

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM
आयकर अपील सं./ITA No.543/SRT/2018
(निर्धारणवर्ष / Assessment Years: (2014-15)
(Physical Court Hearing)

Mitesh J. Naik, L/H of Jagdishchandra N. Naik, Vishaka Park, Soceity, Mankodia, Vijalpore, Navsari-396445	Vs.	The ITO, Ward-3, Navsari.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAPPN6447B		
(Assessee)		(Respondent)

Assessee by : Shri Sapnesh Sheth, CA

Revenue by : Shri Abhishek Gautam, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 06/05/2022

घोषणाकीतारीख/Date of Pronouncement: 19/07/2022

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the ld. CIT(A)”] in Appeal No. CIT(A)/VLS/734/16-17 dated 11.06.2018, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 16.12.2016

2. Grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of assessing officer in making addition of Rs.2,83,675/- u/s. 50C of the I.T. Act.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in not making reference to departments valuation officer for determining the fair market value of property u/s 50C(2) of the I.T. Act, 1961.

3. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. Brief facts of the issue in dispute are stated as under. The assessee before us is an Individual. He is Partner in M/s Navsari Petroleum situated at Housing society, Station Road, Navsari having 49% of the share profit and same is dissolved during the year under consideration and absorbed by the proprietary concern. The assessee has pension income, commission income and earned short term capital gain by selling one immovable property during the year. During the course of assessment proceedings, it was observed by assessing officer that assessee had sold one property, vide Document No.NSR/7212/2013, on 26/11/2013 for sale consideration of Rs.48,00,000/-. The property is situated near Station Road, Sandh kuva area, RS No.273/3 Plot no, 16, City Survey No.3026, TP No.1, FP no.226 at Navsari city. In respect of property sold assessee had paid stamp duty of Rs.2,63,000/- and received sale consideration of Rs, 48,00,000/- which at variance of stamp duty valuation. Assessee's share in property comes to at 50% and received the amount of Rs.24,00,000/- of sale consideration. However, assessing officer noted that as per Stamp Duty valuation, sale consideration comes to Rs.53,67,350/-. The property is sold by 2 co-owners and assessee has share of 50% portion of the above properties. Accordingly, assessee had shown less value of property by Rs.5,67,350/- [Value as per Stamp Duty Valuation being Rs. 53,67,350 - Value as per sale deed being Rs.48,00,000]. The part of the assessee in the sale consideration comes to Rs. 2,83,675/- (being 50% of Rs.5,67,350/-).

4. Therefore, considering these facts assessing officer noted that in assessee's case, section 50C of the Income Tax Act applies. The AO noted that with effect from A.Y.2003-04, section 50C has been inserted in the Income Tax Act, 1961, dealing specifically about gross consideration in computation of capital gains in respect of transaction in land or building or both. Section 50C provides that if the value stated in the instrument of transfer 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. Therefore,

assessing officer issued show cause notice dated 12.12.2016, wherein the assessee was asked as to why amount of Rs. 2,83,675/- being difference of value as per Stamp Duty valuation and 50% proportion in the hands of the assessee should not be added to the income of the assessee u/s 50C of the IT Act. **In response to this, the assessee did not offer explanation and agreed to such addition.** Therefore, addition of Rs.2,83,675/- was made by AO to the total income of the assessee.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the action of the Assessing Officer observing as follows:

“3.3 After considering the findings of the assessing officer and submissions of the appellant, I find that the appellant vide his ground of appeal no.1 has contended that the assessing officer had not referred his case to DVO for valuation. From the assessment order and written submission made by the appellant during appellate during appellate proceedings, it is found that appellant's letter given to the AO does not mention for reference of the appellant's case to DVO. During appellate proceedings, appellant submitted a copy of show-cause reply furnished before the AO, which also shows that appellant did not mention any thing about referring the appellant's case to DVO. As per Sub-section 2(a) to Section 50C, the assessee has to make a claim before the AO disputing the stamp duty value of the property upon which the AO may refer to the DVO for valuation of the property. In the current case, the appellant had submitted before the AO to ignore the addition on the ground that the difference between stamp duty valuation and actual value shown was less than 15%. The appellant referred to various judgement of different courts including the decision of Hon'ble Supreme Court in the case of C.B. Gautam 199 UR 530. After considering the appellant's reference to the Hon'ble Supreme Court decision in the case of C.B. Gautam, I find that this decision was rendered prior to the enactment of provision of sec. 50C of the Act. The provision of sec. 50C of the Act was brought with effect from 01.04,2003 whereas Hon'ble Supreme Court decision in the case of C.B. Gautam came on 17.11.1992. Thus, the court decision referred by the appellant is not relevant for current A.Y. Further, the provision of section 50C of the Act is deeming provision wherein no leverage of specific variation is mandated to be allowed. The value of the property has to be taken as the stamp duty value of the said property as from instrument of registration except for the situations as per section 50C(2) of the Act. Considering these facts and legal positions, the appellant's contentions for deleting addition of Rs.2,83,675/- is not acceptable. Hence, ground of appeal no. 1 & 2 are hereby dismissed.”

6. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before us.

7. The Ld. Counsel for the assessee submitted that difference in valuation is less than 15% but more than 10% of the value, therefore, such minor difference in valuation of property should be ignored and no addition should be made in the hands of the assessee. The ld Counsel relied on the same judgments which are discussed by ld CIT(A) in his findings, as mentioned in para No.4 of this order.

8. On the other hand, Ld. Departmental Representative (Ld. DR) for the Revenue submitted that if the difference of Stamp Duty Valuation (SDV) is more than 10% then the addition should be confirmed as provided in third proviso to Section 50C(1) of the Act, therefore, ld DR prays the Bench that addition made by the assessing officer should be sustained.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that Parliament has introduced third proviso under section 50C(1) of the Act wherein tolerance limit of 5% has been inserted with effect from 01.04.2019 and this limit was further enhanced to 10% by the Finance Act 2020, with effect from 01.04.2021. The ld Counsel for the assessee pointed out that difference in Stamp Duty Valuation (SDV) and actual consideration is only 11.82%, which is a minor difference therefore it should be ignored. However, we note that difference of 11.82% is more than 10% of tolerance limit prescribed in third proviso to section 50C(1) of the Act, therefore, based on this factual position such difference should not be ignored.

10. We are aware that amendment in section 50C(1) of the Act is curative in nature, therefore amended provision are applicable retrospectively. However, in the assessee's case the difference is more than 10% and none of the case laws cited by the assessee is applicable to the facts of the assessee's case, therefore the claim of the assessee is not acceptable as contended by the Ld. DR for the Revenue. The case law relied on by ld Counsel, have been distinguished by ld

CIT(A) in his findings. That is, these decisions cited by Id Counsel, in no way supports the assessee's claim. Based on this factual position, we are of the view that the conclusions arrived at by the Id CIT(A) are correct and admit no interference by us. We, approve and confirm the order of the CIT(A).

11. In the result, appeal filed by the assessee is dismissed.

Order is pronounced in the open court on 19/07/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूत /Surat / दिनांक/ Date: 19/07/2022

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat