

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.673/Bang/2019
Assessment Year: 2014-15

M.S. Amarnath No.18, 10 th D Main Road Jayanagara 4 th Block Bangalore 560 011 Karnataka PAN NO : AAOPA6154B	Vs.	ITO Ward-7(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Venkatesh Kumar, A.R.
Respondent by	:	Shri Sudheendra Kumar S.K., D.R.

Date of Hearing	:	21.06.2022
Date of Pronouncement	:	21.06.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 31.1.2019. The assessee has raised following grounds of appeal:-

1. *“That the learned CIT(A) was not justified in adopting the fair market value of Rs.2,34,63,205/- under section 50C of the Income tax Act, without considering the objection of the assessee with regard to fair market value of the property sold by the Assessee during the relevant A.Y. 2014-15, based on the report of the DVO as well as against the presumptive value of the capital asset as per Sec. 50C of the Act.*

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2. *The learned CIT(A) has failed to consider the Assesses CBDT approved valuer's report, wherein he adopted the Land & Building method of valuation being the most appropriate method of valuation and determined the FMV of the property at Rs.1,25,30,606/- by considering the factors like type of property, transactions, & specific situation of the property etc.*
3. *The Hon'ble Madras High Court, in the case of **M/s. Jagannathan Sail Chitta v. The Income Tax officer, T.C.A. No.142 of 2019, Dated 15.02.2019** dealing with similar question held that ' A bare reading of Scheme of Sec. 50C of the Act would show that Assessee can object to presumptive value as per Sec.50C (1) and, therefore, it is only after hearing the objections of the Assessee, the Fair Market Value of the Capital Asset as per Guidance Value' can be determined by the authorities. The Assessee cannot be denied an opportunity to raise his objections even against the presumptive Fair Market Value under Sec, 50C (1) of the Act or Report of DVO under Section 50C (2) of the Act and the Assessing Authority or the Appellate whose powers are co-extensive with those of the Assessing Authority, cannot refuse to meet those objections point by point'.*
4. *The Hon'ble Delhi High Court, in the case of **CIT v. Khoobsurat Resorts (P) Ltd., (2012) 28, taxmann.com 93** dealing with a similar question held that the provisions of Sec. 50C of the Act only enable the Revenue to adopt the Guidance Value declared by the State for payment of stamp duty, as the Fair Market Value under section 48 of the Act But that Guidance Value cannot, ipso facto, be taken as the valuation for the purposes of computing Capital Gain Tax liability in the hands of the assessee/seller. Sub Sec. 2 of Section 50C of the Act itself provides for reference to DVO if the assessee objects to invoking of Sec. 50C (1) of the Act'.*
5. *The learned AO & CIT(A) has erred in considering the current assets comprising of loans advances amounting to Rs.1,71,59,090/- off which Rs.42,52,500/- represents advances given to jewellery makers for making up of jewellery as part of business/commercial expediency of the trade. And Rs.10,90,242 represents unsecured loan given to Mohan Jewellery and interest received thereon was declared as income in the relevant assessment year.*
6. *The Appellant craves leave to add, alter, substitute, amend or delete any or all of the grounds of appeal urged above.”*

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2. The crux of the above grounds is that the lower authorities erred in making addition on account of difference in sale consideration and guidance value at Rs.49,62,526/-. Facts of the case are that the assessee has sold property bearing BBMP No.18/2, PID No.60-106-18/2 with super built-up area of 2005 sq. ft. in the third floor, 10th Main Road, 4th Block Jayanagar, Bangalore 560011, dated 13/11/2013 vide document No.5448/2013-14 to 1) Sri Rajesh Kannaan K G, 2) Sri Ashok Dalta and 3) Sri K Prabahar during the F Y 2013-14 relevant to A Y 2014-15 for a consideration of Rs.1,55,00,000/-. At the time of sale and registration of the said property, guidance value of Rs.2,66,50,000/- was adopted and stamp duty 1% that is Rs.2,66,500/- has been paid by the purchaser and accordingly proposal was sent to the assessee on 26.12.2016 to show cause why the difference of guidance value of Rs.27,87,500/- cannot be brought to tax as short-term capital gain as per Sec.50C of the Act.

2.1 The assessee has filed his reply to the show cause notice with the contention that property has been sold at a value much greater than the guidance value and further the sub-registrar has valued the property completely disregarding the fact that the property is situated not in the main road but in the cross road, just because the place has been named as 10th D Main in the Govt. notification; and the property has been sold in piecemeal and not as whole stock and barrel which considerable impacts its value negatively, and consequently the proposed addition of Rs.27,87,500/- which appears to be very discretionary and not factual.

2.2 The A.O. referred the matter of valuation of the impugned property to the valuer who determined the value of the property at Rs.2,34,63,205/- against the value declared by the assessee at Rs.1.55 crores. However, the A.O. considered the guideline value of

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Rs.2,66,50,000/- as sales consideration and out of this, assessee's share of 25% considered as consideration received by assessee at Rs.66,62,500/- to compute the capital gain. Thus, the Ld. A.O. in his order of assessment has made addition of Rs.49,62,526/ - with the following observation vide para 5 which reads thus;

The assessee's submissions in this regard have been considered carefully. In this case the sale consideration as per registered sale deed is less than the guidance value therefore, the transaction attracts provisions of sec.50C of the IT Act. The provisions of Sec.50C reads as under:

“..... (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... for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of sec.48 be deemed to be the full value of the consideration received or accruing as a result of such transfer.....”

Hence, as per the above provisions of sec.50C, the assessee ought to have declared the Guidance value of the property as full value of the consideration while computing the short term capital gain. Thus, the assessee has suppressed the actual value of the property and the provisions of sec.50C is attracted.

3. Ld. CIT(A) observed that the DVO estimated the value of property in question at Rs.2,34,63,205/- as against the value declared by assessee in the sale deed at Rs.1.55 crores. After making detailed enquiry and taking into account all the relevant facts,

according to the Ld. CIT(A), assessee has not brought any material to prove that the report of valuation officer has no fallacy and that it cannot be related upon. Therefore, the objection of the assessee was rejected with regard to the valuation report. He also placed his reliance on the judgement in the case of Geeta Roy in ITA No.440/Kol/2010 dated 11.3.2011 wherein it was held as under:

“9. We find that from the above provision of section 50C of the Act, as introduced by the Finance Act, 2002 w.e.f.1.4.2003, by virtue of which a special provision for determining the full value of consideration in cases of transfer of immovable property is introduced. As per this provision, in case the consideration declared to be received or accruing as a result of transfer of land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration and capital gains shall be charged accordingly u/s. 48 of the Act. This position is in view of sub-section 50C(1) of the Act. Sub-section (2) provides that where the assessee claims that the value adopted or assessed for stamp duty purposes exceeds the fair market value of the property as on the date of transfer and he has not disputed the value so adopted or assessed in any appeal or revision or reference before any authority, the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the Act. If the fair market value determined by the Valuation Officer is less than the value adopted for stamp duty purposes, the Assessing Officer has to take such fair market value to be the full value of consideration but if the fair market value so determined by the DVO is more than the value adopted or assessed by stamp duty Authorities for the purposes of collection of stamp duties, the Assessing Officer shall not adopt such fair market value but shall take full value of consideration to be the value adopted or assessed for the 'purposes of stamp duty. In our view, in the present case, the CIT(A) has referred the matter to the DVO for ascertaining the fair market value, who ascertained the fair market value at Rs.30,87,675/- as against the value adopted by Stamp Duty Authorities at Rs.1,33,22,222/-. In our view, in view of the provisions of sub-section (2) of section 50C, fair market value as assessed by the DVO is lower than the value adopted by Stamp Duty Authorities for collecting stamp duty and the value so adopted by DVO has to be adopted by the Assessing Officer for the purpose of computation of LTCG. We find no fault in the order

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of CIT(A) and accordingly, we confirm the same. This issue of the revenue's appeal is dismissed."

4. Aggrieved, he confirmed the addition made by AO. Against this assessee is in appeal before us.

5. Before us, Ld. A.R. submitted that the assessee has submitted the registered valuer report valuing the property at Rs.1,25,30,606/- , which was produced before Ld. CIT(A) who has taken note of this fact in his order in page 7 in para 5.3.2. However, no credit has been given for valuation report from the registered valuer report. He solely relied on the valuation report furnished by the DVO which is improper. Further, he submitted that the DVO considered the value of the property at 470 sq.ft. which is not in the impugned sale deed and included the value of the same property at Rs.21.43 lakhs in his valuation. It should be excluded. Further, he submitted that the DVO valued the guidelines method of valuation for evaluating the Fair Market Value (FMV) of the property under consideration though other most appropriate method is available before him like land & building method, rent capitalization method, development method, profit method, comparable method, combination of more than one method for partly owner and partly tenanted property. He drew our attention to the registered valuer report done by CBDT approved registered valuer, wherein adopted the land & building method of valuation being the most appropriate method of valuation to determine the FMV of the said building after considering all relevant facts. He also relied on the following judgements:-

- a) The ITAT Agra Bench in Shri Pare Mohan Mathur, HUF, vs. income Tax Officer, Ward-2, Aligarh, has held as follows —

"The circle rate can be substituted u/s. 50C for the purpose of determining the sale consideration for

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computation of capital gain, but there is no provision which states that the fair market value will be represented by the circle rate.

The fair market value is defined u/s. 2(22B). This section nowhere states that the fair market value will be the circle rate as notified for the purpose of registration of the properties under the Stamp Duty Act. This section clearly says that fair market value will be the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date and where such price is not ascertainable it should be determined in accordance with rules made under the Income-tax Act. It was pointed out that no rule in this regard has been made so far."

b) In the case of Ravi Kant vs Income Tax Officer, the Delhi ITAT Bench has held that —

"The sweeping generalizations inherent in the circle rates cannot hold good in all situations. It is, therefore, not uncommon that while fixing the circle rates, authorities do err on the side of excessive caution by adopting higher rates of the land in a particular area as the circle rate. In such circumstances, the DVO's blind reliance on circle rates is unjustified. When DVO's valuation is required to compare the same with the valuation by the stamp valuation authority, it is futile to base such a report on the circle report itself. Such an approach will render exercise under Section 50C(2) a meaningless ritual and an empty formality."

c) In the case of ACIT Cir-32 vs Bajaj Chemicals by the Kolkata ITAT held that :-

"The stamp duty authority generally estimates the value Ward-wise. The Stamp Duty Authorities value a property for stamp duty purposes simply on the basis of pre-declared rate and not on the basis of the factors governing each individual premise. It is also fact that each part of the Ward may not fetch the same geographical situation, civic facilities and other factors. In fact, relying on the stamp valuation for valuing a property defeats the very purpose of referring the matter for valuation to the DVO since the dispute is in respect of the stamp duty valuation itself. The DVO should have based his valuation on actual verification of the land and the various methods of valuation, i.e. primarily

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land & building method, contractor's method of valuation, rental basis or yield basis method, municipal valuation method etc. In this case, the DVO has not ascertained any market value to which a willing, reasonable and prudent purchaser would pay for this property."

d) In the case of DCIT, Circle-2, Pune Vs Subhash Vinayak Supnekar,, Pune, ITAT, has further held that —

"valuation done by any state agency for the purpose of stamp duty would not IPSO facto substitute the actual sale consideration as being passed on to the seller by the purchaser in the absence of any admissible evidence."

6. On the other hand, Ld. D.R. relied on the order of Ld. CIT(A) and submitted that the assessee has not produced the registered valuer report before the AO and he has produced the same before Ld. CIT(A) only for which no credence could be given. Further, he submitted that assessee has paid the stamp duty on the value fixed by the sub-registrar and which has not been challenged by him either by the assessee or by the purchaser being FMV determined by the DVO to be considered as fair and to be adopted and there is no error in the order of lower authorities and same to be confirmed.

7. We have heard the rival submissions and perused the materials available on record. In this case, assessee has filed the valuation report from the registered valuer before Ld. CIT(A) and the fact has been noted by the Ld. CIT(A) in his order. However, no credence has been given to it. As per the registered valuer report given by A.S. Anil Kumar dated 23.8.2018, the value has been determined by him as Rs.1,25,30,606/- as against the value adopted by the DVO at Rs.2,34,63,205/-. However, the assessee declared the value at Rs.1.55 crores in sale deed. However, the AO considered the guideline value adopted for registration as sale consideration to determine the capital gain. There is a substantial difference between

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the value adopted for registration and valuation made by different valuers. The argument of the Ld. D.R. is that the assessee has not furnished copy of registered valuer report to AO at the time of assessment and only at the time of first appellate proceedings, he has produced it. Hence, no credence has been given. In our opinion, an appropriate opportunity ought to have been given to the assessee to reconcile the value mentioned by DVO and registered valuer and also with regard to the method of valuation followed by the different valuers. It is also submitted by Ld. A.R. that DVO has considered the value of certain property, which was not in the impugned sale deed which has to be excluded while determining the FMV of the impugned property. We also direct the authorities to bring more comparable cases for deciding the issue. With this observation, we remit the entire issue to the file of AO for reconsideration in the light of above.

8. Further, the assessee raised one more ground in ground No.5 with regard to the sustaining addition towards finance cost. At the time of hearing, no argument was made before us on this issue. Accordingly, this ground is dismissed as not pressed.

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

Order pronounced in the open court on 21st Jun, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 21st Jun, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**