

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2690/Mum/2023  
(A.Y: 2011-12)

Deependra Singh, 504 Pushpa Kunj, A Road, Marine Lines, Mumbai-400020.	Vs.	ITO Ward-17(2)(1), Kautaliya Bhavan, Bandra East, Mumbai-400050.
PAN/GIR No. : AKIPS3319N		
Appellant	..	Respondent

Assessee by :	Shri H.N.Motiwalla.AR
Revenue by :	Shri P.D.Chougale. Sr.DR

Date of Hearing	02.02.2024
Date of Pronouncement	20.03.2024

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 143(3) r.w.s 254 and u/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case the learned Commissioner of Income tax, National Faceless Appeal Center, New Delhi, erred in confirming the order of Assessing Officer in respect of taking the stamp duty value as on the date of agreement dated August 19,2006 amounting to Rs. 3,44,95,000/- instead of DVO's value amounting to Rs. 2,25,13,000/- as per DVO's report dated March 31, 2016, on the*

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*ground that it is an after thought, particularly when, sub-sections (2) and (3) of section 50C mandates the Assessing Officer to take either stamp duty value or DVO's value whichever is less, which is also clarify by the Board vide its circular no. 8/2002 dated August 27,2002.*

*2. The said learned Commissioner of Income tax has also erred in confirming the order of the Assessing Officer in respect of working out the index cost up to the date of agreement dated August 19,2006 instead of deed of conveyance dated December 30, 2010.*

*3. Since the finding of the learned Commissioner of Income tax (Appeals) and learned Assessing Officer is that the transfer has taken place on August 19, 2006, therefore, no capital gain should be charged to tax in the year under consideration.*

2. The brief facts of the case are that, the assessee has filed the return of income for the A.Y.2011-12 on 31.03.2012 disclosing a total income of Rs.1,76,680/-.The Assessing Officer (AO) found that the assessee having 50% share in the one of the ancestral property at bandup has executed the development agreement on 19-08-2006 with a sale consideration of Rs.2,04,12,000/-but the market value determined by the stamp duty authorities at Rs. 3,44,95,000/- and when the conveyance deed was registered on 30.10.2010 in F.Y.2010-11, the market value was determined at Rs.9,32,38,000/-.Whereas in the assessment proceedings, the AO has dealt on the facts and submissions and applicability of the provisions of the Act

with respect to development agreement and conveyance deed. Further on the request of the assessee for reference to D.V.O under the provisions of section 50C(2) of the Act, the A.O has referred to the valuation cell, and since the report was not received and considering the time barring assessment, the A.O. has adopted the value as per stamp duty authorities and made an addition of Rs.3,64,63,531/-under section 50C of the Act and assessed the total income of Rs.3,65,89,675/- and passed the order U/sec143(3) of the Act dated 20-03-2014. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has confirmed the action of the AO. On further appeal by the assessee, the Honble Tribunal has restored the issue to the file of the A.O to verify the mode of receipt of Rs.10 Lakhs at the time development agreement.

3. The AO as per the directions of the Hon'ble Tribunal has issued notice u/s 142(1) of the Act. Whereas the AO has considered the facts and the submissions referred at Para 5.1 to 5.2 of the order as under:

*5.1. In response, the assessee's representative has filed letter dated 21.06.2018 and submitted as follows:-*

*5.2 Regarding stamp duty valuation, the assessee's representative has referred to its letter dated 26.02.2018,*

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wherein it has been stated as under: At the time of original assessment you have taken the Stamp Duty Value of Rs.9,32,38,000/- as on date of conveyance i.e. December 30, 2010 instead of date of development agreement as on August 19, 2006. Against which our above named client had preferred an appeal the CIT(A) 28, Mumbai, who confirmed your order vide dated September 27, 2016.

