

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 175/Mum/2023 (A.Y.2013-14)

Bhavesh Shantilal Gohil

A-1304, Gohil Mansion,
Irani Wadi, Shantilal Mody
X Road No. 2, Asian Bakery
Kandivali (west), Mumbai-400067

PAN: ABKPG2287Q

..... Appellant

Vs.

ITO – 35(1)(2)

R. No. 2, C-12, Pratayaksha kar
Bhavan, Bandra Kurla Complex,
Bandra (E)
Mumbai-400051

..... Respondent

Appellant by	:	Shri Vipul Joshi, Ld. AR
Respondent by	:	Shri Ashok Kumar Ambastha, Ld. DR
Date of hearing	:	19/07/2023
Date of pronouncement	:	04/10/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 02.12.2022 u/s. 250 of the Income Tax Act,

1961 (in short 'the Act') for A.Y. 2013-14. The assessee has raised the following grounds of appeal:-

1. NATURAL JUSTICE

1.1 In the facts the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while passing the appellate order.

1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

(i) The same is framed in breach of the principles of natural justice; and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

(iii) The same is passed without providing an opportunity of personal hearing 1.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

2. ADDITION OF RS. 1, 74, 13,688/- MADE U/S. 50C OF THE ACT

2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 1,74,13,688/- by invoking the provisions of section 50C of the Income-tax Act, 1961 ('the Act') and substituting the amount of sales consideration with the stamp duty value of the immovable property.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, no such invocation of section 50C was called for and, consequently, no addition was called for.

2.3 without prejudice to the above, assuming-but not admitting-that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.

LIBERTY

3. the Appellant craves leave to add, alter, deletes or modifies all or any the above ground at the time of hearing.

2. The brief facts of the case are that assessee individual filed his return of income on 29.08.2015, declaring total income at Rs. 17,35,670/-. Case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Act was issued. Assessee is an individual and is earning income from Salary, Capital Gains and Other Sources. During the year under consideration assessee declared long term capital gain of Rs. 11,05,876/-, whereas as per AO applying the provisions of section 50C it should be 1,74,13,688/-. Accordingly for difference amount he made an addition and assessed the income accordingly. Assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), who in turn confirmed the action of AO. Assessee being further aggrieved preferred the present appeal before us.

3. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee along with grounds of appeal raised before us. There is a property at Malad, Mumbai, (1502.9 Sqmt.) along with structures/buildings standing thereon. **Mother of the Assessee, Ramaben Shantilal Gohil, was tenant / lessee of the said Property.** On a portion of the said property, there existed an old building "Gohil Mansion" that was construed in 1965 and which was originally occupied by tenants. Vide

registered Deed of Assignment 20.04.1965 registered on 29.04.1965, the owners of Gohil Mansion assigned their rights to Ramaben. Ramaben converted the tenancies into ownership by receiving consideration from each tenant by execution of various Agreements for Sale. The owners thereafter formed "Shree Gohil Mansion Co- operative Society Ltd.", empowering its managing committee to get Agreement for Sale / Conveyance from Ramaben. (Pg. 1 to 9 Additional Evidence read with Pg.24-25 and 31 and also Pg. 90 to 129).

4. Vide Agreement for Sale dated 21.08.1988, Ramaben transferred all her rights over Gohil Mansion in favour of the said Society for the consideration already received from each flat purchaser and handed over possession of the land to the said Society. It was clearly agreed that as the Society was in process of getting registration, Ramaben was obliged to execute a formal conveyance in favour of the Society when requested. The said Society was also entitled to all present and future benefits (FSI, rents, etc.) arising with respect to the property from that date (Pg. 1 to 9 of Additional Evidence).

5. Parallely, vide Agreement dated 20.07.1980, Ramaben, as "Licensor / grantor", permitted one Smt. Smita Bhogilal Shah ["Smita"] to construct a building for consideration as mentioned therein on the balance portion of the said property (142.40 sqmt.) (Pg. 76 to 79). Ramaben also bound herself to transfer lease of the land in favour of Smita Ramaben also executed Irrevocable Power of Attorney in favour of Smita on 25.11.1980 (Pg. 76 to 79 r.w 11 to 12). On 22.11.2004, Deed of Confirmation was executed, confirming the above agreement and transferring the land & the building in

favour of Smita (Pg. 67 to 75). Both the documents were registered on 23.11.2004 (Pg.12). In pursuant of this, Smita constructed a building "Vaishali" on the property and sold the flats therein on "ownership" basis to various flat purchasers, (Pg. 12-13 and 26). The OC was given on 02.03.1983 (Pg. 82 to 85).

6. Vide Agreement dated 05.05.1988, Ramaben, along with the Assessee, agreed to acquire the Property land from the owners of the land on the terms and the conditions as contained in the letter of Vendors dated 05.05.1988 (Pg.3 & 6 of Additional Evidence and Pg. 8-9 of the paper book). After prolonged litigations, Ramaben, along with the Assessee, acquired the property vide Deed of Conveyance executed on 14.12.1994. After death of Ramaben on 26.11.2003, the Assessee became co- owner, along with his three sisters.

7. As such, before becoming formal owner of the plot in 1994, the entire plot area stood already consumed by the two buildings and was fully occupied, possessed, and enjoyed by the occupants of the buildings. All rights, title & interest thereof as well as domain and control over the property stood divested (Pg. 88). All expenses and outgoings with respect to the property were borne and met by the society and the members thereof. In fact, as the members of the Society had already paid the entire consideration for acquiring their respective flat, no consideration was left to be paid by the members to the Assessee & his Sisters; in terms of section 11 of Maharashtra Apartment Ownership Act, 1963 and relevant rules, under such circumstances, the Society was legally entitled to get deemed

conveyance directly without any recourse to the Assessee and without any payment to the Assessee.

8. Gohil Mansion was in distress condition (Pg. 60). Vide Memorandum of Understanding dated 24.10.2011, the said Society, along with its members, granted development rights to redevelop the said property to a Developer, subject to the obligation of the Developer to obtain formal conveyance from the legal heirs of Ramaben, the Assessee and his sisters, in favour of the Society, in terms of the agreement already entered into in 1988 (Pg. 13, 61). The Developer, therefore, requested the Assessee and his sisters to execute formal conveyance of the Property (Pg.13-14).

9. It was under these peculiar circumstances that in order to avoid long procedure of getting deemed conveyance and to make the conveyance procedure smooth and easier that for acceding to the request of the Developer, the Assessee and his sisters were paid Rs. 24.371 lacs, with the share of the Assessee at Rs. 15 lacs which was paid on 13.12.2010. Smita was also paid Rs. 19 lacs as a confirming party (Pg.14- 15).

10. Accordingly, a formal Deed of Conveyance came to be executed between all the parties concerned on 23.04.2012 along with all the above referred earlier agreements, documents, etc. attached and registered on the same day. The conveyance also included the term with respect to the development rights granted by the Society in favour of the Developer. Now for sake of better understanding and clarity over the matter, we are reproducing the provisions of section 50C of the Act as under:

Special provision for full value of consideration in certain cases.

50C. (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 [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 :

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 [or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:]

[Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and [ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]

(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 31[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.

32[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).

33[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 33[or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed 33[or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

11. With the facts narrated (supra), it is crystal clear that the mother of the assessee was simply a tenant. She was never an owner of the property under consideration. Rather the real owner get clear her tenancy right long

back in the year 1988 vide page 1 to 9 of additional evidence. After death of his mother Rama Ben, assessee became co-owner alongwith his 3 sisters. At that time, the entire property was already in possession and occupied by the occupants of the building. It is observed that all rights, title, control and interest thereof in the property was divested in favour of flat owners of the society built over the land mentioned (supra).

12. In fact, as the members of the Society had already paid the entire consideration for acquiring their respective flat, no consideration was left to be paid by the members to the Assessee & his Sisters; in terms of section 11 of Maharashtra Apartment Ownership Act, 1963 and relevant rules, under such circumstances, the Society was legally entitled to get deemed conveyance directly without any recourse to the Assessee and without any payment to the Assessee. We have gone through the clause no. XXV and XXVI relied upon by the revenue and Clause no. XXIX, XXX and XXXI of deed of convenience dated 23.04.2012 relied upon by the assessee. In addition to this, we have considered clause no. XXXVI as under:-

Since the members of the Purchasers were the tenants in the said building Gohil Apartment and subsequently their tenancy rights being converted into ownership pursuant to the agreements executed between the Vendors and them that as such no consideration amount is paid by the members of the Society to the Vendors. However at the request of the Vendors and First Confirming party the Second Confirming Party have agreed to pay an amount of Rs.24,37,500.00 (Rupees. Twenty Four Lac Thirty Seven thousand Five hundred only) to the Vendor and an amount of Rs. 19, 00,000/- (Rupees. Nineteen Lac only) to the First Confirming Party.

13. In view of above, it is observed that assessee was not an owner of the property at all. The consideration mentioned (supra) amounting to Rs. 24, 37,500/- they received jointly (assessee and his 3 sisters) for sake of getting document registered with the authorities wherein owners of the society and developer are the real stakeholder. Further as reproduced (supra), the provisions of section 50C of the Act is not applicable on assessee based on the given facts.

14. Legally speaking assessee was not the owner of said Land & get consideration of Rs. 24, 37,500/- for submitting their rights in favour of registered society called Gohil mansion Co-op Housing Society Ltd. which are standing since 1988. Further assessee has received money for clearing title of said Land in favour of the society. Assessee was not seller of the said Land but only "Confirming Party"& therefore valuation of the Land are not matter for him as per section 50C.

And further they are four persons to receive consideration of Rs. 24, 37,500/- as under:

Sr. No.	Name of the Party (jointly)	Amount Proceeds (Dt. 23-04-2012)	% Holding
1	Shri Bhavesh S Gohil	1500000/-	61.54
2	Smt. Ila H. Tank	312500/-	12.82
3	Smt. Harsh B Chavda	312500/-	12.82
4	Smt. Chetna G. Vadher	312500/-	12.82
		2437500/-	

15. To further substantiate we relied on following judicial pronouncement of Hon'ble Jurisdictional High Court and Co-ordinate bench as under:

[2017] 77 taxmann.com 308 (Bom.) CIT, Central-II, Mumbai v. Greenfield Hotels & Estates (P.) Ltd.

2. *The Revenue urges the following question of law for our consideration:*

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT (A) in deleting the addition of Long Term Capital Gain of Rs. 80, 58,000/- on the ground that provisions of section 50C of the IT Act, 1961 were not applicable to transfer of land and building, being a leasehold property?"

3. *The impugned order of the Tribunal has dismissed the Revenue's appeal from the order dated 15 June 2012 passed by the Commissioner of Income Tax (Appeals). The issue before the Tribunal was whether Section 50C of the Act would be applicable to transfer of leasehold rights in land and buildings. The impugned order of the Tribunal followed its decision in Atul G. Puranik v. ITO [2011] 132 ITD 499/11 taxmann.com 92 (Mum.) which held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings."*

[2020] 119 taxmann.com 186 (Mum. - Trib.) Network Construction Company, v. ACIT, Circle-2, Thane

"12. *The learned Counsel for the assessee specifically relied on the Mumbai Tribunals decision in the case of Voltas Ltd. v. ITO [2016] 74 taxmann.com 99/61 ITD 199, wherein it is held that the provisions of section 50C of the Act could not be applied to sale development rights of land owned by the assessee. We noted that the provisions of section 45(3) provides that when a person transfer his capital asset to a firm or a body of individual or to AOP by way of capital contribution for becoming a partner/member therein, then for the purposes of section 48 of the Act, the amount recorded in the books of account of the assessee firm or AOP, the value of the capital asset shall be deemed to be full value of consideration received or accruing as a result of the transfer of capital asset. As per the deeming fiction an amount recorded in the books of account thereby the full value of consideration for the purpose of section 48 of the Act. We noted that the provisions of section 45(3) of the Act is a charging provision having two limbs joined by conjunction "AND". The first limb is a charging provision which levies capital gain tax on gains arising from contribution of capital asset in the AOP by a member and second limb is an essential deeming fiction for determining the value of consideration without which the*

charging provision would fail. We also noted that the provisions of section 50C of the Act also deeming fiction deems only the value of consideration for the purpose of calculating capital gains in the transfer of capital asset from one person to another. In view of the above, we are of the view that the provisions of section 50C of the Act are not applicable in the instant case and provision of section 45(3) of the Act will be applied. Hence, we reverse the orders of the lower authorities and allow the appeal of the assessee on this issue.”

16. Ld. AR for the assessee made an argument that before the AO and Ld. CIT (A) that assessee could not file the agreement/deed of conveyance dated 23.04.2012 before the AO and Ld. CIT (A) which is a vital document to decide the issue raised before the Tribunal as to if section 50C is applicable to the facts of the case or not, which is available at page no. 1 to 129 of the paper book and made a request to entertain the additional evidence and to remand the case back to the file of AO to examine the same and to decide the case de novo.

17. We have considered the application for additional evidence filed by the assessee, which is necessary to decide the issue in question and the same is allowed. In these circumstances, the issue is remanded back to the file of AO to decide afresh after examining the additional evidence brought on record by the assessee in the light of the observations made by the bench herein before. **In the result, grounds raised by the assessee are allowed for statistical purposes.**

18. In the result, Appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 4th day of October, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 04/10/2023

Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai