

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / ITA Nos. 246 & 247/Hyd/2024
(निर्धारण वर्ष / Assessment Years: 2009-10 & 2011-12)

Saroja Bai Thakur, Vs. Income Tax Officer,
Hyderabad Ward-7(2),
[PAN No. ACJPT2805P] Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, AR
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 09/05/2024
घोषणा की तारीख/Pronouncement on: 16/05/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the orders dated 15/01/2024 & 16/01/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Saroja Bai Thakur ("the assessee") for the assessment years 2009-10 & 2011-12, assessee

preferred these appeals. For the sake of convenience, we decide these appeals by this common order.

2. Brief facts of the case are that for the assessment years 2009-10 and 2011-12, the learned Assessing Officer proposed to invoke the provisions of section 50C of the Income Tax Act, 1961 ('the Act') in respect of the consideration received by the assessee in respect of the sale of properties. Assessee pleaded that there was litigation surrounding the entire properties and the value adopted by the Stamp Valuation Authority, exceeds the market value to be fetched by the assessee under such litigation. Assessee also filed copies of the documents relating to the suits filed, ITAT orders etc.

3. Grievance the assessee is that without considering this plea taken by the assessee and without referring the valuation of the property to a valuation officer, as mandated under section 50C(2) of the Act, the learned Assessing Officer proceeded to adopt the Stamp Valuation Authority. It is argued before me that the learned CIT(A) also did not enter into merits of the plea, but referred to the decision of the Hon'ble Delhi High Court in the case of *Avantha Realty Ltd.*, [2022] 139 taxmann.com 127 (Delhi) and upheld the applicability of section 50C of the Act to the transactions done below the circle rate.

4. Learned AR submitted that even in the case of *Avantha Realty Ltd.*, (supra), Hon'ble court held that where the assessee sold the property below the circle rate, learned Assessing Officer has jurisdiction to examine such a transaction in detail to compute the true capital gains and on the

other hand, the Hon'ble court has referred to the report of the District Valuation Officer on the aspect of Fair Market Value (FMV). He, therefore, submitted that non-compliance with the mandate under section 50C(2) of the Act, the issue deserves to be restored to the file of the learned Assessing Officer to refer the matter to the DVO, obtain his report and to act upon the same, having given an opportunity to the assessee to participate in such proceedings.

5. Per contra, learned DR vehemently opposes the request of the assessee to quash the impugned order and to restore the issue to the file of the learned Assessing Officer to comply with the requirement of section 50C(2) of the Act, he does not dispute the fact that assessee pleaded before the learned Assessing Officer about the pending litigation impacting the market price of the property and the learned Assessing Officer not considering it in the light of section 50C(2) of the Act or that the decision in the case of *Avantha Realty Ltd.*, (*supra*) supports the case of the assessee.

6. We have gone through the record in the light of the submissions made on either side. As recorded by the learned Assessing Officer in the assessment order for the assessment year 2009-10, the assessee submitted with corroborative evidence that the property in question is under the thick of litigation and that such a litigation has an adverse impact on the market price fetched by the same. Section 50C(2) of the Act clearly states that where the assessee claims before the learned Assessing Officer that the value adopted by the Stamp Valuation Authority exceeds the FMV

of the property as on the date of transfer, the learned Assessing Officer may refer the valuation of the capital asset to a valuation officer.

7. Learned Assessing Officer did not record any reasons for not referring the matter to the valuation officer and at the same time, he did not dispute the existing litigation concerning the property in question. It is the settled principle of law that in all fairness, the learned Assessing Officer should refer the determination of the value to be fetched by the property in question, to the DVO, who shall determine the same, giving an opportunity to the assessee to corroborate her plea.

8. In these circumstances, the determination of the correct tax liability of the assessee depends upon the market value to be fetched by the assessee while exercising due diligence in that respect and in view of the plea taken by the assessee about the pending litigation, law requires that such market value could be decided basing on the report of DVO. We, therefore, are of the considered opinion that it is a fit case to accede to the request of the assessee to quash the impugned order and restore the issue to the file of the learned Assessing Officer for compliance with the requirement under section 50C(2) of the Act. Grounds are accordingly treated as allowed for statistical purposes.

AY. 2011-12

9. Since the facts of the case for assessment year 2011-12 are identical to the facts and circumstances in assessment year 2009-10 (supra), our findings in the above appeal, *mutatis mutandis*, would apply to this appeal as well. Hence, in this appeal also, we quash the impugned order and

restore the issue to the file of the learned Assessing Officer for compliance with the requirement under section 50C(2) of the Act. Grounds are accordingly treated as allowed for statistical purposes.

10. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

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

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 16/05/2024

TNMM

Copy forwarded to:

1. Saroja Bai Thakur, 9-2-504, Beside Andhra Bank, Langer House, Hyderabad.
2. Income Tax Officer, Ward-7(2), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD