

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.294/Mum/2021
(A.Y. 2017-18)**

Ramesh S. Shah 203, A Wing Peninsula Corporate Park Ganpatrao Kadam Marg, Lower Parel, Mumbai- 400013	Vs.	The DCIT, Central Circle -5(3) Room No. 1906, 19 th Floor, Air India Building Nariman Point, Mumbai – 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAGPS9863H		
Appellant	..	Respondent

Appellant by :	Nishit Gandhi
Respondent by :	Agnes P. Thomas

Date of Hearing	29.11.2023
Date of Pronouncement	11.12.2023

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-53, Mumbai dated 31.12.2020 for A.Y. 2017-18. The assessee has raised the following grounds before us:

"ON NATURAL JUSTICE:

1. *In the facts and circumstances of the case and in law, the order passed by the Learned Commissioner of Income Tax (Appeals) - 53, Mumbai ("the Ld. CIT(A)" for short] affirming the order of the Learned Deputy Commissioner of Income Tax, Central Circle-5(3), Mumbai ["the Ld. AO" for short] is bad in law and void since the same is passed in violation of principles of Natural Justice and without appreciating the evidences furnished by the Appellant.*

ON JURISDICTION:

2. *In the facts and circumstances of the case and in law, the Ld CIT(A), erred in not quashing the order passed by the Ld. AO wherein the mandatory procedure prescribed under section 50C of the Income Tax Act, 1961 ["the*

Act" for short] was not followed by the Ld. AO and the order was directly passed without referring the matter to Departmental Valuation Officer [“the DVO” for short] despite the objection to the stamp duty value raised by the Appellant during the course of assessment as per sub-section (2) of section 50C of the Act

ON MERITS:

3. *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in affirming the action of the Ld. AO in making an addition of Rs. 1,83,72,500/- under section 50C of the Act.*
- 3.1 *While doing so, the Ld. CIT(A) failed to appreciate that*
 - (i) *No such addition was called for since the said property was sold at the actual market value of the property Rs. 6,12,00,000/- and the stamp duty value of Rs. 7,925,72,500/- is not the correct market value of the property:*
 - (ii) *The Appellant had objected to the stamp duty value before the Ld. AO and also agitated the same before the Ld CIT(A) and it was mandatory on the part of the Ld. AO as well as the Ld CIT(A) to refer the valuation to the DVO in terms of section 50C(2) of the Act before passing the impugned order(s), and,*
 - (iii) *In any case, in case of doubt, the Ld. CIT(A) should have on his own directed the valuation of the property and correctly computed the income of the Appellant thereafter since the stamp duty value is far too excessive and does not reflect the correct market value of the property sold.*
3. *All the above-mentioned grounds are without prejudice to each other. The Appellant craves leave to add, alter, delete or modify all or any the above grounds of appeal.”*

2. Fact in brief is that return of income declaring total income of Rs.384,00,280/- was filed on 31.03.2018. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 14.08.2018. During the course of assessment on perusal of the detail filed by the assessee, the assessing officer noticed that assessee has sold immovable property to Shri Deepak Nihalani and Smt. Vedika Deepak Nihalani for total sale consideration of Rs.6,12,00,000/- against stamp duty value of Rs.795,72,500/-. However, the assessee had adopted the value of Rs.6,12,00,000/- as full value of consideration instead of Rs.7,95,72,500/- as determined by the stamp duty authority. Therefore, the assessing officer observed that assessee has failed to comply with the provision of Sec. 50C of the Act. On query, the assessee

submitted that the said office premises was in a vary dilapidated conditions and required extensive repairs like re-plastering etc, therefore, the value adopted by the stamp valuation authority exceeded the fair market value of the property as on the date of transfer. In view of these the assessee requested that the price received by him on the date of transfer was full and fair, therefore, the stamp duty value ought not to be taken as sale consideration and the capital gains be computed as per the agreement value only. However, the AO has not agreed with the aforesaid submission of the assessee for the reason that Sec. 50C of the Act is attracted in the case of the assessee which is deeming provision that provide if the valuation adopted by the stamp valuation authority is more than the consideration declared than such value is to be treated as full valuation of consideration received or accrued for the purpose of Sec. 48 of the I.T. Act. Therefore, the AO has computed the capital gain after considering the provision of Sec. 50C of the Act to the amount of Rs.464,79,022/-.

3. Aggrieved the assessee filed the appeal before the ld. CIT(A). Before the ld. CIT(A) the assessee specifically submitted that as per the provision of subsection (2) of Sec. 50C of the Act where the assessee claimed before the assessing officer that the value adopted or assessed or assessable by the stamp valuation authority under subsection (1) exceed the fair market value of the property as on date of transfer the assessing officer has to refer the valuation of the capital asset to the valuation officer. However, the ld. CIT(A) has dismissed the appeal of the assessee reiterating the findings of the assessing officer.

4. Heard both the sides and perused the material on record. During the year under consideration the assessee has computed the long term capital gain on the sale of the impugned property after taking into consideration the total sale consideration of Rs.6,12,00,000/- instead

of value of Rs.7,95,72,500/- computed by the stamp duty valuation authority. Before the lower authorities the assessee has categorically submitted that the sold commercial premises was in dilapidated conditions, therefore, the value adopted by the stamp valuation authority exceeded the fair market value of the property as on the date of transfer and contended that sale consideration received by the assessee was full and fair and requested that stamp duty value be not taken as sale consideration and the capital gains be computed as per the agreement value only. However, the assessing officer has worked out the capital gain on sale of property as per the deeming provisions of Sec. 50C of the Act by taking the value of the property assessed by stamp duty authority. After perusal of the above facts and material on record we find that assessee has objected before the assessing officer regarding the valuation adopted by the stamp valuation authority on the reason of dilapidated condition of the sold commercial premises. The assessing officer without disputing any of the reason given by the assessee had made addition u/s 50C of the Act and failed to follow the procedure prescribed in law i.e making reference to DVO as amended by Sec. 50C(2) of the Act. The relevant part of the provision of Sec. 50C(2) is reproduced 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 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 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.— 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- Fro the purpose 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 by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

Considering the provision of Sec. 50C(2) of the Act where the assessee objected to valuation adopted by stamp valuation authority, the AO is required to make a reference to valuation officer to ascertain the correct and fair market value of the property. In view of the provisions Sec. 50C(2) we remind this matter back to the file of the assessing officer for deciding the issue de novo on the basis of report of DVO after referring it for valuation as discussed supra in this order. Therefore, the grounds of appeal of the assessee are allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11.12.2023

Sd/-

(Vikas Awasthy)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 11.12.2023

PS. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.