Against which our above named client preferred an appeal to the Income Tax Appellate Tribunal, Mumbai, who vide his order dated January 24, 2018 has directed you to take the value as on August 19, 2006, if our above named client had received Rs.10,00,000/- by cheque. Our Ms.Ambwani submitted the bank statement wherein the figure of Rs.10,00,000/- is appearing at the date of development agreement. Hence, we request you to take the value of DVO on August 19, 2006 at Rs.2,25,13,000/- as per attached CBDT circular no.8 of 2002 dated August 27, 2002, wherein the circular reads as under:-

*If the fair market value determined by the Valuation Officer is less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be full value of consideration. However, if the fair market value determined by the Valuation Officer is more than the value adopted or assessed for stamp duty purposes, the Assessing Officer shall not adopt such fair market value and shall take the full value of consideration to be the value adopted or assessed for stamp duty purposes"*

*This being benevolent circular is binding as per following judgements of the Supreme Court:*

*(i) Navnit Lal C. Javeri Vs. K.K. Sen [56 ITR198(SC)]*

*(ii) Ellernan Lines Ltd. vs. CIT [82 ITR 913 (SC)]*

*iii) K.P. Varghese Vs. ITO [131 ITR 597(SC)]*

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*(iv) UCO Bank Vs. CIT [237 ITR 889 (SC)]*

*Hence we request you to give effect to the same, following the circular and aforesaid judgments*

Whereas the AO was not satisfied with the explanations and dealt at Para 5.1 to 5.5 of the order and assessed the total income of Rs.99,60,580/-and passed the order U/sec143(3) r.w.s254 of the Act dated 27.08.2024.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, and findings of the AO and observed at Para 5 as under:

*Adjudication*

*5. I have gone through the facts of the case, the statement of facts filed in Form No.35, submission made by the appellant and the assessment order passed by the Assessing Officer.*

*As per facts of the case the original assessment order u/s 143(3) for A.Y. 2011-12 which was completed at an income of Rs.3,65,89,675/- on the basis of an addition of Rs.3,64,63,521/- on account of Long Term Capital Gain (LTCG) on sale of immovable property. The Ld. A.O calculated the LTCG based on conveyance deed registered on 30.10.2010 which determined the market value of the immovable property as 9,32,38,000/-. The appellant had already executed a development agreement on 19.08.2006 at a sale value of Rs.2,04,12,000/- determined by DVO while the market value as*

determined by Stamp Duty Authorities was Rs.3,44,95,000/-. The Ld. CIT(A) confirmed the order of A.O. On 2nd appeal of the appellant, after due consideration of all the facts of the case the matter was remanded back to Ld. AO by Hon'ble ITAT vide its order dated 24.01.2018 with the directions as under:-

"....we restore this issue back to the file of AO to verify whether Rs. 10,00,000/- was received by the assessee on the date of registration by cheque or not. If the assessee produces the evidence that he has received the money by cheque then the stamp valuation should be taken as on 19.08.2006

The Id. A.O. passed the consequential order u/s 143(3) rws 254. on Aggrieved with the order of t being adjudicated as the Ld AO, the appellant 27/08/2018. an appeal which is under.

Grounds No. 1 & 2:-

Both the grounds are interrelated and hence taken together. As can be made out from the arguments of the appellant before Hon'ble ITAT, Mumbai, the matter in question was the determination of the date of transfer of his immovable property for which the Coordinate Bench was pleased to issue directions to the Ld. AO which was just to determine the date on which part performance of the transfer of his immovable property took place and the proof of payment received by him thereof. The Ld. AO has brought evidence on record on payment of Rs.5,00,000/- on 23.08.2006 into the account of the which is his share of part consideration. Hence, the market value of the property was determined by the AO as on 19.08.2006 which was Rs.3,44,95,000/- as per Stamp Duty Authority. The. DVO-had-determined the... value of the property at Rs.2,04,12,000/-.

In my opinion, the only issue at hand of the AO was determining the date of transfer of the property by looking at the corroborating evidence. No directions what so ever have been issued by Hon'ble ITAT to determine the cost of immovable

*property as per DVO's valuation. The appellant is just raising this ground as an after-thought. Alternately, it is pertinent to mention that Section 50C creates a deeming fiction to tax the transfer of capital asset being immovable property at the consideration, being higher of the consideration actually received or the stamp duty value of the said immovable property.*

*I am in agreement with the Ld. AO that as per the directions of the Hon'ble ITAT the stamp duty valuation of the property as on 19.08.2006, which was Rs.3,44,95,000/- is to be adopted for calculation of full value of consideration for determination of Long Term Capital Gain.*

*The contentions of the appellant are not convincing and are hereby rejected. The ground of appeal no. 1 & 2 are hereby dismissed.*

5. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the order of the AO, considering the stamp duty value on the date of agreement irrespective of the DVO value of Rs. 2,25,13,000/- as per DVO report dated 31.03.2016. The A.O has overlooked the provisions under section 50C(2)&(3) of the Act and CBDT circular no 8/2002 dated 27-08-2002 in adopting the DVO value or stamp duty value whichever is less. The CIT(A) has erred in confirming the action of the

A.O in computing cost index inflation to the date of agreement ignoring the year of execution of conveyance deed/transfer in financial 2010-11. The Ld.AR substantiated the submissions with the factual paper book, judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR submitted that the issue of adopting the DVO value on the date of agreement was raised for the first time by the assessee and there is no observations in the original assessment proceedings and the Ld.DR supported the order of the CIT(A).

7. Heard the rival submissions and perused the material on record. The Ld. AR made submissions on the first disputed issue, that the CIT(A) has erred in sustaining the order of the AO, considering the stamp duty value on the date of agreement irrespective of the DVO value received after passing of order U/sec143(3) of the Act. The Ld.AR contentions are that the AO in the assessment proceedings u/sec 143(3) r.w.s 254 of the Act has overlooked the value of Rs.2,25,13,000/- as per the District valuation Officer(DVO) report dated 31-03-2016 and has adopted stamp valuation of Rs.3,44,95,000/- on the date of agreement dated 19.08.2006. On perusal of the information and the facts, the assessee is having 50%

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share in the one of the ancestral property in bandup and has entered into development agreement along with 50% co-owner on 19.08.2006 for sale consideration of Rs. 2,04,12,000/- and the market value determined by the stamp duty authorities on the date of agreement is Rs. 3,44,95,000/-. Subsequently the assessee has executed a conveyance deed which was registered on 30.10.2010 in the F.Y 2010-11, where the market value determined by the stamp duty authorities at Rs. 9,32,38,000/-. The AO in the original proceedings u/sec 143(3) of the Act has passed the order dated 23.03.2014 with an addition of Rs. 3,64,63,531/- under provisions of Sec. 50C of the Act of adopting the stamp duty valuation on the date of execution of conveyance deed in F.Y.2010-11. But the fact remains that when the assessment proceedings U/sec143(3) of the Act are pending, the assessee has requested by letter dated 31.01.2014, which was brought on record by the Ld. AR requesting to refer the matter to the District Valuation Officer(DVO) under the provisions of section50C(2) of the Act as under:

*“ -----Your above named Assessee has filed his Income Tax Return disclosing Capital Gains of Rs. 50,331/- in respect of his 50% right, title and interest in the property situated at Bhandup. As the Assessee is of the opinion*

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*that valuation fixed by the Registering Authorities at the time of entering into Development Agreement as well as at the time of Conveyance is higher, as the Valuation Authority has not considered the facts of my case. I, therefore, hereby request you to refer the said valuation at the time of registering development in 2006 and at the time of registering Conveyance Deed in 2010 to the District Valuation Officer as per provisions of Section 50(c)(2) and also request to value the said property after considering the following facts as well as the documentary evidence, which will be produced before him” ----*

Subsequently, the AO has referred the matter to DVO for determination of the value, since it was a time barring assessment and the AO without waiting for the DVO report considered the market value by the stamp duty authorities on the date of execution of conveyance deed in the F.Y 2010-11 has computed the capital gains and assessed the total income of Rs. 3,65,89,675/- and passed order u/s 143(3) of the Act dated 20.03.2014. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) on 02.05.2014 raising the grounds of appeal with respect to adoption of stamp duty value on the date of agreement i.e 19-08-2016 instead of conveyance deed executed on 30-12-2010 in F.Y 2010-11 as under:

*1) The Ld AO erred in invoking the provisions of section 50C and failed to appreciate that there were defects in title of the assessee and encumbrances over the plot of land, on account of which the assessee was unable to get a better price.*

2) *The Ld. AO fell in error of law in placing heavy reliance on the SVA valuation, and failed to appreciate that the SVA valuation adopts a uniform rate, is highly generalized and does not take into consideration peculiar features of a particular property.*

3) *Without prejudice to the above, the Ld. AO failed to appreciate that provisions of section 50C of the Act have to be read with reference to the date of Development Agreement instead of the date of Conveyance and the SVA value for the purpose of stamp duty as on the date of Development Agreement should be adopted and not as on the date of execution of conveyance deed.*

4) *Without prejudice, the Ld. AO ought to have completed the assessment by adopting the consideration declared by the assessee, during the pendency of the reference before the DVO, subject to subsequent rectification.*

5) *The Appellant/Assessee craves leave to add/amend/modify any ground(s) of appeal*

Whereas the CIT(A) has dealt on the grounds of appeal, submissions and findings of the assessing officer and has dismissed the assessee appeal. On further appeal, the Honble Tribunal has restored the issue to the file of the AO to verify the mode of receipt of Rs.10 lakhs at the time of entering the development agreement.

8. The Assessing officer subsequent to the receipt of valuation order from DVO dated 31.03.2016, has revised the working of capital gain(50% share) by adopting the Fair Market value (FMV) of land as on 30-12-2010 and revised the total income of Rs.3,54,20,180/-vide order u/sec154 of the Act dated 11.11.2016. When a query was raised to the Ld.AR that, there are no findings on this disputed issue of adoption of DVO value on the date of agreement before the Honble Tribunal, the explanations of the Ld.AR that the assessee has filed revised grounds of appeal. Subsequent to the directions of the Honble Tribunal, The AO has completed assessment by adopting the sale value/ sale consideration as per the stamp duty valuation on 19.08.2006 of Rs.3,45,94,000/- and has granted the index cost acquisition to the date of development agreement and assessed the total income of Rs.99,60,580/- and passed the order U/sec143(3) r.w.s 254 of the Act dated 27.08.2024. But the fact remains that the assessee has challenged the order, for adoption of DVO value of Rs.2,25,13,000/- as on 25.08.2006. Further on the second disputed issue, the Ld.AR

contentions are that index cost of acquisition has to allowed to the date of execution of conveyance deed in F.Y.2010-11 and not restricting to the date of agreement in F.Y 2006-07. On perusal of the facts as discussed, it is clear that these facts are emanating in the current proceedings from the information submitted by the assessee. The Ld.AR emphasized on the applicability of provisions u/sec 50C(1) of the Act retrospectively and filed a note relying on the judicial decisions that

“ the legislature has inserted two proviso to section 50C(1) w.e.f April 01,2017. These provisos were inserted from April 01,2017 on the basis of provisions of section 43CA of the Act. The said section was inserted w. e. f. April 01, 2014.

(i)The provisos reads as under:

*Provided that where the date of agreement fixing the amount of consideration and the date of registration for the transfer of 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 purpose of computing full value of consideration for such transfer:*

*Provided further that the first proviso shall apply only in the case where the amount of consideration, or part thereof, has been received by way of an amount payee cheque or account payee bank draft or by use of electronic clearing system through a bank account*

*[or though such other electronic mode as may be prescribed ] on or before the date of agreement for transfer)*

(ii) These provisos have been held curative in nature and inserted to remove difficulties and should be treated as applying retrospectively and not prospectively as per the principle laid in CIT Vs. Alom Extrusions Ltd. (319 ITR 306 (SC)).

(iii) The Ahmedabad Tribunal in Dharmshibhai Sonani Vs, ACIT [161 ITD 627] has also held and decided that the said provisos should be considered retrospectively and not prospectively as under:

*“Section 50C of the Income-tax Act, 1961-Capital gains - Special provision for full value of consideration in certain cases (Computation of capital gain) - Assessment year 2008-09 Whether insertion of proviso to section 50C by the Finance Act, 2016 with effect from 1-4- 2017, has retrospective effect - Held, yes - Assessee entered into an 'agreement to sell' a piece of land on 29-6-2005 Sale deed of land was executed on 24-4-2007 - Assessing Officer having invoked provisions of section 50C, adopted stamp duty valuation rate prevailing on date on which sale deed was executed Accordingly, certain addition was made to capital gain arising from sale of land Whether in view of aforesaid legal position, impugned addition was to be set aside and, matter was to be remanded back to Assessing Officer for recomputation of capital gain on basis of stamp duty valuation rate prevailing on date of 'agreement to sell' Held, yes [In favour of assessee/Matter remanded”*

(iv) Similarly the Madras High Court in CIT Vs, Vummudi Amarendran [429 ITR 97] has held as under:

*"As per the proviso to section 50C(1) where date of agreement, fixing amount of consideration and date of registration for transfer of capital assets are not same, the value adopted or assessed or assessable by stamp valuation authority of the date of agreement may be taken for the purpose of computing full value of consideration for such transfer and, thus amendment by insertion of said proviso seeks to relieve the assessee from undue hardship"*

9. The Ld.AR also referred to the CBDT circular No.8 of 2002 dated 27 August 2002, in particular-Finance Act 2002- Explanatory Notes specifically Para37.3 on reference to valuation officer in accordance with the provisions of section 55A of the Act and the basis of adoption of value in computation of capital gains under section 48 of the Act. Further the valuation report dated 31-03-2016 is placed at page 78 to 101 of the paper book, and in particular at page 101, the Calculation of Fair market value of said property – Annexure II is placed with the information as under:

(i) Fair Market Value As On 01-04-1981 is Rs.10,98,245/-

(ii) Fair Market Value As on 25-08-2006 is Rs.2,25,13,000/-

(iii) Fair Market Value As on 30-12-2010 is Rs.9,08,99,000/-

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Whereas at the request of the assessee by letter dated 31.01.2014, the assessing officer has referred to the DVO valuation cell, pending DVO report the A.O has passed the assessment order u/sec143(3) of the Act dated 23.03.2014 adopting the stamp duty valuation on the date of execution of conveyance deed in F.Y.2010-11. Whereas the Valuation report u/sec55A of the Income Tax Act is dated 31-03-2016. It is clear that this report was not available to the assessing officer during the assessment proceedings. Therefore, considering the facts, circumstances, ratio of judicial decisions, the provisions of section 50C(2)&3 of the Act and the material evidences as discussed in the above paragraphs. Prima facie these issues were never discussed in the proceedings as the D.V.O valuation report was finalized after a period of 2 years, i.e subsequent to passing of order U/sec143(3) of the Act on dated 23.03.2014. Further, the Assessing officer has granted index cost acquisition as per the provisions of section 48 of the Act to the date of transfer i.e 30-12-2010 in F.Y 2010-11 in the assessment proceedings u/sec143(3) of the Act and there are no valid reasons to deny or restrict the index cost of acquisition to the date of agreement i.e.25-08-2006 i.e F.Y.2006-07 in

the impugned proceedings. Accordingly, set aside the order of the CIT(A) and restore the disputed issues to the file of the Assessing officer to recomputed the capital gains adopting the DVO value as per the valuation report and grant indexed cost of acquisition to the date of transfer subject to verification of evidences and material and adjudicate on merits. It is nevertheless to mention that the the assessee should be provided adequate opportunity of hearing and should cooperate in submitting the information.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20.03.2024.

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 20.03.2024

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT

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Deependra Singh, Mumbai.

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5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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( Asst. Registrar)  
ITAT, Mumbai