

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH, MUMBAI**

**Before Shri Prashant Maharishi, Accountant Member &
Shri Narender Kumar Choudhry, Judicial Member**

ITA No. 1689/Mum/2023
(Assessment Year: 2013-14)

M/s. Surya & Company
20/26 Tawa Lane
Abdul Rehman Street
Pydhonie, Mumbai 400003

A C I T - 17(3)
Kautilya Bhawan
Vs. Bandra Kurla Complex,
Bandra(East),
Mumbai 400003

PAN – AAASF6086L

Appellant

Respondent

Appellant by: None
Respondent by: Shri Swapnil Sawant, Ld. DR

Date of Hearing: 03.08.2023
Date of Pronouncement: 21.08.2023

ORDER

Per: N.K. Choudhry, JM

This appeal has been preferred by the Assessee against the order dated 31.03.2023 impugned herein passed by the learned Commissioner of Income Tax/National Faceless Appeal Centre, Delhi (NFAC) (in short 'ld. Commissioner') under section 250 of the Income Tax Act, 1961 (in short 'the Act') for AY 2013-14.

2. In this case, the Assessee sold a property situated at Mhatre Road, Dahisar (West), Mumbai for a total consideration of Rs.2,75,00,000/- whereas Stamp Duty Authority valued the said property at Rs.3,98,49,000/- for stamp valuation and registered in the name of subsequent buyer. The Assessee declared the value of the property at Rs.2,74,00,000/- as valued by the government approved valuer on 6th September, 2012. The Assessee before the

Assessing Officer (AO) claimed that the valuation adopted by the stamp valuing authority was higher than the market value of the property as the property sold was encroached/occupied by various tenants and the purchaser was supposed to vacate the premises from the tenants by paying certain amount of compensation and that is why the Assessee sold the property at lower rates. The Assessee alternatively, before the AO, also claimed that even otherwise without prejudice to the above the adjudication authority/Registrar valued the property at Rs.3,62,35,987/- by considering the value of the tenant occupied portion, hence the same may be considered.

3. The AO did not find the said claim of the Assessee as tenable mainly on the following reasons:

“That there was no difference between the clauses of the purchase deed and sale deed executed in favour/by the Assessee and therefore considering the peculiar facts that the property was transferred in the same situation in which it was acquired, hence it cannot be accepted that the market value of the property occupied by the tenants should not be considered. Further the Stamp Duty District Officer also in his order mentioned the separate market value of property occupied by tenants and freehold property separately (the total sum being Rs.3,98,49,000/-. It has clearly been observed that the stamp duty value of the property which is occupied by the tenants is taken at comparatively very stumpy. “

And therefore the AO ultimately adopted the stamp value as determined by the Stamp Value Authority to the tune of Rs.3,98,49,000/- and computed the capital gain as per provisions of section 50C of the Act and consequently added an amount of Rs.1,23,49,000/- being the difference in long term capital gain as

offered by the Assessee and as calculated under the provisions of section 50C of the Act. The AO also made other disallowance of Rs.5,67,591/- which is not in controversy before us.

The Assessee challenged the addition of Rs.1,23,49,000/- as well before the learned Commissioner and reiterated its claim as made before the AO. The Assessee also claimed before the learned Commissioner that the property may be referred to the Valuation Officer/DVO for valuation. The Id. Commissioner though considered the claim of the Assessee but did not find acceptable and by observing *“that the adjudicating authority has arrived to the adjudicating value after considering the value of the tenanted portion and the adjudicating value is being fixed by the authority concerned after considering the value of the tenanted portion. Further in the instant case, the adjudicated value is almost near to the value arrived as per the valuation report obtained by the Assessee from the government approved valuer”* ultimately held that it is fair to adopt the value of Rs.3,62,35,987/- arrived by the adjudicating authority and consequently directed the AO to adopt the same and recompute the capital gain.

With regard to not referring the property in dispute for valuation to the Valuation Officer/DVO, the learned Commissioner held that the Assessee had disputed the stamp duty value and referred the matter to the adjudicating authority and the said authority, after considering the value of tenanted portion, has reduced the stamp duty value. When this is the status quo, in his the considered opinion that there is no requirement of referring the matter to the Valuation Officer (DVO). Moreover, the value as adopted by the Government approved valuer (before reducing the value of tenanted portion of the property) is almost near to the value arrived by the adjudicating authority. In the circumstances,

the case laws relied upon by the appellant are not applicable as the same were rendered under different contexts.

4. The Assessee being aggrieved is in appeal before us. Though notice for the date of hearing on 10th July, 2023 was issued to the Assessee, the Assessee neither appeared nor filed any adjournment petition, hence by hearing the learned DR, we are disposing off this appeal as ex-parte.

5. We have given thoughtful consideration to the peculiar facts and circumstances of the case. The provisions of section 50C(2) of the Act, reads as under: -

"50C. (1) -----

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law

for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

6. The said provisions empowers the AO to refer the valuation of the capital asset to a Valuation Officer, where:

"(a) the Assessee claims before any Assessing Officer that the value adopted or assessed (or assessable) by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed (or assessable) by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court."

8. Coming to the instant case, it is not in controversy that the Assessee has made a specific claim before the AO that the value adopted or assessed by the Stamp Valuation Authority was higher than the fair market value of the property as on the date of transfer on which date the Assessee sold the property, hence for the just and proper decision of the case and for the ends of substantial justice, we are inclined to direct the AO to refer the property under dispute for valuation to the DVO and after receiving the valuation report, to determine afresh the liability/capital gain accordingly, suffice to say by affording reasonable opportunity of being heard to the Assessee.

9. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Pronounced in the open Court on 21 August, 2023.

Sd/-

(Prashant Maharishi)
Accountant Member

Sd/-

(Narender Kumar Choudhry)
Judicial Member

Mumbai

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT concerned*
4. *The DR, ITAT, Mumbai*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai

n.p.