

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL

INDORE SMC BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.140 & 141/Ind/2023
(Both Assessment Years:2011-12)

Shri Sanjay Dubey R/O 131/6 Kiran Complex M.P. Nagar, Bhopal (Appellant / Assessee)	Vs.	ITO 1(2) Bhopal (Revenue)
PAN: ATUPD 7354 B		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	05.12.2023	
Date of Pronouncement	07.12.2023	

ORDER

These two appeals by the Assessee are directed against the two separate orders of the Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi dated 13.02.2023 and 16.02.2023 arising from the assessment order passed u/s 147 r.w.s 143(3) and order passed u/s 154 of the Act respectively for A.Y.2011-12.

2. In the appeal arising from the reassessment order passed u/s 147 r.w. section 143(3) the assessee has raised following grounds of appeal:

“1.That the Ld. Lower authority has erred in holding the view that appellant is liable for capital gain tax on forcefully transfer of immovable property by the bank against the liability of third party which is upheld by the ld. CIT(A) is arbitrary erroneous and unjustified.

2. That the Ld. Lower authority as erred in making addition of Rs.15,58,000/- by invoking the provisions u/s 50C of the IT Act 1961 which is upheld by the Ld. CIT(A) is arbitrary erroneous and unjustified.”

3. The solitary issue arises in this appeal of the assessee is regarding the addition made by the AO by invoking the provision of section 50C of the Act. Ld. AR of the assessee has submitted that the assessee provided guaranty for the loan taken by the wife of the assessee from M.P. Rajya Sahakari Bank Mydt. Subsequently due to the default of repayment of the loan the recovery proceedings were initiated against the assessee being guarantor of the loan taken by the wife. The land in question of the assessee was directed by the court vide order dated 20.04.2010 to be sold for recovery of the outstanding dues of the bank. He has further submitted that the sale of land was effected by the recovery officer then Tehsildar and the entire sale proceeds was deposited in the account of borrower for repayment. Therefore, the entire amounts of the sale proceeds of the land is infact loss to the assessee. He has pointed out that the land was sold by the recovery officer for Rs.32,08,000/- only on which a capital gain tax was paid of Rs.22,89,280/-. The stamp duty value of the land has taken by the AO at Rs.48,48,000/- and thereby the AO has made addition of Rs.15,98,000/-. The Ld. AR has thus submitted that when the land was sold as a distress sale in the recovery proceedings initiated by the bank against the assessee being guarantor of the loan taken by the wife then the provision of section 50C cannot be invoked as sale was not voluntary sale by the assessee. He has further submitted that the Tehsildar who was also recovery officer got valuation of the land and therefore, fair market value of the land cannot be more than sale proceeds of the land in auction. The land was not sold by the assessee but it was sold under the recovery proceedings by the recovery officer therefore, the fair market value of the land cannot be more than the sale proceeds. In support of his contention he has relied upon the judgment of Hon'ble Delhi High Court in case of Pr. CIT vs. H.T.L. Ltd. 294 taxmann 38 (Del.) Thus, Ld. AR has submitted that the addition made by the AO and confirmed by the Ld. CIT(A) is not justified and the same may be deleted.

4. On the other hand, Ld. DR has relied upon the orders of the authorities below.

5. I have considered the rival submission as well as relevant material on record. The AO in the reassessment proceedings noted that the assessee has shown the sale value of property amounting to Rs. 32,08,000/- whereas the value of the property adopted by the Stamp Duty Authority at Rs.48,48,000/-. Hence the AO proposed to make addition of difference of Rs.15,98,000/- as per the provisions of section 50C of the Act. The assessee objected to the said addition proposed by the AO and contended that the property was sold for recovery of the loans taken by the wife from the bank and the entire sale proceeds has been utilized for the repayment of the outstanding dues of the bank. The assessee also objected to the applicability of the provision of section 50C of the Act as the property was sold by the recovery officer and therefore, the assessee is not benefited by the said sale but has suffered loss of the entire sale proceeds of the land. The AO did not accept this contention of the assessee and took the full value consideration as per provision of section 50C of the Act and thereby made the addition of Rs.15,98,000/- to the long term capital gain. The assessee challenged the action of the AO before the Ld. CIT(A) but could not succeed. It is pertinent to note that once the property was sold by the recovery officer as per the order of the court for recovery of the outstanding dues of the loan taken by the wife. The assessee was a guarantor of the loan and the land in question was secured assets with the bank. Therefore, the sale proceeds effected under the recovery proceedings and by the recovery officer after taking valuation report from the registered valuer itself manifest the fair market value of the land in question. Since it was a distress sale therefore, the market value of the property would be definitely less than the prevailing market rate and neither the AO nor the CIT(A) has considered the provisions of section 50C(2) for ascertaining the fair market value of the property before making the addition u/s 50C(1) of the Act. The facts and circumstances under which the property was sold by the recovery officer as distress sale

themselves show that the sale proceeds is nothing but the maximum amount could have been realized from the sale of the property in the auction sale by the recovery officer. Hence, the fair market value of the property cannot be more than sale proceeds realized in a distress sale. The Hon'ble Delhi High Court in case of Pr. CIT vs. H.T. L. Limited (supra) while considering an issue of under assessment on account of not invoking provisions of section 50C by the AO in respect of the property auctioned under SARFAESI Act in par 14 to 17 as under:

“14. A perusal of the record has thrown up the following facts, which are not disputed by Mr Maratha:

(i) The respondent/assessee had run into rough weather, whereby its net worth was eroded. Consequently, a Reference was filed by the respondent/assessee with the Board of Industrial and Financial Reconstruction [in short, "BIFR"] under the relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 [in short, "SICA"].

ii) While Reference was pending before the BIFR, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short, "SARFAESI Act"] came to be enacted. Consequently, proceedings before the BIFR stood abated on 13-10-2010.

(iii) State Bank of India [SBI], which was one of the secured lenders of the respondent/assessee, took steps on behalf of the consortium of lenders for recovering the dues, by seeking to auction the subject land. The record shows that the SBI attempted e-auction on four occasions i.e. 17.2.2011, 9.3.2011, 5.11.2012 and 23.1.2013. Since the SBI was unable to auction the subject land, at a meeting held concerning the consortium of lenders, a decision was taken to fix the reserve price of the subject land at Rs.250 crores. It is in this context, that the SBI finally effected sale of the subject land in favour of VGN for an amount equivalent to Rs.2,72,29,08,000/-

14.1 The record also discloses that the AO, while framing the scrutiny assessment had, in fact issue a notice dated 22.2.2016 wherein queries were raised with regard to the sale of the subject land. This aspect of the matter has been recorded by the Tribunal in paragraph 15 of the impugned order.

15. As would be evident the PCIT concluded that there was under assessment by virtue of the fact that the valuation that had been placed by the concerned authority for affixation of stamp duty was

higher. As noted above, the value for the purpose of stamping was pegged at Rs. 387,64,76,000/-

16. The record, thus, reveals that it was not the respondent/assessee who effectuated the sale of the subject land. The subject land was sold by the secured lenders to recover from dues owed by the respondent/assessee. It is in these circumstances, that the Tribunal concluded that the PCIT had failed to notice the underlying facts, while invoking his powers under section 263 of the Act.

17. In our view, the tribunal correctly appreciated the law on the subject which is that for invoking powers under section 263 of the Act, two conditions have to be met, i.e. not only the order should be erroneous, but it should also be prejudicial to the interest of the revenue.”

6. Accordingly in the facts and circumstances of the case as discussed above and in view of the judgment of Hon'ble Delhi High Court in case of Pr. CIT vs. H.T.L Ltd. (supra) the addition made by the AO invoked the provision of section 50C is not justified and the same is deleted.

7. **In appeal arising from the order passed u/s 154 of the Act the assessee has raised following grounds of appeal:**

“1 . That the learned lower authority has erred in holding the view that appellant is liable for capital gain tax on forcefully transfer of immovable property by the bank against the liability of third party which is upheld by the Ld. CIT (Appeal) is arbitrary erroneous and unjustified.

2. That the learned lower authority has erred in making addition of Rs.15,98,000/- by invoking the provisions u/s 50C of the IT Act 1961 which is upheld by the Ld. CIT(A) is arbitrary erroneous and justified

3. That the learned lower authority has erred in rectifying his own order during the pendency of the appeal by increasing the demand of interest u/s 234A at Rs.53,8310/- which is upheld by the Ld. CIT (Appeal) is arbitrary erroneous and unjustified.”

8. The only issue raised by the assessee in this appeal is against the increase in demand of interest u/s 234A of the Act.

9. I have considered the rival submission as well as relevant material on record. Since the interest u/s 234A is mandatory and consequential to

the outcome of the assessment therefore, in view of the outcome of the quantum appeal the AO is directed to recalculate interest u/s 234A of the Act.

10. In the result, the appeal of assessee in ITANo.140/Ind/2023 is allowed and in ITANo. 141/Ind/2023 is allowed for statistical purposes.

Order pronounced in the open court on 07.12.2023

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Indore; दिनांक Dated : 07/12/2023

Patel/Sr. P.S.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary

ITAT, Indore