

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1572/Ahd/2024
निर्धारण वर्ष / Assessment Year : 2013-14

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| Anilkumar Dwarkaprasad Modani A-17, Videocon Housing Colony Chavaj, Bharuch 392 002 (Gujarat) | <u>बनाम/</u> <u>v/s.</u> | The Dy.CIT Circle-2(1)(1) Vadodara |
| स्थायी लेखा सं./PAN:ACNPM 0273 C | | |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |
| Assessee by : | | Shri Hemant Suthar, AR |
| Revenue by : | | Shri Surendra Kumar, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 12/11/2024
घोषणा की तारीख /Date of Pronouncement: 21/11/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order dated 26/12/2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"] for the Assessment Year (AY) 2013-14, in which the addition made by the Assessing Officer [hereinafter referred to as "AO"] under Section 50C of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] was confirmed vide assessment order dated 28/03/2016.

Facts of the case:

2. The assessee, an individual earning income from salaries, trading in shares and securities, capital gains, and other sources, filed his return of

income electronically on 05.08.2013, declaring total income of Rs.65,92,970/-. The return was selected for scrutiny, and notice under Section 143(2) of the Act was issued on 03.09.2014, which was duly served upon the assessee. The case was subsequently examined, and the AO completed the assessment under Section 143(3) of the Act on 28.03.2016.

3. During the assessment proceedings, the AO noted that the assessee had sold immovable properties in Jaipur. The sale consideration as declared by the assessee in respect of these properties was compared with the stamp duty valuation (*Jantri* rate) and found to be lower. Consequently, the AO invoked Section 50C of the Act and substituted the sale consideration with the stamp duty valuation, leading to an addition of Rs.54,99,196/- to the assessee's declared capital gains, thereby assessing the total income at Rs.1,20,92,166/-.

3.1. The details of the properties sold and the valuation differences noted by the AO are as follows:

| Description of Property | Sale Deed Value (Rs.) | Stamp Duty Value (Rs.) | Difference (Rs.) |
|---------------------------------|--------------------------|------------------------|------------------|
| Plot No. 99, Shyamwatika | 5,00,000 | 5,04,912 | 4,912 |
| Plot No. 101, Shyamwatika | 6,00,000 | 6,07,945 | 7,945 |
| Plot Nos. 166-173, 142, and 143 | 9,00,000 (1 lac each) | 63,86,339 | 54,86,339 |

3.2. Based on the above discrepancies, the AO made an addition of Rs.54,99,196/- to the assessee's income, treating the difference as additional capital gains under Section 50C of the Act.

4. Aggrieved by the addition, the assessee filed an appeal before the CIT(A), NFAC, Delhi. The assessee contended that the AO erred in substituting the actual sale consideration with the stamp duty value without obtaining an independent valuation report from the District Valuation Officer (DVO). The assessee had specifically requested the AO to refer the matter to the DVO under Section 50C(2) of the Act, and although the AO did so, the DVO could not furnish the valuation report within the assessment time limit. In the absence of the DVO report, the reliance on stamp duty valuation was unjustified and did not reflect the fair market value of the properties. Despite these submissions, the CIT(A) upheld the addition made by the AO, concluding that the reliance on the stamp duty valuation was valid in the absence of the DVO report.

5. Aggrieved by the order of the CIT(A) the assessee is in appeal before us with following grounds of appeal:

1. *The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in passing the order without giving proper opportunity of being heard and thus, the order so passed is prayed to be set aside.*
2. *The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in passing the order without obtaining report of the Ld. ^[1]~~SEP~~DVO. The action of the Ld. CIT(A) in passing an order without this, is bad in law and deserves to be set aside.*
3. *The Ld. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in confirming the action of the Ld. A.O. in the addition of Rs.54,99, 196/- being additional capital gain determined by substitution of stamp duty value in place of actual sale consideration. The impugned addition of Rs.54,99,196/- being bad in law and in facts is prayed to be deleted.*
4. *Your appellant craves liberty to add, alter, amend substitute or withdraw any of the ground(s) of appeal hereinabove contained.*

5.1. The appeal was filed with a delay of 191 days, and the assessee has filed an application for condonation of delay.

Condonation of Delay

6. The assessee has explained that upon receipt of the CIT(A)'s order on 26.12.2023, he forwarded it to his Chartered Accountants, M/s. Mukund & Rohit, for further action, assuming that they would file an appeal before the Tribunal within the prescribed period. However, the assessee's Chartered Accountants were occupied with hearings before the Interim Board for Settlement for other clients, which continued until 31.12.2023. Consequently, the task of filing the appeal was inadvertently overlooked. The delay came to light only when the Income Tax Department issued an intimation under Section 245 of the Act, adjusting the refund against the outstanding demand, prompting the assessee to inquire about the status of the appeal. Upon realizing that the appeal was not filed, immediate steps were taken to file it on 02.09.2024, resulting in a delay of 191 days. The assessee has supported his application for condonation of delay with an affidavit from his Chartered Accountant, explaining the reasons for the delay and affirming that it was unintentional and due to an oversight caused by preoccupation with other professional commitments.

7. We have also taken into account various judicial precedents cited by the assessee, including the landmark decision of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition v. Mst. Katiji (167 ITR 471) [SC]**, where it was held that in matters of condonation of delay, a

liberal and pragmatic approach should be adopted to ensure that substantial justice is not denied on technical grounds.

7.1. In view of these facts and circumstances, we find that the delay was due to bona fide reasons and was not a result of any deliberate negligence or malafide intention. Following the principles laid down in judicial precedents, we condone the delay in filing and admit the appeal for hearing on merits.

On the grounds of appeal

8. We observe that the CIT(A) failed to afford a proper opportunity of hearing to the assessee, as required under Section 250 of the Act. In matters where substantial additions are made, natural justice demands that the assessee be given an adequate chance to present their case, especially in faceless proceedings where interaction is limited. This procedural lapse warrants reconsideration of the case.

8.1. The assessee had exercised their right under Section 50C(2) of the Act to request a DVO valuation, challenging the stamp duty value as an unfair reflection of the actual market price. The AO indeed referred the matter to the DVO on 03.03.2016, but the DVO was unable to furnish the report before the assessment time limit (31.03.2016). Despite this, the AO proceeded to complete the assessment based solely on the stamp duty value.

8.2. After carefully considering the facts of the case, relevant statutory provisions, and judicial precedents, we find that both procedural and substantive aspects of this case have not been adequately addressed by the lower authorities, particularly in relation to the application of Section 50C of the Act.

8.3. Section 50C of the Act mandates that where there is a difference between the actual sale consideration of an immovable property and the value adopted by the stamp duty authority, the higher stamp duty value should be adopted as the deemed sale consideration for the purpose of calculating capital gains. However, Section 50C(2) of the Act provides a crucial procedural safeguard by allowing the assessee to request a reference to the Departmental Valuation Officer (DVO), if they believe that the stamp duty valuation does not reflect the fair market value of the property.

8.4. In the present case, the assessee disputed the stamp duty valuation and invoked the right under Section 50C(2) for a DVO reference. The Assessing Officer did initiate this reference; however, due to time constraints, the DVO could not complete the valuation before the assessment was finalized. Despite the lack of an independent valuation, the AO proceeded to adopt the stamp duty valuation, and the CIT(A) subsequently upheld this addition.

8.5. We emphasize that the procedural provisions of Section 50C(2) of the Act are not mere formalities but critical safeguards intended to ensure fair assessment of capital gains. Valuation is a technical matter, and

reliance on an independent Valuation Officer is essential when there is a dispute regarding the fair market value. The importance of this procedural step is heightened in cases involving substantial additions to capital gains, as these assessments directly impact the tax liability of the assessee.

8.6. Failure to obtain a DVO report in this case has deprived the assessee of a fair opportunity to substantiate the declared sale consideration. When an assessee challenges the stamp duty valuation, the AO is duty-bound to rely on a DVO valuation before concluding the assessment. In the absence of such an independent valuation, reliance on the stamp duty rate alone may lead to an erroneous assessment that does not accurately reflect the true capital gains.

8.7. Given the procedural lapses in this case and the importance of fair valuation in capital gains matters, we find it appropriate to set aside the order of the CIT(A) and restore the matter to the AO with specific directions:

1. The AO is directed to obtain an independent valuation report from the DVO for the properties in question as per the procedural requirements of Section 50C(2) of the Act.
2. Upon receipt of the DVO report, the AO shall reconsider the addition of Rs.54,99,196/-, taking into account the fair market value as determined by the DVO rather than relying solely on the stamp duty valuation.
3. The AO shall afford the assessee an adequate opportunity of being heard during this reassessment process, ensuring compliance with principles of natural justice.
4. If the DVO valuation report is not available within a reasonable period, the AO should judiciously assess whether the actual sale consideration

reflects the fair market value and decide accordingly, guided by relevant judicial principles and equitable considerations. If the assessee provides evidence that challenges the stamp duty value (such as comparable sales data or other valuation evidence), the AO must carefully evaluate this evidence before relying solely on the stamp duty value.

8.8. In view of the above, the order of the CIT(A) is set aside, and the matter is restored back to the AO with the above directions to ensure compliance with statutory valuation procedures and to provide the assessee a fair and just reassessment of capital gains.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 21st November, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 21/11/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad