

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

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.611/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

DCIT, Circle – 8, Pune	Vs.	M/s. Envair Electrodyne Ltd. 117, S BlocK, MIDC, Bhosari, Pune-411026 PAN: AAACK7292B
Appellant		Respondent

Assessee by None  
Revenue by Shri S.P. Walimbe  
Date of hearing 27-06-2022  
Date of pronouncement 30-06-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This Revenue's appeal for AY 2013-14 arises against the CIT(A)-6, Pune's order dated 27-12-2017 passed in case No. PN/CIT(A)-6/DCIT Cir-8/67/2016-17 involving proceedings under Section 143(3) of the Income Tax Act, 1961, in short 'the Act'.

Case called twice. None appears at the assessee's behest. It is accordingly proceeded *ex-parte*.

2. Coming to Revenue's sole substantive grievance that the CIT(A) has erred in law and on facts in reversing the assessment findings making

section 50C addition of Rs.3,07,94,790/- in issue, we find that the lower appellate authority has discussed this issue to this effect as under:

*“5. **Ground No.1 & 2:** These grounds relates to adoption of stamp duty valuation u/s 50C for the purpose of computing the capital gains.*

*5.1. The appellant submitted that it had purchased lease hold rights from MIDC vide agreement dtd.13/1/1984 for an area of 12069.25 sq.mtrs in plot no.117 'S' block of Pimpri Industrial area by paying a lease premium of Rs.6,03,500/- and with annual lease rent of Rs.18,703/-. Out of this leased area, the appellant had sold the lease rights in respect of Sand measuring 2300 sq.mtrs to M/s Elvin Furniture Ltd vide agreement did. 25/2/2013 for a consideration of Rs.2,90,00,000/-. This agreement is not registered with registration authorities by paying the stamp duty and registration fee. The appellant claimed that the transfer requires the consent of MIDC and an application for such consent has been made. It was claimed the deed of assignment or conveyance will be executed after obtaining permission from MIDC. The appellant also further stated that the land has to be subdivided by MIDC. The AO had held that the transfer has taken place as the possession of the land has been given and the sale deed has been entered into on a non judicial stamp paper of Rs.100/-. The AO was therefore of the opinion that the appellant should have adopted the stamp value of the property for arriving at the capital gain. He accordingly, worked out the value of the property at Rs.5,87,94,790/- based on the sub registrars value of Rs.25,630/- per sq.mtr. The appellant claimed that it had valued the property based on the MIDC values. It was submitted that the MIDC land rate in the year 2012 was Rs.9,310/- per sq.mtr and there was a proposal to revise this price by 10 from January 2013. The valuation report submitted by Techno Economic Consultant dtd.28/2/2013 adopted the value at Rs.10,241/- per sq.mtr and accordingly worked out the rate of 2307 sq.mtrs at Rs.2,36.25,987/-. The valuer also adopted the RCC structure at Rs.14,59,912/- and factory building portion at Rs.25,79,720/- and the fencing and the compound wall was Rs.76,119/-. However, this report was revised by way of the letter dtd. 3/7/2013 by the Techno Economic Consultant and in this revised valuation, value of the land adopted at Rs.9,310/- per sq.mtr on the ground that the proposed increase of 10 from January 2013 by MIDC was not approved by the Board. The valuer accordingly valued the land at 2,14,78,170/- and there was no change in respect of the valuation of other structures. Thus, the valuation of the property changed from Rs.2,77,41,738/- to Rs.2,55,93,921/-. However, the appellant had adopted the consideration of land to be Rs.2.8 crores and the building at Rs.10 lakhs. It is seen that the AO has not altered the STCG for sale of building of Rs.10 lakhs admitted by the appellant.*

*5.2. The appellant submitted that only lease hold rights have been transferred to M/s Elvin Furniture Pvt Ltd. It was claimed that the provisions of sec. 50C are not applicable to lease hold rights in view of the words used in sec. 'land or building or both'. It was argued that the ownership of the land indicates all the rights in the land and therefore, only such transfer of all rights would fall within the purview of sec.50C. Thus claimed that the transfer of lease hold rights which are only part of the rights in the land do not fall within the purview of sec.50C. The appellant relied on the following case laws for the proposition that the provisions of sec.50C does not apply to transfer of lease hold rights.*

- a. *ITAT Pune Bench 'A' in the case of Kancast (P) Ltd Vs. ITO Wd.9(3), Pune ITA No.1265(PN) of 2011 A.Y. 06-07 dtd.19/1/2015.*
- b. *ITAT Mumbai Bench 'A' in the case of Atul G. Puranik Vs. ITO 12(1)(1) ITA No.3051 (MUM) of 2010 A.Y. 06-07 dtd.13/5/2011.*
- c. *High Court of Bombay in the case of CIT, Central-II, Mumbai Vs. Greenfield Hotels & Estates (P) Ltd ITA No.735 of 2014 dtd.24/10/2016.*

5.3. *The case laws relied upon have been perused. It is seen that the Pune ITAT in the case of Kancast (P) Ltd cited above has held as under:*

*" Para-9: We have carefully considered the rival submissions. Section 50C of the Act provides that if the consideration received or accruing is less than the value adopted or assessed or assessable by the stamp valuation authority of the State Government for such transfer then the value so adopted or assessed or assessable shall be deemed to be the full value of consideration and the capital gains will be computed accordingly. The phraseology of sec.50C of the Act clearly provides that it would apply only to 'a capital asset, being land or building or both'. The moot question before us is as to whether such expression would cover the transfer of a capital asset being leasehold rights in Sand or building. There cannot be a dispute to the proposition that the expression land by itself cannot include within its fold leasehold rights in land also. Of course, leasehold rights in land is also a capita! asset and we find no fault with this land of the revenue. So however, every kind of a 'capital asset' is not covered within the scope of sec.50C of the Act for the purpose of ascertaining the full value of consideration. In-fact, the heading of section itself provides that it is 'special provision for full value of consideration in certain cases". Therefore, there is a significance to the expression 'a capital asset, being land or building or both' contained in section 50C of the Act. The significance is that only capital asset being land or building or both are covered within the scope of sec. 50C of the Act and not all kinds of capital assets.*

.....  
.....

*Para-13-In view of the aforesaid legal position and in the absence of any decision to the contrary brought out by the revenue, we conclude by holding that sec.SOC of the Act does not come into operation in the present facts where what is transferred by the assesses is only the leasehold rights in land which were acquired by it from Maharashtra Industrial Development Corporation (i.e. MIDC) on a 99 years lease basis. As a consequence, we set aside the order of the CIT(A) and direct the AO to compute the long term capital gain on transfer of leasehold land by adopting the full value of consideration of Rs.2,35,04,000/- declared by the assessee in the computation of income and allow the appropriate relief to the assessee. Thus, on this ground assessee succeeds".*

5.3.1. *The jurisdictional ITAT has held the issue in favour of the assessee and there are no distinguishing features in the present case to differ from the same. Therefore, following the decision of Pune ITAT, the addition made is deleted.*”

3. Suffice to say, we find no merit in the Revenue’s argument in principle that section 50C gets attracted even in case of transfer of leasehold rights which does not come within the nature and ambit of specified asset(s) of “land or building or both” in the statutory provision. We thus, conclude that the learned CIT(A) has rightly adopted stricter construction whilst accepting the assessee’s arguments. We also deem it proper to quote hon’ble apex court’s recent landmark decision in Commissioner of Customs Vs. Dileep Kumar & Co 2018 (9) SCC 1 [SC(FB)] settling the law that taxing provisions in a fiscal statute have to be strictly construed only.

4. The fact also remains that the assessee appears to have transferred its building as well, as it is evident from its submissions dated 15.03.2016 filed before the Assessing Officer. That being the case, we are of the view that section 50C is very much applicable regarding the assessee’s “building” as it indeed cover within the specified category of asset u/s 50C(1) of the Act. We, therefore, partly reverse the CIT(A)’s lower appellate findings granting full relief to the assessee and restore this latter issue of transfer of assessee’s building back to the Assessing Officer for his fresh adjudication on merits as per law within three effective opportunities of hearing. Ordered accordingly.

5. This Revenue's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 30<sup>th</sup> June, 2022.

Sd/-  
**(DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 30<sup>th</sup> June, 2022  
GCVSR

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-06-2022	Sr.PS
2.	Draft placed before author	28-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		