

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.9342/Del/2019
Assessment Year: 2014-15

ACIT Circle – 25 (2) New Delhi	Vs	Thomson Press (India) Ltd. K-9, Connaught Place, New Delhi PAN No.AAACT4827F
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Sapna Bhatia, CIT DR
Respondent by	Sh. Salil Aggarwal, Sr Advocate Sh. Shailesh Gupta, CA

Date of hearing:	15/06/2023
Date of Pronouncement:	30/06/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-9, New Delhi dated 27.09.2019 pertaining to A.Y.2014-15.

2. The grievance of the revenue read as under :-

1. *“On the facts and circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs.20 Crores made on account of Capital Gains u/s 50C of the I.T Act on the basis of the information received Investigation Wing of the Income Tax Department, Noida.*

1.a) *Whether Ld. CIT(A) is justified in giving relief to the assessee on the basis of Proviso to 50 C of the I.T Act, 1961 which was made applicable from 01/04/2017, whereas the case falls in F.Y – 2013-14?”*

2. *“The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. Briefly stated the facts of the case are that the AO came to know about a transaction between M/s. Living Media India Private Limited and M/s. Maccons Infra Private Limited in respect of Plot No.B, admeasuring 20,000 sq mtrs at 132, Gautam Budh Naga, Noida for an agreed circle rate of Rs. 18000 per sq. mtrs. i.e. 36 crores whereas the circle rate of the property at the time of sale was Rs.28000 per sq. mtr i.e. sale value of Rs. 56 crore.

4. The assessee was served a notice and was directed to provide certified copy of agreement to sell 30.05.2013 and subsequent transfer deed cum sale deed between the same parties executed on 11.10.2013.

5. Necessary details were submitted by the assessee and on perusal of the documents the AO came to the conclusion that the assessee have sold the land for Rs.36 crores whereas the stamp valuation of such land was Rs.56 crores on the date of execution of sale deed and the assessee has shown the sale consideration

lesser by Rs. 20 crores. The AO accordingly added the sum of Rs. 20 crores.

6. Assessee challenged the assessment before the CIT(A). It was strongly contended that as per the provisions of section 50C the stamp duty value of the property as on the date of agreement to sell has to be considered for the purpose of computing capital gain. It was explained that stamp duty value of the property at the time of agreement to sell was for Rs. 10,000 per sq. mtr and the actual sale consideration was Rs. 18000 per square meter. It was further explained that at the time of agreement to sell part of sale consideration was paid by the account payee cheques before the date of the agreement for transfer. Thus the transfer of the property was affected even if the registration was materialized subsequently. Reliance was placed on several decisions of the coordinate Benches.

7. After considering the facts and the submissions and after drawing strong support from the decision of the coordinate Bench in the case of Amit Bansal 100 taxmann.com 334 the CIT(A) allowed the appeal of the assessee.

8. Before us the DR strongly relied upon the memorandum explaining the finance bill 2016 and pointed out that the impugned amendment to the provisions of section 50C of the Act are prospective and not applicable for the assessment year under consideration.

9. Per contra the Counsel for the assessee reiterated what has been stated before the lower authorities and once again relied upon the several decisions of the coordinate Benches emphasizing that the impugned amendment is retrospective.

10. We have carefully considered the orders of the authorities below. In so far as the dates of agreement to sell and the actual transfer of property are concerned there is no dispute. The only quarrel is whether the stamp duty valuation has to be taken on the date of agreement to sell or on the date of the sale deed since both the dates are falling within the same financial year.

11. First and second proviso to section 50C (1) read as under :-

“Provided that where the date of the 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 a case 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, on or before the date of the agreement for transfer”

12. It is not in dispute that part of the sale consideration was received before the date of the agreement for transfer. It is not in dispute that the stamp duty was actually paid on the date of agreement to sell as per the circle rate prevailing at that point of time. An identical issue was considered by the coordinate Bench in the case of Amit Bansal (supra). The relevant findings read as under :-

7.I have considered the rival submissions and perused the orders of the authorities below. The undisputed facts in the instant case are that the assessee has purchased the property jointly with Shri Vikas Bansal on 28th July, 2010 for a consideration of Rs.39,33,600/- which was sold on 22nd July, 2011 for a net consideration of Rs.42 lakhs. The assessee had entered into an agreement to sell the property on 25th March, 2011 and taken the part payment of Rs.10 lakhs. It is also an admitted fact that there is no registered conveyance deed. We find the Assessing Officer, relying on the provisions of section 53A and the provisions of section 2(47)(v) of the IT Act, treated the property as a capital asset and treated the profit from sale of such property as short term capital gain in the hands of the assessee. Further, the Assessing Officer has also invoked the provisions of section 50C and adopted the circle rate of the property as on 22nd July, 2011 at Rs. 16,000/- per sq. yard as against the circle rate of 11,000/- as on 25th March, 2011 contended by the assessee and calculated the full value of the consideration at Rs.57,21,600/- as against the actual sale consideration of Rs.42 lakhs. Accordingly, the Assessing Officer made an addition of Rs.7,60,800/- in the hands of the assessee which has been upheld by the CIT(A). It is the submission of the Id. counsel for the assessee that in view of the proviso to section 50C(1) of the IT Act where the date of the 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 and, thus, the assessee has correctly adopted the rates applicable on the date of the agreement as against the date of actual sale. We find the proviso to section 50C(1) read as under:-

“50C. (1) Whether 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 (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 or assessable 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 : 84[Provided that where the date of the 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:”

The above proviso was inserted by the Finance Act, 2016 w.e.f. 01.04.2017. Therefore, the question that has to be decided is as to whether the above amendment is prospective in nature i.e., will be applicable from A.Y. 2017-18 or is retrospective in nature being curative in nature. We find identical issue had come up before the Ahmedabad Bench of the Tribunal in the case of Dharamshibhai Sonani versus ACIT (supra) where it has been held that amendment to section 50C introduced by the Finance Act, 2016 for determining full value of consideration in the case of involved property is curative in nature and will apply retrospectively. We find following the above decision, the Ahmedabad Bench of the Tribunal in the case of Rahul G: Patel vs. DCIT, ITA No.2767/Ahd/2016, order dated 26th September, 2018 has held that the proviso to section 50C(1) introduced by the Finance Act, 2016 can be construed as clarificatory in nature and can be applied on pending matters. The various other decisions relied on by the Id. counsel for the assessee also support the case of the assessee that where the date of the agreement fixing the amount\of consideration and the date of registration regarding the transfer of the capital asset in question are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of the agreement is to be taken for the purpose of full value of consideration. I, therefore;’ accept the argument of the Id. counsel for the assessee in principle and restore the issue to the file of the Assessing Officer with a direction to verify necessary facts and decide the issue in the light of my above observation directing to adopt the circle rate on the date of agreement to sell in order to compute the consequential capita, gain.

13. Respectfully following the coordinate Bench (supra) we decline to interfere with the findings of the CIT(A). The appeal of the revenue is accordingly dismissed.

Order pronounced in the open court on 30.06.2023.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

Dated: .06.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi