

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.601/PUN/2024
निर्धारण वर्ष / Assessment Year : 2015-16

Ramsing Himmatsing Rajput, Plot No.17, Usha Bungalow, Near Seven Heven Hotel, Behind Lotus House, Chetna Nagar, Nashik- 422009. PAN : ADRPR2780A	Vs.	ITO, Ward-2(1), Nashik.
Appellant		Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri Manoj Tripathi
Date of hearing : 02.05.2024
Date of pronouncement : 16.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 19.02.2024 passed by Ld CIT(A)/NFAC for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

"1] The learned CIT(A) erred in confirming the addition u/s 50C of Rs. 14,25,000 by taxing the difference between govt. valuation of Rs.22,25,000 and actual sale consideration of Rs.8,00,000 without appreciating that the impugned land located near river bank was vulnerable to floods, it was situated near cremation

ground and did not have any approach road and hence, its fair market value was only around Rs.8,00,000 and therefore, the addition made u/s 50C was not justified on facts and in law.

- 2] *The learned CIT(A) failed to appreciate that the claim of the appellant was duly supported by Valuation Report of Govt. Approved Valuer and therefore, the addition u/s 50C confirmed by the CIT(A) without even referring the matter to DVO in spite of specific request made by assessee was against the law laid down by Hon'ble Calcutta High Court in Sunil Kumar Agarwal v. CIT [372 ITR 83] and hence, the said addition may be deleted.*
- 3] *The appellant craves leave to add/ alter/ amend any of the grounds of appeal."*

3. Briefly, the facts of the case are that the appellant is an individual engaged in the business of labour contractor. The Return of Income for the assessment year 2015-16 was filed on 30.09.2015 declaring total income of Rs.18,32,450/-. Based on the information available with the AIR that the appellant had sold a land on 22.07.2014 for a consideration of Rs.8,00,000/- whereas its stamp duty value for the purposes of registration was Rs.22,25,000/-, the Assessing Officer formed an opinion that the income escaped assessment of tax in the light of section 50C. Accordingly, after obtaining approval from competent authorities the Assessing Officer reopened the case u/s 147 of the IT Act and issued notice u/s 148 of the Act on 31.03.2021. Thereafter, statutory notices u/s 142(1) were also issued. However, no compliance was made by the assessee in reply to the said notices issued u/s 148 and 142(1) of the

Act. Since the assessee had not disclosed the sale transaction in the original return of income, the Assessing Officer in the order passed u/s 144/147 of the Act determined the total income of the assessee at Rs.40,57,450/- by determining the income under the head Capital gain of Rs.14,25,000/-, being difference of stamp duty value Rs.22,25,000/- & the actual sale consideration of Rs.8,00,000/- as “Short Term Capital Gains”.

4. Being aggrieved, an appeal was filed before Id. CIT(A)/NFAC, who vide impugned order Dated 19-02-2024 partly allowed the appeal of the assessee by observing as under :-

“6. Decision:

The appellant in its grounds of appeal assailed the AO in making addition u/s 50C of the Act being the difference in the stamp duty valuation 22,25,000/- and the actual sale consideration. The appellant further stated that the AO has erred in not referring the impugned land sold for valuation to DVO as there was substantial difference between actual consideration and value for stamp duty purposes per section 50C (2) and that the AO has erred in not considering cost of land sold while calculating short term capital gain.

6.1 The AO in the assessment order noted that the assessee had sold an immovable property at Rs. 800000/- whose guideline value was Rs. 2225000/- for the stamp duty purposes. The AO issued the notices but no compliance was made so the AO added the entire stamp duty consideration as the income of the assessee. The appellant during the course of the appellate proceedings filed detailed submission and requested for the condonation of delay. The reasons were perused and the delay in filing the appeal is condoned. The appellant filed the copy of the sale deed, the copy of the purchase of the said land and the valuation report from the approved valuer to buttress its grounds of appeal. The appellant submitted that because of the prevailing condition i.e., the land is surrounded by nulla and uneven, near the river the actual cost of the land was much lower than the guidance value. The appellant further stated that the AO should have referred the

matter to the DVO for its valuation. However, since no compliance was made by the appellant during the assessment proceedings the AO could not have proceeded to get it valued from the DVO without a request being made or compliance made by the assessee. Therefore, this contention of the appellant lacks merit and is therefore rejected.

6.2 With regard to the appellant's submission and the reliance on the case laws and the valuers report. The Valuation Report of the Valuers shows the fair price of the land to be Rs. 1010915/-. However, the issue being is that the said price is not that of the DVO but of the Valuer of the appellant and the valuation as per the stamp duty shall remain as it is while calculating the capital gain. Therefore, the valuation submitted by the appellant is not acceptable and hence rejected. However, the appellant shall be entitled to the cost of acquisition and the AO shall be computing the Capital gain after giving the benefit of indexation. The addition is partly deleted. The ground of appeal is partly allowed."

5. Being aggrieved by the decision of the Id. CIT(A)/NFAC, the appellant is in appeal before us.

6. The LD AR submitted before us that the assessee is only 8th class pass & is not well conversant with technology & therefore could not see the notice u/s 148/142(1), which were sent on email. Consequently the orders were passed *ex-parte* by the AO resulting in addition of income under the head "short term capital gains" of Rs.22,25,000/-. It was further submitted by LD counsel of the assessee that the impugned sold property was located near the river bank beside cremation ground & did not have any approach road hence the sale value of Rs.8,00,000/- was appropriate & therefore the determination of fair market value on the basis of guideline

value is not correct. Even as per the valuation of Govt Approved Valuer the fair market value was not more than Rs.10,10,915/-. Under these circumstances when the assessee challenged before LD CIT(A) the valuation of the impugned property at Rs.22,25,000/- on the basis of guide line value of stamp duty for the purpose of registration of property , then in the light of section 50C(2) of the IT Act, it was the duty of LD CIT(A)/NFAC to refer the matter of fair market valuation of the impugned property before the DVO, but it was not done. It is therefore requested before the bench to set-aside the orders passed by both the subordinate authorities & direct LD CIT(A)/NFAC or to the AO to refer the matter to the DVO for determination of fair market value of the property for the purposes of calculation of short term capital gain. In support of the said contentions, the counsel of the assessee relied on decision of Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT, 372 ITR 83 (Calcutta).

7. The LD DR supported the orders passed by subordinate authorities & requested to confirm the order passed by LD CIT(A)/NFAC.

8. We have heard LD counsels from both the sides & perused the material available on the record. We find that the assessee is only

8th class pass & therefore could not see the notices sent by AO on emails. The only ground raised before us in this appeal is regarding making the addition on the basis of difference in guide line value of stamp duty for the purposes of registration & actual sales consideration, without appreciating the contention of the appellant as well as without referring the matter to the DVO as envisaged in the section 50C of the IT Act. We find that the appellant assessee requested to allow the deduction of cost of the land sold & also disputed the determination of fair market value of the land sold on the basis of guide line value of stamp duty before LD CIT(A)/NFAC, but he has not bothered to refer the matter to the valuation officer in the light of section 50C(2) of the IT Act, but only directed the AO to allow the cost of the land sold for the purposes of calculation of short term capital gain. It was the contention of the LD counsel of the assessee that due to the location of the property the assessee was compelled to sell the property below the guide line value. The counsel of the assessee relied on the decision of Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT, (2015) 372 ITR 83 (Cal.), wherein, the Hon'ble High Court was pleased to order as under :-

“8. For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

9. For the aforesaid reasons, the order under challenge is set aside.

10. The impugned order including orders passed by the CIT(A) and the assessing officer are all set aside. The matter is remanded to the assessing officer. He shall refer the matter to the departmental valuation officer in accordance with law. After such valuation is made, the assessment shall be made de novo in accordance with law.”

9. We therefore respectfully following the above judgement, find force in the contention of the appellant assessee that to overcome such situation in section 50C, an option is given to the assessee to object determination of fair market value on the basis of guide line value of stamp duty for the purposes of registration of the property & in such a case the AO is bound to refer the matter to the DVO. In the instant case the AO passed *ex-parte* order & therefore the request was made before LD CIT(A)/NFAC which was wrongly denied. Therefore, now we deem it proper to set-a-side the order passed by both the subordinate authorities & remand the matter back to the file of the AO to refer the matter to the valuation officer

for the purposes of section 50C of the IT Act. The AO will refer the matter to the DVO for determining the fair market value of the land sold & pass the order as per law in the light of report of the DVO after providing reasonable opportunity of being heard to the assessee. We order accordingly. Thus, the ground of appeal raised in the appeal filed by the assessee is allowed for statistical purpose.

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

Order pronounced in the open Court on 16th day of May, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th May, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.