

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B" : PUNE

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

I.T.A.No.349/PUN./2023
Assessment Year 2012-2013

Shri Prakash Sadashiv Sonawane, Chakradhar Bhavan, Sonawane Mala, Krishnai Nagar, B/H Hotel Sai Palace, Nashik-422009 Maharashtra. PAN BOJPS1790B	vs.	The Income Tax Officer, Ward-2(1), Aaykar Bhavan, Gadkari Chowk, Old Agra Road, Nashik – 422 002 Maharashtra.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri M.G. Jasnani

Date of Hearing :	04.05.2023
Date of Pronouncement :	15.05.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2012-2013, arises against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2022-23/1048548306(1), dated 09.01.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

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

2. At the outset, it is noticed that there is a delay of 18 days in filing the appeal and the assessee filed an application for condonation of the delay duly stating the reasons. Hon'ble apex court's landmark decision Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all such technical aspects must make way for the cause of substantial justice. We, therefore, condone the impugned delay and take-up the instant appeal for adjudication on merits.

3. We notice with the able assistance coming from the Revenue side that the assessee's sole substantive grievance herein challenges correctness of both the lower authorities action making long term capital gains addition of Rs.55,70,021/- in the course of sec.143(3) r.w.s.147 re-assessment dated 27.12.2016 as upheld in the NFAC's order under challenge.

4. Mr. Jasnani has strongly supported both the lower authorities action making the impugned long term capital gains addition. Relevant facts qua the instant sole issue are indeed in a very narrow compass. Both the learned lower authorities had found the assessee to have sold the immovable property/capital asset in S.No.900/2 [admeasuring 2 hectare 67R] to Shri Rajendra Rasiklal Shah for Rs.1,85,00,000/- on 30.12.2011. There is no dispute even as per the assessment

findings that the assessee had actually received Rs.72 lakhs only as against stamp valuation of Rs.4,29,63,200/- adopted by the registration authority(ies). The Assessing Officer has further discussed the issue in para-4 pages 2 and 3 of the impugned re-assessment that the assessee had executed the corresponding development agreement on 18.08.2007 in assessment year 2008-2009. He has thereafter computed the impugned long term capital gains after invoking sec.50C; coming to Rs.55,70,021/-.

5. The NFAC has affirmed the impugned addition as under:

2. Brief Facts of the Case:

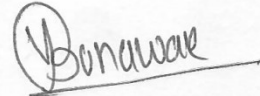
2.1 The assessee is an Individual and has derived income from partnership firm, income from other sources and agricultural income during the year under consideration. As per information available with this office, the assessee and eight others had sold an immovable property i.e. land situated within the Nashik Municipal Corporation at Survey No. 900/2 admeasuring 2 Hectare 67 R to Shri. Rajendra Rasiklal Shah on 30.12.2011 for Rs.1,85,00,000/- (having Govt. Valuation of Rs.4,29,63,200/-) and the assessee was in receipts of Rs.72,00,000/-. As this being the Capital Asset, the assessee was liable to pay the Capital Gain Tax on this Capital Receipt of Rs.72,00,000/-. On verification from ITD system, it was seen that the assessee has not filed his return of income for any of the assessment years including the year under consideration. In view of this, the assessing officer had reason to believe that the income of Rs.72,00,000/- was escaped from the assessment as per the provision of explanation 2(a) of the Proviso 1 of the section 147 of the Income Tax Act, 1961. Accordingly, notice under 148 of the Income Tax Act, 1961 was issued to the assessee on 03.03.2016. In response to notice under section 148 of the Income Tax Act, 1961, the assessee filed his return of income declaring total income at Rs. 2,63,060/-. During the course of scrutiny assessment proceedings, it was observed that the assessee along with two other family members and Shri. Rajendra Rasiklal Shah, Director of M/s Viraj Estate Pvt. Ltd. entered into a development agreement on 18.08.2007 against the immovable property at Survey No. 900/2, Nashik. As per the said agreement, the deemed possession of the immovable property was given to the purchasers after receiving the consideration of the portion which was agreed to be given as per the terms of agreement. On verification of the said documents of agreement, it was found that the said documents is neither a registered document nor the same is notarized, hence, it does not have legal value in the eye of law.

2.2 Further after completion of development work on the said immovable property i.e. Survey No. 900/2, Nashik the assessee along with his family members entered into an agreement with M/s Viraj Estate Pvt. Ltd on 30.12.2011. As per the said agreement the assessee along with family members transferred the developed area 7811.48 Sq. Mtr. to M/s Viraj Estate Pvt. Ltd. at Rs.1,85,00,000/- The stamp duty valuation of the developed area i.e. 7811.48 Sq. Mtr. of the said immovable property is Rs.4,29,63,200/-. The assessee received Rs.72,00,000/- as his share on transfer

of the said immovable property. The assessee submitted the valuation report of the said land as on 01.04.1981 made by the government approved Valuer. As the stamp duty valuation of the said immovable property is more than the sale consideration received by the assessee, provision of section 50C of the Income Tax Act, 1961 is applicable in this case and thus, the capital gain is worked out as under:

Consideration received by the assessee	Rs.72,00,000/-
Total consideration received for the said land	Rs.1,85,00,000/-
Stamp Valuation of the said land	Rs.4,29,63,200/-
Sale consideration for the assessee as per provision of section 50C of the Act	Rs.1,67,20,813/-
7200000×42963200	
18500000	
Cost of acquisition of the said land as on 01.04.1981	Rs.36,49,851/-
Cost of acquisition for the assessee as on 01.04.1981	Rs.14,20,483/-
72×3649851	
185	
Indexed cost of acquisition of the land for the Assessee for the AY 2012-13	Rs.1,11,50,792/-
785×1420483	
100	
Long Term Capital Gains	Rs.55,70,021/-

Therefore, the amount of Rs.55,70,021/- is added to the total income of the assessee.



Being aggrieved by the said order passed by the AO, the appellant has preferred this appeal.

3. Grounds of Appeal:

As per Form No. 35 dated 27/01/2017 there are following Grounds of appeal:-

"1. The learned AO has erred on facts and in law in making an addition of Rs.55,70,021/- as Capital Gain disregarding the fact that the land was owned by the HUF. Without prejudice to the above, the learned AO erred in law and on facts in invoking the provisions of section 50C of the Income Tax Act, 1961.

2. The assessee craves leave to add to or amend or alter any or all of the grounds of appeal."

During appellate proceedings the appellant has raised following additional grounds of appeal.

Additional Grounds

1) On the facts and in law the A. O. has erred in incorrectly applying the provision of section 50C as the AO had not considered the first and the second proviso to section 50C of the Act according to which the value of the land sold in the year 2007 is to be considered for computing capital gain.

2) On the facts and in law the A. O. has erred in not referring the impugned land for valuation to DVO as per provision of Section 50C (2) of the Act which should have been done by him as there is considerable difference in actual consideration and value for stamp duty purpose.

4. Submission of the Appellant:

During the appellate proceedings the appellant has filed written submission as under:

"2. Grounds raised by the appellant are as under: Ground No.1:

The learned AO has erred on the facts and in law in making addition 31,71,819 as capital gain disregarding the fact that the land was owned by the HUF Without prejudice to above, the learned AO erred in law and on facts in invoking the provisions of section 50C of the Income tax Act.

Borawale

Request to admit additional grounds u/s 250(5) of the Act.

The appellant has not pointed out specific defects in applying section 50C of the act in original ground though taken in respect of section 50C. Therefore, following specific grounds are raised as additional grounds which may please be admitted u/s 250(5) as the omission of these grounds from form of appeal was not willful or unreasonable.

Additional Grounds

1) On the facts and in law the A. O. has erred in incorrectly applying the provision of section 50C as the AO had not considered the first and the second proviso to section 50C of the Act according to which the value of the land sold in the year 2007 is to be considered for computing capital gain.

2) On the facts and in law the A. O. has erred in not referring the impugned land for valuation to DVO as per provision of Section 50C (2) of the Act which should have been done by him as there is considerable difference in actual consideration and value for stamp duty purpose.

