

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.421/Nag./2022
(Assessment Year : 2018-19)

Virambhai Hargovanbhai Patel
Nehru Putla, Telipura, Itwari, Nagpur
PAN – AOQPP8483C

..... Appellant

v/s

Dy. Commissioner of Income Tax
National Faceless Appeal Center, Delhi

..... Respondent

Assessee by : Shri Bhavesh Moryani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 01/08/2024

Date of Order – 14/08/2021

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 26/10/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2018-19.

2. In its appeal, the assessee has raised following grounds:-

“1. The order U/s. 143(3) r.w.s. 144B of the Income Tax Act passed is illegal, invalid and bad in law;

2. On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi erred in confirming total addition of Rs.3,56,100/- made by the assessing officer, therefore order passed is unjustified, unwarranted and excessive;

3. *On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi ought to have considered disallowance made in respect of difference in fair market value and sale consideration being only 11.46%, which is nominal in this line of business, therefore, addition confirmed U/s. 56(2)(x) at Rs.3,56,100/- is unjustified, unwarranted and excessive;*

4. *On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi ought erred in not considering the judgment of various benches of Hon'ble ITAT, which clearly stated that the 15% difference between fair market and sale consideration were allowable, therefore addition U/s. 56(2)(x) confirmed without any reasons is unjustified, unwarranted and excessive;*

5. *The appellant denied the liability of interest charged U/s. 234A, 234B and 234C of the Act the same may kindly be deleted;*

6. *The appellant seeks permission to add any other ground of appeal or amend or alter the aforesaid ground of appeal at the time of hearing of the appeal."*

3. Grounds no.1 and 6, being general in nature, hence no separate adjudication is required.

4. The issue arise out of grounds no.2, 3 and 4, is, whether or not the Assessing Officer was justified in making addition under section 56(2)(x) of the Income Tax Act, 1961 ("*the Act*") which was confirmed by learned CIT(A).

5. In this case, the assessee filed return of income for the assessment year 2018-19 declaring total income at ₹ 7,33,700. The case was selected for limited scrutiny assessment under the E-assessment Scheme, 2019, to verify the issue on investment in immovable property. Accordingly, the Assessing Officer issued notices under section 143(2) and 142(1) of the Income Tax Act, 1961 ("*the Act*"). In response to the same, the assessee submitted that he has purchased the property being land at Kh.No.746/2, situated at Gram Panchayat, Wadoda, Ph.No.27, tehsil Kamptee, Dist. Nagpur registered on 06/12/2017, and his share in the property was 50% i.e., ₹ 27,50,000 (total

purchase consideration being ₹ 55,00,000 and stamp value of entire property being ₹ 1,41,75,000. Further, it was stated that the property was purchased in an auction conducted by Nagpur Nagrik Sahkari Bank Ltd. The said bank had provided credit facilities to the owner of the property, namely, Sh Harinarayan Ramsevak Jais, Prop. M/s. Mohit Dall Mill, against the mortgage of the property. Since the dues were not repaid, the mortgaged property was taken by the bank following due procedure and subsequently a bank auction was advertised in newspapers. The assessee purchased this property from the bank through the bank auction and stated that the difference between the stamp value and purchase value could not be treated as his income as the property was purchased through an auction and nothing more than the purchase consideration had been paid by the bank. The Assessing Officer completed the assessment by making addition of ₹ 3,56,100, being the difference between fair market value of the property which exceeds consideration by an amount of ₹ 7,12,200, and restricted the assessee's share to 50% of ₹ 7,12,200 i.e., ₹ 3,56,100, under section 56(2)(x) of the Act.

6. The learned CIT(A) confirmed the order passed by the Assessing Officer by observing as follows:—

"On perusal of the assessment order, it is observed that the assessee has purchased a property being land at Kh. No.746/2, situated at Gram Panchayat, Wadoda, Ph. No.27, Tahsil Kamptee, Dist Nagpur, for Rs. 55,00,000/- the value of which was determined at Rs. 1,41,75,000/-. During the assessment proceedings, the appellant stated that his share in the property was 50% i.e., 27,50,000/-(Total purchase consideration being Rs. 55,00,000/- and stamp value of entire property being Rs. 1,41,75,000/-). Further stated that the property was purchased in an auction conducted by Nagpur Nagrik Sahkari Bank Ltd., and the difference between the stamp value and purchase value could not be treated as his income as the property was purchased through an auction. Since the fair market value of the property was less than that adopted by the stamp valuation authorities, the AO made a

reference u/s 50C(2) of the I.T. Act, to the Valuation Officer for ascertaining the fair market value of the property. The Valuation officer determined the fair market value of the property at Rs. 62,12,200/-. The appellant also referred the case to the Valuation Officer and the Valuation Officer vide his report determined the fair market value of the property at Rs. 55,00,000/-, the same amount as fixed by the Bank.

7.2 Since the fair market value of the property exceeds the consideration by an amount of Rs.7,12,200/- (Rs.62,12,200 Rs.55,00,000) and the same is chargeable to income as 'Income from other sources' u/s 56(2)(x) of the I.T. Act. Accordingly AO made addition of Rs. 3,56,100/- being 50% of his share out of total difference amount of Rs. 7,12,200/-.

7.3 During the course of appellate proceedings, the appellant submitted the written submissions and other documentary evidence in support of his claim. I have carefully considered the assessment order, submissions of the appellant and documentary evidences.

7.4 On perusal of the submissions and documentary evidences filed by the appellant it is evident that the appellant has purchased the property through the bank auction at Rs. 55,00,000/- the value of which was determined at Rs. 1,41,75,000/- for stamp duty levy. The fair market value as determined by the Departmental Valuation Officer is Rs. 62,12,200/- which is more than the fair market value determined by the appellant's Valuation Officer. Accordingly, AO added the difference between the fair market value to the total income. Since the purchase consideration is below the stamp valuation price, the provisions of sec. 56(2)(x) of the I.T.Act are applicable.

7.5 The Provisions of Section 56(2)(x) reads as under:

.....

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017:-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, fifty thousand the whole sum; of the aggregate value of such sum;

(b) any immovable property:-

1. without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property:

2. for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration.

7.6 In view of the above, it is evident that where an immovable property is purchased or received by a person for a consideration which exceeds the stamp duty value of the property by an amount exceeding Rs. 50,000/-, the amount by which the Stamp duty value of the property exceeds the consideration paid, shall be chargeable to income tax as income under the head "Income From Other Sources". The only exception is mentioned in first proviso to the section and deals with date of agreement being different from

date of registration in which case the stamp duty value of the property on the date of agreement fixing the consideration shall be the stamp duty value before the stamp duty authorities and has paid the stamp duty on the stamp duty value of the property mentioned above. Once the stamp value assessed in respect of the transferred property has become final and full consideration actually reported is less than such value, provisions of section 56(2)(x) of I.T. Act, 1961 are attracted instantly.

7.7 In view of the above, the said provision provides for deemed valuation of property if the sale consideration is less than the stamp value of the property. However, the aspects such as whether property was purchased through bank auction, payment was made through banking channel, transaction was bonafide etc. are not of any relevant while determining the valuation u/s 56(2)(x) of I.T. Act.

7.8 In the instant case the departmental Valuation officer has determined the value of the property at Rs. 62,12,200/- after considering all relevant factors. Hence, the same is taken as full value of consideration as a result of transfer and not the purchase consideration of Rs. 55,00,000/- as reported by the appellant.

7.9 In view of the above and after considering the facts and circumstances of the case, I am of the opinion that the AO was justified in restricting the addition to 50% being appellant's share of Rs. 7,12,200/- i.e., Rs. 3,56,100/- u/s 56(2)(x) of the I.T. Act, 1961. Hence, the grounds of appeal raised by the appellant are dismissed."

8. In the result, the appeal filed by the appellant is dismissed.

7. We have given a thoughtful consideration to the rival arguments made and perused the material available on record. Before us, the sole point of dispute is regarding the application of provisions of section 56(2)(x) of the Act in case the property is purchased through an auction conducted by the Bank. The matter was before the Co-ordinate Bench of the Tribunal, Hyderabad Bench, and the order dated 10/11/2017, was passed in ITO v/s Southern Steel Ltd., reported as [2018] 61 ITR (Trib.) 126 (Hyd.), wherein, the Bench, after a detailed deliberations, held as follows:-

"(ii) In the case of Krishi Utpanna Bazar Samittee v Dy. CIT in I.T.A. No. 2043/PN/2012 and others vide order dated 20-3-2014 on a similar issue as in the case under consideration, observed as under:

8. We have carefully considered the rival submissions. Section 50C of the Act is a special provision which provides a deeming fiction. In terms of section 50C of the Act in cases where the consideration received or accruing as result of the transfer of a capital asset being land or building or both, is lower than the value adopted or assessed by any authority of the State of Government for the purposes of payment of stamp duty in respect of such transfer, then the value so adopted or assessed shall be deemed to be the full value of consideration received or accruing as a result of such transfer for the purposes of computing the capital gain in terms of section 48 of the Act. In the present case, the Revenue has sought to justify invoking of section 50C of the Act primarily on the ground that the value adopted by the Stamp Valuation Authority for the purposes of payment of stamp duty in respect of transfer of the two properties in question is higher than the actual consideration accruing to the assessee as a result of their sale. The defence of the assessee is that the sale consideration stated in the sale deed is liable to be taken as the fair market value even for the purposes of payment of stamp duty in the present case because the sale/transfer in the present case is by way of a public auction conducted by a statutory body. Pertinently, the assessee is a statutory body incorporated under the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and is inter alia, engaged in the activity of marketing of agricultural produce as a public utility. The moot question is as to whether the aforesaid proposition of the assessee is in accordance with law or not.

9. As noted earlier, the objective of section 50C of the Act is to substitute the value adopted by a Stamp Valuation Authority as the full value of consideration in cases where the actual consideration received or accruing to an assessee is lower than the value assessed by the Stamp Valuation Authority. In other words, in such situations, the value determined by the Stamp Valuation Authority is to be taken as the full value of consideration in order to compute the capital gains. In this context, the assessee has referred to the provisions of rule 4(6) of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, especially the proviso which we have reproduced in the earlier part of this order. In terms of the said proviso, the Government of Maharashtra has issued a Circular dated 30-6-2005 (supra) dealing with the cases where sale is conducted by the Debt Recovery Tribunal and other Government or non-Government organisations by public auction. Considering the provisions of rule 4(6) of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, the said Circular prescribes that in the aforesaid cases the highest price as certified shall be considered as the fair market value for the purposes of payment of stamp duty. The relevant portion of the Circular, a copy of which has been placed on record, reads as under :

'1. While registering the documents in respect of sale conducted by the Debt Recovery Tribunal and other Government/non-Government organisations or their competent authorities by public auction on as is where is basis and along with the encumbrances and as per the terms and conditions of the auction sale, the highest price as certified in the sale certificate or other order issued by such authority should be considered as the fair market value for the purposes of stamp duty and in such cases the price as per the ready reckoner should not be considered.

2. The registering authority should assess the stamp duty on the value mentioned in the sale certificate and the said sale certificate and extract of property card should be made annexure of the document to be registered.

3. The market value as defined in section 2 (na) of the Bombay Stamp Act, 1958 in respect of such property should be restricted to the value declared in sale certificate only for registration of such document. Therefore if such property is/subsequently sold, the value as per ready reckoner should be taken for that transaction.'

10. In the present case, the assessee before us is a statutory body and the sale of properties in question has been made through the route of public auction, which is not in dispute. The Commissioner (Appeals) has also reproduced the submissions of the assessee before him which inter alia contain averments that the sale of the properties was conducted in public auction, after seeking necessary permissions from the director of Panan of Maharashtra State. Factually speaking, in our considered opinion, the impugned transfers effected by the assessee by way of public auction fall within the purview of the Circular issued by the Government of Maharashtra dated 30-6-2005 (supra) for the purposes of payment of stamp duty. In terms of the said Circular, the highest price in the sale auction is considered to be the fair market value for the purposes of payment of stamp duty. This would mean that the consideration stated in the sale deed is to be accepted as the fair market value for the purposes of payment of stamp duty in the present case and not the prices worked out as per the ready reckoner. Ostensibly, in such a situation the invoking of section 50C of the Act for the purposes of substituting the full value of consideration in order to compute the capital gain would fail since there would not be any differential between the stated consideration and the value to be considered by the stamp valuation authority of the State Government for the payment of stamp duty. However, it has been pointed out by the Revenue that the buyers of the properties have paid stamp duty at the value determined on the basis of rates prescribed in the ready reckoner, which are higher than the stated consideration. In our considered opinion, the aforesaid factum would not make any difference to the rationale of invoking section 50C of the Act, which has to be decided on the basis of the prevailing legal position, and not on the basis of the position taken by a party. Pertinently, the purchaser of the properties are liable to bear expenses of stamp duty and it was not within the domain of the assessee and therefore the assessee cannot be put to a jeopardy of invoking of section 50C of the Act merely because of the fault of the buyers of the properties.

11. In view of the aforesaid discussion and having regard to the facts and circumstances of the present case, in our view, the Commissioner (Appeals) erred in affirming the invoking of section 50C of the Act in relation to the two properties sold by the assessee through public auction. Accordingly, we set aside the order of the Commissioner (Appeals) and direct the Assessing Officer to allow appropriate relief to the assessee as per law.'

As the issue under consideration is materially identical to that of the case decided by the Pune Bench as above, respectfully following the same, we uphold the order of the Commissioner (Appeals), who in turn, followed the said case and held that the Assessing Officer cannot adopt the sale consideration at Rs. 21,88,97,000 and invoke section 50C. Accordingly, we deem it fit to dismiss the grounds raised by the Revenue.

7. *In the result appeal of the Revenue is dismissed.*”

8. Placing reliance on the decision of the Co-ordinate Bench, which has not been controverted by the learned Departmental Representative, we hold that there is no scope of substitution of fair market value in case the property is purchased through auction. Hence, the same being a statutory process and there cannot be any scope of understatement of consideration, therefore, we hold the Assessing Officer was not justified in making addition of ₹ Rs.3,56,100, under section 56(2)(x) of the Act which was confirmed by the learned CIT(A). Consequently, we set aside the impugned order passed by the learned CIT(A) and allow the issue raised in ground no.2, 3 and 4 by the assessee.

9. Ground no.5, relates to levy of interest under section 234A, 234B and 234C of the Act.

10. Levy of interest under the above provisions of the Act is consequential in nature, hence, no separate adjudication is needed.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 14/08/2024

V. DURGA RAO
JUDICIAL MEMBER

K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 14/08/2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur