

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

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

ITA No. 1268/MUM/2014
(Assessment Year: 2009-10)

Ashok Rasiklal Shah,
3-8, 15B, Aruna Niwas,
Lady Pochkhanwala Road,
Sleater Road, Mumbai - 400007
[PAN: AABPS6466M]

Appellant

Income Tax Officer,
Ward – 16(2)(4), Mumbai
Tardeo Road, Mumbai - 40007

Vs

..... **Respondent**

ITA No. 1826/MUM/2014
(Assessment Year: 2009-10)

I.T.O. Ward - 16(2)(4), Mumbai
2nd Floor, Matru Mandir,
Tardeo Road, Mumbai - 40007

..... **Appellant**

Shri Ashok R. Shah,
3-8, 15B, Aruna Niwas,
Lady Pochkanwala Road,
Sleater Road, Mumbai - 400007
[PAN: A AABPS6466M]

Vs

..... **Respondent**

ITA No. 1269/MUM/2014
(Assessment Year: 2009-10)

Nayan Rasiklal Shah,
3-8, 15B, Aruna Niwas,
Lady Pochkhanwala Road,
Sleater Road, Mumbai - 400007
[PAN: AAJPS8347M]

..... **Appellant**

Income Tax Officer,
Ward – 16(2)(4), Mumbai

Vs

..... **Respondent**

Appearances

For the Assessee

: Shri Viraj Mehta

For the Department

: Shri Milind Chavan

Date of conclusion of hearing : 20.05.2022
Date of pronouncement of order : 16.08.2022

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. These are three appeals pertaining to two assessees who sold their respective share in land along with other co-owners during the previous year relevant to the Assessment Year 2009-10. On account of commonality of factual background and grounds raised, the appeals were heard together and are being disposed by way of a common order.

**Appeal by Assessee: ITA No. 1268/MUM/2014 &
Appeal by Revenue: ITA No. 1826/MUM/2014**

2. These cross appeals for the Assessment Year 2009-10 arising from the order of the Learned Commissioner of Income Tax (Appeals) - 28, Mumbai [hereinafter referred to as 'the CIT(A)'], passed on 27.12.2013, which in turn arose from the Assessment Order, dated 23.12.2011, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].
3. In the grounds raised in appeal, the Assessee has challenging computation of capital gains arising from transfer of 35% share in land during the relevant previous year by substituting the actual sale consideration received by the Assessee with the full value of consideration determined by the Assessing Officer by invoking provisions of Section 50C of the Act.
4. The relevant facts, in brief, are that the Assessee filed return of income for the Assessment Year 2009-10 on 31.07.2009 declaring total income of INR 1,42,100/-. The return filed by the

Assessee was selected for scrutiny. During the assessment proceedings, the Assessing Officer noted that the Assessee had sold 35% share in land on 19.04.2008 for a consideration of INR 52,50,000/- (being 35% of INR 1,50,00,000/-) and disclosed in the return of income Long Term Capital Gain of INR 50,394/- (after claiming exemption under Section 54EC for INR 50,00,000/-). According to the Assessing Officer the value of land adopted by the Stamp Valuation Authority for the purposes of determining stamp duty on the date of sale was INR 4,18,61,000/- as opposed to consideration of INR 1,50,00,000/- disclosed by the Assessee. Accordingly, the Assessee was asked to show-cause why provisions of Section 50C of the Act should not be invoked. In response, the Assessee submitted that the land has been transferred at the fair market value. Further, according to the Assessee stamp value adopted by the Stamp Valuation Authority did not take into account the peculiar factors specific to the land transferred and therefore, the Assessee opposed the adoption the same raising the following objections:

- Land was located at Bhandup was habilitated by slum dwellers.
- Out of the total area of 1944 Sq. Mtrs., only 857.56 Sq. Mtrs. was vacant and the balance, 1086.44 Sq Mtrs had 72 structures.
- The land was being demarcated as slum.
- The land was not properly managed and hence encroached by the unlawful elements. There were threats to the Assessee and his family members. Various

complaints by the Assessee to various authorities were placed on record in this regard.

- The land was purchased by the purchasers on '*as is where is*' basis after considering the negative factors which factored in the purchase price.

5. The Assessing Officer, not being satisfied, rejected the objections raised by the Assessee and adopted the value taken by the Stamp Valuation Authority for determining the stamp duty. Thus, taking value of land as INR 4,18,61,000/- the Assessing Officer arrived at full value of consideration for 35% share in land at INR 1,46,51,350/- and brought to tax capital gains of INR 94,51,744 (after allowing exemption of INR 50,00,000/- under Section 54EC of the Act) in the hands of the Assessee.
6. Being aggrieved, the Assessee preferred an appeal before CIT(A) contending, inter alia, that addition made by the Assessing Officer is liable to be set aside as the Assessing Officer erred in not referring the matter for valuation to the District Valuation Officer (DVO) despite objections having been raised by the Assessee which was in complete violation of the provisions of Section 50C of the Act. While the CIT(A) rejected the aforesaid contention of the Assessee, relief was granted to the Assessee to the extent that the CIT(A) determined the value of entire land at INR 2,53,45,819 (as opposed to INR 4,18,61,000/- determined by the Assessing Officer) by adopting the value of land as determined by the DVO in the case of a co-owner, i.e., Shri Nayan Rashiklal Shah.

7. Being aggrieved, the Assessee is now in appeal before us and reiterating his contention that the addition made by the Assessing Officer are liable to be set aside since reference was not made to the DVO despite objections having been raised by the Assessee. Further, the Assessee has also challenged the adoption of the value determined by the DVO in case of the other co-owner on the ground that the value determined by the DVO did not take into account various factors. The Revenue is also aggrieved by the order of CIT(A) and has contended that the Assessing Officer was justified in adopting the value determined for the stamp duty purposes as the full value of consideration and that the CIT(A) fell into error by adopting the lower value by taking valuation determined by the DVO in the case of one of the co-owners.
8. We have considered the rival submission and perused the material on record. Both the sides have reiterated their respective stands taken in the assessment and appellate proceedings before CIT(A). We would first take up the issue raised by the Appellant which goes to the root of the matter, i.e., the adoption of stamp duty value by invoking provisions of Section 50C of the Act without making any reference to the DVO despite objection from the Assessee.
9. We note that this issue is no longer res-integra. The Mumbai Bench of the Tribunal has, in the case of **Aavishkar Film (P.) Ltd. v. Income-tax Officer, Ward- 11 (1) (1), Mumbai: 178 ITD 613 (Mumbai)[21-06-2019]** has held that where an assessee objects to adoption of stamp duty value as deemed sale consideration, Assessing Officer is duty bound to make a reference to DVO

under Section 50C(2) of the Act. The relevant extract of the aforesaid decision reads as under:

“7. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. There is no dispute between the parties with regard to the primary fact that as against declared sale consideration of Rs. 1.75 crore shown by the assessee the Assessing Officer has adopted the value determined by the stamp valuation authority at Rs. 2,51,45,500, as deemed sale consideration under section 50C(1) of the Act. Against the adoption of the value determined by the stamp valuation authority as deemed sale consideration, assessee's argument is twofold. Firstly, on the face of objection raised by the assessee against adoption of stamp duty value, the Assessing Officer should have made a reference to the DVO for determining the value of the property. Secondly, the stamp duty valuation cannot be adopted as the deemed sale consideration considering the fact that the property was encumbered. Insofar as the first contention of the assessee with regard to making a reference to the DVO is concerned, on a schematic interpretation of section 50C of the Act as a whole, it appears that, though, under section 50C(1) of the Act the value determined by the stamp valuation authority is to be treated as deemed sale consideration and has to be substituted for the declared sale consideration, however, in a case where the assessee objects to adoption of stamp duty valuation, as per sub-section (2) of section 50C of the Act the Assessing Officer is required to make a reference to the DVO for determining the value of the property. Now, the issue before us is, whether as per section 50C(2) of the Act, it is mandatory on the part of the Assessing Officer to make a reference to the DVO to determine the value of the property. In our view, on a careful reading of the provisions contained under section 50C of the Act and the

legislative intent for enacting such a provision, it becomes clear that in a case where the assessee objects to the adoption of stamp duty value as the deemed sale consideration, the Assessing Officer is duty bound to make a reference to the DVO for determining the value of the property and thereafter proceed to compute capital gain by following the provisions of sub-section (3) of the Act. In the facts of the present appeal, undisputedly, in the course of assessment proceedings the assessee has objected to adoption of stamp duty value as the deemed sale consideration for whatever may be the reason. That being the case, it was the duty of the Assessing Officer to make a reference to the DVO for determining the value of the property sold. The contention of the Department that the reference to DVO was not made because the assessee raised the objection before the Assessing Officer purposefully at the fag end to see to it that the proceeding gets barred by limitation, in our view, is unacceptable. Further, at the first appellate stage also learned Commissioner (Appeals) could have directed the Assessing Officer to get the valuation of the property done by the DVO and thereafter proceeded in accordance with law. In case of S. Muthuraja v. CIT [2013] 37 taxmann.com 352/218 Taxman 73 (Mag.)/[2014] 369 ITR 483 (Mad.), the Hon'ble Madras High Court has held that where the assessee objects to the adoption of stamp duty valuation as deemed sale consideration during the assessment proceedings, the Assessing Officer is duty bound to make a reference to the DVO to determine the value of the property as per section 50C(2) of the Act. The other decisions cited by the learned Authorised Representative also express similar view.

.....The assessee's case stands in a much better footing as in the course of assessment proceedings, the assessee had objected to adoption of stamp duty value as the deemed sale consideration. Thus, in such circumstances, in our

considered opinion, the Assessing Officer should have followed the mandate of sub-section (2) of section 50C of the Act by making a reference to the DVO to determine the value of the property sold. The Assessing Officer having not done so and the learned Commissioner (Appeals) also failing to rectify the error committed by the Assessing Officer, we have no hesitation in restoring the issue to the Assessing Officer with a direction to make a reference to the DVO to determine the value of the property sold in terms of section 50C(2) of the Act and thereafter proceed to compute capital gain in accordance with law. In view of our decision herein above, we do not intend to delve into the other aspect of the issue relating to the actual value of the property on account of certain prevailing conditions like encumbrance, etc. All these issues are available to the assessee for agitating in the course of proceedings before the DVO. With the aforesaid observations, we set aside the impugned order of learned Commissioner (Appeals) and restore the issue to the Assessing Officer for fresh adjudication in terms of our direction herein above. Grounds are allowed for statistical purposes.” (Emphasis Supplied)

10. We are cognizant of the fact that the in the above case, the issue was restored to the file of the Assessing Officer for fresh adjudication, however, that was on account of the contention of the Revenue that the assessee in that case had raised objections before the Assessing Officer purposely at the fag end so that proceedings get time barred. There are no such allegations in the facts of the present case. Accordingly, respectfully following the above said decision of the co-ordinate bench of the Tribunal, we set aside the order passed by the CIT(A) and direct the assessing officer to compute capital gains by accepting the actual sale consideration of INR

52,50,000/- as full value of consideration. In view of the aforesaid, Ground No.1 raised by the Assessee is allowed whereas the Grounds No. 2 & 3 are disposed off as being infructuous. Ground No. 4 is disposed off as being general in nature.

11. While the grounds raised by the Assessee relating to other aspect relating to the actual value of the land by DVO in the case of the other co-owner without taking into account certain prevailing conditions, encumbrance etc., have been disposed off as being infructuous. However, for the sake of completeness, we clarify that our findings in the appeal filed by the other co-owners [ITA No. 1269/Mum/2014] in relation to the aforesaid aspects, would have applied mutatis mutandis to the present case as well.
12. In view of the above, Appeal filed by the Assessee [ITA No. 1268/Mum/2014] is allowed whereas the Appeal filed by the Revenue [ITA No. 1826/Mum/2014] is dismissed. We note that the tax effect in the appeal filed by the Revenue is below the specified limit and therefore, the appeal preferred by the Revenue was also liable to be dismissed as 'not pressed' on account of low tax effect in terms of Circular No. 3 of 2018 as modified by Circular No. 17 of 2019 issued by the Central Board of Direct Taxes.

