



।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1357/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Baban Rajaram Shahane, Shop No.3, Saraf Bazar, Govind Complex, Nashik Road, Nashik – 422101. PAN: ASWPS1504M	V s	The Income Tax Officer, Ward-3(1), Nashik.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Sanket M Joshi – AR
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	22/10/2024
Date of pronouncement	23/10/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] dated 22.12.2023 under section 250 of the Income tax Act 1961. The Assessee has raised the following grounds of appeal :

“1. The learned CIT(A) erred in confirming the addition u/s 50C of Rs.38,97,200 made by the ITO, Ward 2(1), Nashik in the asst, order u/s 144 without appreciating that the said addition u/s 50C made without obtaining the require

approval from Range Head as mandated para 2.3 of the CBDT Instruction dated 05.03.2019 was not sustainable in law and hence, the same ought to have been deleted.

2. *The learned CIT(A) erred in confirming the addition u/s 50C of Rs.38,97,200 by taxing the difference between govt, valuation of Rs.88,97.200 as on the date of entering sale deed and actual sale consideration of Rs.50,00,000 without appreciating that the impugned land did not have any approach road and hence, its fair market value was only around Rs.50,00,000 and therefore, the addition made u/s 50C was not justified on facts and in law.*

3. *The learned CIT(A) ought to have appreciated that the CA of the appellant who was looking after the income tax asst, work had been diagnosed with mouth cancer and he subsequently succumbed to cancer and therefore, there was a reasonable cause due to which the stamp valuation of land could not be challenged before the A.O. in the asst, u/s 144 but when the said valuation was challenged during appellate proceedings, the addition u/s 50C confirmed by the CIT(A) without even referring the matter to DVO was in direct contradiction to the law laid down by Hon'ble Calcutta High Court in Sunil Kumar Agarwal v. CIT [372 ITR 83].*

4. *Without prejudice to the above grounds, the appellant submits that the govt, valuation of the land as on the date of entering agreement to sale dated 10.06.2015 was Rs.80,23,000 and advance of Rs.20 lakhs was also received through banking channel before entering the said regt. agreement and therefore, the govt, valuation for the purposes of section 50C should not have exceeded Rs.80,23,000 as per first and second proviso to section 50C of the Act.”*

Submission of Id.AR :

2. Ld.AR for the assessee submitted that the Assessee had sold Immovable Property on 10.06.2015 for actual consideration of

Rs.50 lakhs only, through Satekhat dated 10.06.2015. However, the sale deed was registered on 17.09.2016. The Stamp Duty Value on the date of registration was Rs.88,97,200/-. The Assessing Officer invoked Section 50C of the Act. The Assessee had challenged valuation before Id.CIT(A). Therefore, it was mandatory for Id.CIT(A) to refer that property for valuation to the District Valuation Officer(DVO). Ld.Authorised Representative for the Assessee relied on the order of the Hon'ble Kolkata High Court in the case of Sunil Kumar Agarwal vs. CIT 372 ITR 83. Ld.AR also submitted that as per Section 50C, Valuation on the date of Satekhat needs to be taken into consideration.

3.1 Ld.AR requested that Id.CIT(A) may be directed to refer the issue of Valuation to the DVO.

Submission of Id.DR :

4. Ld.DR relied on the order of AO and Id.CIT(A).

Findings & Analysis :

5. We have heard both the parties and perused the records. It is observed from the Id.CIT(A)'s order that Impugned Immovable Property was sold by executing Satekhat on 10.06.2015 whereas

Sale Deed was executed on 17.09.2016. It is also observed that Assessing Officer invoked Section 50C of the Act. Both ld.AO as well ld.CIT(A) failed to refer the issue to the DVO. The Hon'ble Kolkata High Court in the case of Sunil Kumar Agarwal vs. CIT 372 ITR 83 (supra) has held as under :

“6. For the aforesaid reasons, we are of the opinion that the valuation by the DVO, contemplated under s. 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 AO, 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.

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

5. Respectfully following the Hon'ble Calcutta High Court, we direct the ld.CIT(A) to refer the impugned issue of Valuation to the DVO. Accordingly, the order of ld.CIT(A) is set-aside to ld.CIT(A) for denovo adjudicating the issue of Capital Gain after considering the DVO's Report. The assessee shall be provided opportunity of hearing. Accordingly, appeal of the assessee is allowed for statistical purposes. The ld.AR for the Assessee has not pleaded any other ground.

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

Order pronounced in the open Court on 23rd October, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd Oct, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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