3. Contentions of the appellant in support of the grounds raised against the addition of Rs. 55,70,021/- As the additional grounds are specific the same are taken first in filing submission.

3.1 Additional Ground No.1: On the facts and in law the A. O. has erred in incorrectly applying the provisions of section 50C as the AO had not considered the first and the second proviso to section 50C of the Act according to which the value of the land sold in the year 2007 is to be considered for computing capital gain.

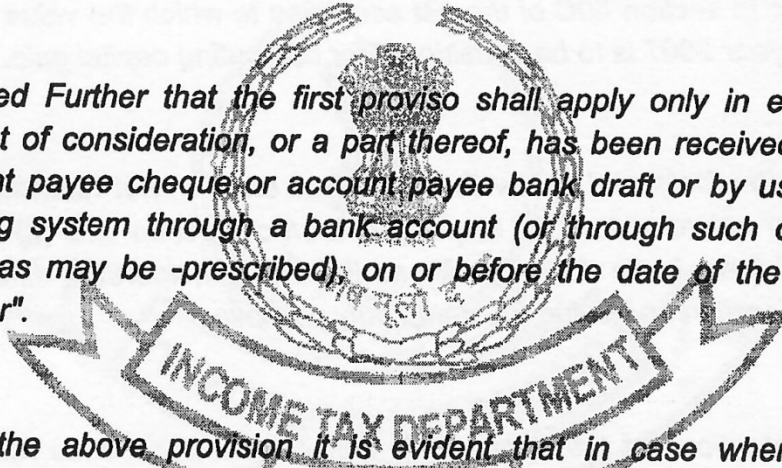
The relevant provision of section 50C reads as under:

Borawale

"50C. Special provision for full value of consideration in certain cases.- (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 by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Provided that where the date of agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

Provided Further that the first proviso shall apply only in each where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account (or through such other electronic mode as may be -prescribed), on or before the date of the agreement for transfer".



From the above provision it is evident that in case where the date of agreement fixing the amount of consideration and date of registered document for transfer are not the same, then the stamp duty value on the date of agreement fixing the amount of consideration is to be considered. In the case under appeal undisputedly the consideration was fixed as per the agreement entered into on 18.08.2007. Copy of agreement dated 18.08.2007 is attached as Annexure-2, whereas the registered agreement allegedly transferring the land was dated 30.12.2011. Copy of registered agreement dated 30.12.2011 is attached as Annexure-3. The next condition is to be fulfilled is that, as per the earlier agreement fixing the price, the part payment of consideration fixed should have been made by an account payee cheque. In the case under appeal the consideration of the impugned property has been fixed by entering into agreement dated 18/8/2007, as per which the payment of Rs. 5 lakhs was paid by cheque of Union Bank bearing No. 186347. Therefore, the value of the property for the purpose of section 50C is to be considered as stamp duty

V. Banawar

value as on 18/8/2007. In view of the above facts & provision of section 50C & also ratio laid down by above mentioned decision the A.O. should have considered the value for stamp duty purpose on 18.08.2007. The value of the impugned land in the year 2007 as per sub registrar's Ready Reckoner works out to Rs. 1,43,42,220 as against actual sale consideration Rs. 1,85,00,000/-. In the support of the above contention the valuation Report of the Govt. Approved valuer is obtained, who has valued the impugned land as per sub registrar's Ready Reckoner. Copy of the said Valuation report is enclosed as Annexure-4.

If, in view of the above facts Additional Ground No.1 is allowed then there shall not remain any addition u/s 50C. In such case, Additional Ground No.2, may be treated as not pressed and need not be adjudicated.

3.2 Additional Ground No.2: On the facts and in law the A. O. has erred in not referring the impugned land for valuation to DVO as per provision of Section 50C(2) of the Act which should have been done by him as there is considerable difference in actual consideration and value for stamp duty purpose.

In the case under appeal the value for stamp duty purpose was Rs.4,29,63,200/- whereas the consideration as per the agreement was Rs. 1,85,00,000/-. Therefore, there is vast difference between the two figures. The assessee has also not accepted the stamp duty value but has relied on consideration mentioned in the registered agreement. In view of these facts the A.O. should have referred the impugned land for valuation to D.V.O. as per the provisions of section 50C(2) of the Act.

It is settled law that when there is substantial difference between actual consideration and stamp duty value the property is to be referred for valuation to DVO. 4. Ground No.1: The learned AO has erred on the facts and in law in making addition 31,71,819 as capital gain disregarding the fact that the land was owned by the HUF Without prejudice to above, the learned AO erred in law and on facts in invoking the provision of section 50C of the Income tax Act.

Banawa

It is a fact that the impugned land was an ancestral and hence should have been treated as belonging to the HUF of Sonawane family.

As regards the second contention in the above ground it is submitted that the specific additional grounds referring to section 50C have been raised and submission in respect of the same has been filled in earlier paragraphs."

5. Decision:

I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as well as the applicable legal position for arriving at the following decision.

6. For the sake of convenience, the additional grounds of the appeal are taken up first. In the first additional ground of appeal, the appellant has stated that as per first and second proviso of Section 50C, the value of land sold in year 2007 is to be considered. It is seen that the proviso's mentioned above have been inserted w.e.f. 01/04/2017 and therefore not applicable for the year under consideration i.e., AY 2012-13. The decisions of Hon'ble Tribunals relied by the appellant do not pertain to jurisdictional Tribunal and the facts thereon are not identical. In view of these facts the additional grounds raised by the appellant is 'Dismissed'.

7. The additional ground no. 2 of appeal is against not referring the matter to DVO. As per provisions of Section 50C (2) of the Act, matter can be referred by AO to DVO if request is made by the appellant. In this case no such request has been made by the appellant. The decisions relied by the appellant do not help the appellant as the facts are not identical. Accordingly, the additional ground no. 2 is 'Dismissed'.

8. In the main ground of appeal, the appellant has submitted that the property is owned by HUF of Sonawane family. The appellant has filed copy of agreement dated 18.08.2007, copy of registered agreement dated 30.12.2011 and copy of Valuation Report valuing the land in 2007. But as per all these documents the owner of property is Prakash Sadashiv Sonawane, the appellant. There is no evidence in support of the claim that the property belongs to the HUF of the family and not the appellant. This issue has not been raised before the AO also neither it is mentioned in Statement of Facts as per Form 35. In view of these facts, I have no reason to deviate from the findings of the AO. Accordingly, the main ground of appeal is 'Dismissed'.

Sonawane

6. We have given our thoughtful consideration to the vehement rival stands and deem it appropriate to restore the instant sole issue back to the Assessing Officer. This is for the precise reason that although the CIT(A) has refused to apply sec.50C(1) first and second proviso(es), inserted by the Finance Act 2016 w.e.f. 01.04.2017 on the ground that the same do not carry retrospective effect, the fact remains that this tribunal's coordinate bench's order in Dharamshibhai Sonani vs. ACIT [2016] 161 ITD 627 (Ahd.) has already decided the issue against the department by holding that this statutory amendment is curative in nature inserted for removing hardships to the taxpayers and, therefore, it carries retrospective effect. The fact also remains that there is no concrete finding either in re-assessment or in the NFAC's order as to whether the assessee had received whole or part of the consideration by way of the specified mode(s) or not so as to attract sec.50C(1) first and second proviso. This is indeed coupled with the fact that both the lower authorities have also not sought the DVO's report held as mandatory even in absence of the assessee's request as per Sunil Kumar Agarwal, vs. CIT [2014] 372 ITR 83 (Kol.). We accordingly restore the assessee's instant sole substantive ground back to the Assessing Officer to decide afresh as per sec.50C(1) first and second proviso r.w.s. 50C(2) of the Act preferably within three effective opportunities of hearing. Ordered accordingly.

7. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 15.05.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 15th May, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Nashik.
4.	The CCIT, Nashik
5.	D.R. ITAT, Pune "B" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.