ITA No. 1269/Mum/2014

13. In the case of this Assessee, in identical facts and circumstances the Assessing Officer assessed capital gains income at INR 94,51,744/- (after allowing deduction of INR 50,00,000/- under Section 54EC of the Act) in the hands of the

Assessee for the Assessment Year 2009-10. However, in this case the Assessing Officer had made reference to the DVO during the assessment proceedings. However, since the report of DVO was not received till the date of passing of assessment order, the Assessing Officer adopted the stamp duty value for computing capital gains. However, the Assessing Officer passed a rectification order, dated 10.10.2012 under Section 154 of the Act on receiving the report of the DVO and revised downwards the Capital Gains income to INR 36,71,394/- computing full value of consideration for 35% share of the Assessee at INR 88,71,000/- taking value of land of INR 2,53,45,819/- as determined by the DVO.

14. Being aggrieved, the Assessee preferred appeal before CIT(A). During the appellate proceedings the Assessee raised a number of objections against the valuation report given by the DVO. However, the CIT(A) rejected all the objections and declined to grant any relief.
15. The appellant is now in appeal before us challenging the order passed by the CIT(A). In the grounds of appeal raised before us, the appellant has accepted the method of valuation adopted by the DVO and has restricted his challenge to denial of the following deduction from the Gross Fair Market Value (Gross FMV) while computing full value of consideration:
 - (a) Deduction for estimated liability for expenses relating to statutory payments required to be made to the Slum Rehabilitation Authority for redevelopment being infrastructure development

charges of INR 24,50,000/- and Payment towards Funds for Maintenance of INR 14,20,000/-

(b) Deduction is respect of additional cost of rehabilitation of tenants taking 33 months as the time required for completion of the project.

16. The Learned Counsel for the Assessee appearing before us focused his arguments in relation to the deduction for additional cost for rehabilitation of tenants/dwellers. He submitted that DVO had adopted 24 months as reasonable time to migrate the dwellers and shift them to a new building. This was objected to by the Assessee in proceedings before CIT(A) as according to the Assessee period of 33 months was reasonable and therefore, cost of rent for 33 months should have been reduced from the Gross Market Value to arrive at Fair Market Value of the land. To support the aforesaid contention information was obtained from Slum Rehabilitation Authority about the period stated by the purchaser in the report submitted for obtaining the approval for the project. In response Slum Rehabilitation Authority, vide letter dated 24.09.2013, provided information that the period granted to complete entire project was 36 months in respect of a plot having area upto 4000 Sq. Mtrs. On the basis of the aforesaid, the Assessee had claimed benefit of period of 36 months instead of 33 months claimed earlier. He further submitted that a re-valuation report was also filed by the Assessee taking rehabilitation period as 36 months. The Learned Counsel for the Assessee submitted that as a matter of fact, when the last hearing was concluded by the CIT(A) more than 33 months had

already lapsed and the occupancy certificate was yet to be issued. According to the Learned Counsel for the Assessee, the CIT(A) grossly erred in allowing deduction only in respect of 24 months as opposed to 33 months claimed by the Assessee.

17. Per Contra, the Learned Departmental Representative submitted that the DVO has taken into account all the relevant factors while arriving at the Fair Market Value. The claim made by the Assessee was rejected by the CIT(A) being without any basis. In this regard, the Learned Departmental Representative relied upon the order passed by the CIT(A).
18. We have considered the rival submission and perused the material on record. The CIT(A) had rejected the contention of the Assessee holding as under:

“From the above it becomes clear that for the project under question, the time period proposed for rehabilitating the tenant could not be ascertained, as the proposal was old. As per present LOI conditions, small plots of upto 4000 sq. mtrs are given rehab period of 36 months, which may not be applicable to the project under question. The DVO has considered 24 months as a sufficient and reasonable time for rehabilitation of tenants, which was relevant to the project at that time. Further, it is a question of estimation of fair market value and in that a fair time is to be considered for arriving at the cost of rehabilitation. If the developer, for any reason is not able to complete the project within the fair time estimated, the same cannot be considered for arriving at the fair value. Although the appellant had submitted that the project was actually got delayed and the rehabilitation could not be completed within 24 months, that cannot be considered to alter the fair market value as mentioned by the DVO in his report. This is also because if the developer had actually completed the project before the estimated 24 months, by the same logic, the fair

market value would not have been increased. It is interesting to note that the Authorised Representative who was till now claiming a fair rehabilitation period of 33 months, started claiming rehabilitation period of 36 months, after the report received from SRA. The Re-valuation report submitted by the appellant from Lakdavala & Associates dated 21.10.2013, stating the rehabilitation period of 36 months, is not supported by any detailed calculation for reasons/ justification for the same. Hence, the claim of the appellant that the rehab period be adopted at 36 month / 33 months instead of 24 months adopted by the DVO, does not hold much merit and cannot be accepted as such to alter the DVO valuation."

19. On perusal of the above it is clear that the CIT(A) failed to appreciate that the Assessee was in appeal and had exercised the right raised objections against the valuation report of DVO whereas the Revenue, having itself accepted and implemented the valuation report of DVO, had no occasion raise the issues on the basis of which the CIT(A) had proceeded to justify the Fair Market Value arrived by the DVO. The Slum Rehabilitation Authority which was tasked with the responsibility of granting approvals for rehabilitation projects had itself stated vide letter dated 24.09.2013 that a period of 36 months was generally granted to complete the entire project for a plot area of upto 4,000 Sq. Ft, whereas period of 60 months and 72 months were granted for completion of project with plot area of between 4,001 to 7,500 Sq. Ft. and more than 7,500 Sq. Ft, respectively. In our view, the period provided by the Slum Development Authority for completion of the projects cannot be rejected as being incorrect and should be considered reasonable unless there are facts on record to the contrary. Further, the finding returned by the CIT(A) that the re-valuation Report, dated 05.01.2013 [*placed at 109 to 113 of the paper-book*], submitted by

the Appellant did not provide any reasons or justification is also not correct. In the aforesaid report, it was clearly stated by the valuer that considering the nature of re-development work, the period of 24 months considered by the DVO was insufficient. It also stated that 27 months had already lapsed and another 6 months would be required to complete construction and thereafter, another 6 more months may be needed to complete the formalities of obtaining occupancy certificate from the authorities. On the basis of the aforesaid, a period of 33 months was estimated to be a reasonable period for which the Assessee would be required to provide transit/alternative accommodation to the dwellers. The Deed of Conveyance was executed on 19.04.2008. However, since the dwellers were vacated in April 2010, the Assessee had set up a claim of transit period of 33 months starting from April 2010. Thus, by January 2013, when the appeal was still pending before CIT(A), period of 33 months had already lapsed and the project was just about reaching the stage of completion. It is a matter of fact that the project actually took more than 33 months as had been contended by the Assessee from the very beginning. There are no allegations that delay was attributable to the Assessee. The claim of the Assessee, originally based on an estimate made, by the Assessee, turned into a claim supported by the actual facts with the passage of time, and we are inclined to accept the same. Accordingly, we direct the Assessing Officer to re-compute capital gains by adopting Fair Market Value as on 19.04.2008 by providing deduction of INR 1,92,45,600/- for providing alternative accommodation for dwellers/tenants for a period of 33 months in place of INR 1,39,96,800/- adopted by the Assessing Officer by taking

estimated period of 24 months. In view of the aforesaid, Ground No. 1 raised by the Assessee is allowed.

20. As regards Ground No.2 pertaining to denial of deduction of statutory charged payable to Slum Rehabilitation Authority, the CIT(A) rejected the claim of the Assessee holding that all statutory expenses have been factored in and taken into account while arriving at the cost of construction of INR 9,500/- per Sq. Mtrs. Nothing has been placed before us to controvert the finding returned by the CIT(A) or to challenge the cost of construction estimated by the DVO. Accordingly, the Ground No. 2 raised by the Assessee is dismissed.

In result, the present appeal is partly allowed.

Order pronounced on 16.08.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 16.08.2022
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