheet shows that matter has been listed on a number of occasions, however, no one has been appearing

for the Appellant since 16.04.2020. Accordingly, we proceed to dispose of the appeal ex-parte based upon the material on record.

7. The Ld. Departmental Representative appearing before us submitted that the AO as well as CIT(A) have correctly applied the provisions of Section 50C of the Act which mandates that the value adopted by stamp authorities be taken as full value of consideration. Since the stamp authorities adopted the valuation of INR 95,00,000/-, the AO was bound to adopt the same.
8. We have perused the material on record. In Ground No. 1, 2, 3 and 4 the Appellant has contended that the transfer took place in the year 2013. However, there is no material available on record to substantiate the same. The AO and CIT(A) have taken the date of sale agreement as date of transfer and proceeded to apply the provisions of Section 50C of the Act. In the appellate proceedings before us the Appellant has failed to substantiate the claim made in Grounds No. 1 to 4, accordingly, the same are dismissed.
9. As regards Ground No. 5 and 6, we are of the view that, both, AO and CIT(A), have proceeded to apply the provisions of Section 50C of the Act in a mechanical manner. Objections were raised by the Appellant that value adopted by the stamp valuation authority was more than the fair market value, however, reference was not made to the valuation officer in terms of Section 50C(2) of the Act. The contention of the Appellant that the correct value determined by applying rate as applicable to the area in which the Office Premises was situated should be adopted was simply brushed aside by the CIT(A) while confirming the order of AO of taking value adopted by the stamp valuation authority for the purpose of sale agreement as full value of the consideration under Section 50C of the Act in the following manner:

*“Argument of the AR of the appellant is that the appellant failed to notice the mistake committed by the stamp duty authority and paid the stamp duty as per higher value determined by the stamp duty authority. From the facts of the case AO has correctly adopted the stamp duty value as per the documents and as paid by the appellant at the time of registration. There is no merit in the argument of the appellant, as the AO adopted the stamp duty value as determined by the stamp duty authority. In view of the facts, the ground of appeal is dismissed”*

10. In the facts of the present case, we are not inclined to accept the contention of the Revenue that the AO/CIT(A) was bound to take the value as adopted by the stamp valuation authority even if it was incorrect as it would, in our view, amount to perpetuating an error. Before the CIT(A) the Appellant had submitted that the Office Premises was situated in Zone 31 / Sub-Zone 173A, however, for the purpose of stamp duty, mistakenly, the rate as applicable to Zone 31 / Sub-Zone 173 was adopted. The fact that the Appellant has not challenged the value adopted by the stamp valuation authorities cannot lead to drawing of adverse inference against the Appellant. The Appellant had explained The Appellant cannot be held responsible for lapse on the part of the buyer in accepting incorrect stamp duty valuation. The stamp duty was paid by the buyer as per the terms of the sale agreement and the Appellant was not responsible for payment of stamp duty. We find merit in the aforesaid contentions raised by the Appellant before CIT(A). Accordingly, we direct the CIT(A) to verify/examine the aforesaid claim/objection of the Appellant, and in case the same is found to be correct, determine the full value of consideration by adopting the correct stamp duty rate applicable to the area wherein the Office Premises is situated as per provisions of Section 50C of the Act after granting benefit of the Third Proviso to Section 50C of the Act, if applicable, as the same has been

held by the Tribunal to be effective from 01.04.2003 in the case of Maria Fernandes Cheryl Vs ITO: (International Taxation), 2(3)(1), Mumbai / [2021] 85 ITR(T) 674 (Mumbai - Trib.). With the aforesaid directions, this issue is remanded to the file of CIT(A), and Ground No. 5 and 6 are partly allowed.

11. In result, the present appeal is partly allowed

Pronounced on 11.05.2022.

*Sd/-*

(Pramod Kumar)  
Vice President

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 11/05/2022  
*Alindra, PS*

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai