

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1460/Mum./2023

(Assessment Year : 2015-16)

The Bombay Samachar Pvt. Ltd.

1, Red House, Syed Abdulla Brelvi Road

Horniman Circle, Fort, Mumbai 400 001

PAN – AAAC1340B

..... Appellant

v/s

Asstt. Commissioner of Income Tax

Circle-2(1)(2), Mumbai

..... Respondent

Assessee by : Shri Nitesh Joshi

Revenue by : Shri Ashok Kumar Ambastha

Date of Hearing – 27/09/2023

Date of Order – 03/10/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 03/03/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2015-16.

2. In its appeal, the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case, and in law, the AO and the CIT(A) have erred in adopting the full value of the property under section 48 of the Income Tax Act, to be Rs.4,99,99,000/- and calculating the capital gains, accordingly.

i. The AO and CIT(A) should have appreciated that the said property was in dispute and on account of the dispute fetched a value lower than that assessed by the Stamp Duty Authorities.

ii. The AO and CIT(A) erred in rejecting the request of the assessee in calling for a valuation of the said property as required under the provisions of section 50C(2) as the assessee disputed the value of the property as determined by the Stamp Duty Authorities before the assessing officer.

iii. The AO and the CIT (A) failed to appreciate that a disputed property cannot fetch the market value as determined in the Ready Reckoner if there is a dispute about the property ownership

iv. The AO and the CIT(A) should have appreciated that Deed of Conveyance itself spoke about the dispute of ownership.

v. The AO and the CIT(A) should have considered that no prudent buyer would pay the market value of a property which is in dispute and that such a property will fetch a lower value. In fact, for such a property the number of buyers would be limited.”

3. The only dispute raised by the assessee, in the present appeal, is against the adoption of the value of land as determined by the Stamp Duty Authority, without referring the valuation to a Valuation Officer under section 50C of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a company and is engaged in the business of printing and publication of newspapers. For the year under consideration, the assessee e-filed its return of income on 28/09/2015 declaring a loss of Rs. 2,92,75,265 under normal provisions of the Act and a loss of Rs. 2,74,09,801 under section 115 JB of the Act. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has sold a piece of land for Rs. 2,75,00,000, whose valuation for the purpose of payment of

stamp duty was Rs. 4,99,99,000. Accordingly, the assessee was asked to show cause as to why the stamp duty value of the land sold should not be considered as the full value of consideration received for the property as per provisions of section 50C of the Act. In response thereto, the assessee submitted that the said property is an open land of about 8 ¼ guntas and is landlocked having no direct access. It was further submitted that the said land is subjected to litigation before the Hon'ble Bombay High Court in the suit seeking the relief against the assessee which is at the pre-admission stage. Accordingly, the assessee submitted that the said land is in dispute and thus the same was sold for the sum of Rs. 2,75,00,000 as buyers were not coming forth. The Assessing Officer ("AO") vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the claim of the assessee does not fit the requirements specified in section 50C(2) of the Act. Accordingly, the value determined by the stamp duty authority of Rs. 4,99,99,000 was considered as full value of consideration of the property under section 48 of the Act. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue and held that the AO has rightly adopted the value of Rs. 4,99,99,000 as deemed sale consideration, as per the provisions of section 50C of the Act based on value adopted by the Stamp Valuation Authority. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. As evident from the record, the assessee sold a piece of land for a total consideration of Rs. 2,75,00,000 as against the

valuation for the purpose of payment of stamp duty of Rs. 4,99,99,000. As per the assessee, since the land was subjected to litigation before the Hon'ble Bombay High Court, the property could not fetch a higher value and thus value as determined by Stamp Duty Authority cannot be considered as full value of consideration under section 50C of the Act. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that assessee's prayer for referring the matter for valuation to the Valuation Officer was rejected by the AO despite the fact that both the conditions of the said section are fulfilled in the present case. However, we find that the Revenue rejected the submissions of the assessee on the basis that its claim does not fit the requirement specified in section 50C(2) of the Act. As held by the AO and upheld by the CIT(A), the issue pending before the Hon'ble Bombay High Court is with regard to ownership of the land and not the valuation of the property, and thus the value adopted is not in dispute. Further, it was held that no material has been produced by the assessee to dispute that the value as determined by Stamp Duty Authority exceeds the sale consideration. Before proceeding further, it is relevant to note the provisions of section 50C(2) of the Act, which reads as under:-

"(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."

6. In the present case, it cannot be disputed that the value adopted by the Stamp Duty Authority exceeds the value of the property on the date of the transfer and the value so adopted is also not in dispute in any appeal, revision, or reference before any authority, court or the High Court. It is pertinent to note that even the AO accepted that in the suit pending before the Hon'ble High Court, only the ownership of the land is in dispute and not the valuation of the land. Thus, when both the conditions of section 50C(2) of the Act are fulfilled in the present case, we find no basis in the findings of the AO, which have been upheld by the learned CIT(A), in adopting the value of Rs. 4,99,99,000 as deemed sale consideration without referring the valuation of the land to the Valuation Officer as per the provisions of section 50C of the Act. Accordingly, we restore this issue to the file of AO for *de novo* adjudication after seeking a valuation report from the Valuation Officer as per the provisions of section 50C of the Act. All the issues are kept open and the

impugned order is set aside. As a result, the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/10/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/10/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai