

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2966/Chny/2024
निर्धारण वर्ष /Assessment Years: 2014-15

Saravanan Arumugam,
C/O. A & S Preowned Cars,
No.1/183, East Coast Road,
Kottivakkam
Chennai- 600 041.
[PAN: AGKPA5662L]

Income Tax Officer
CHE-W-(116)(3)
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mr. Vasantha Narayanan, CA

प्रत्यर्थी की ओर से /Revenue by

: Mr.R.Raghupathy, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 18.02.2025

घोषणा की तारीख /Date of Pronouncement

: 23.04.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed by the assessee against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1068956261(1) dated 23.09.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment year 2014-15.

2.0 The Ld. Counsel for the assessee informed that the only issue emanating from its grounds of appeal is regarding the action of the Ld.CIT(A) in confirming the action of the Ld.AO whereby an addition of

Rs.3,45,78,000/- was made u/s 143(3) vide order dated 30.03.2022. The Ld. Counsel narrated the following brief factual matrix of the case. No return of income for AY-2014-15 was filed by the assessee. Pursuant to the information received regarding assessee having undertaken transactions in immovable property, the Ld.AO proceeded u/s 147 r.w.s 144 / 144B of the Income Tax Act (herein after referred as the 'Act'). No return of income for AY-2014-15 was filed by the assessee in response to notice u/s 148 also. In response to show cause notice u/s 144, the assessee had informed that it had purchased an immovable property for Rs.3,04,22,000/- as against stamp duty valuation of Rs.6,50,00,000/. Justifying the purchase of property below stamp duty valuation, the assessee had informed that it was on account of a part of land being earmarked for Government's road widening scheme as well as other locational and topographical disadvantages. The Ld. Counsel for the assessee informed that during the course of assessment proceedings, it had requested the Ld. AO to refer the property for valuation to the registered valuer. The Ld. AO placed reliance upon the provisions of section 56(2)(vii)(b) of the Act stipulating that deemed income, under the head other sources, would be determined in case there is a variation between the stamp duty valuation of a property and the amount at which transactions are made. While doing so, as evident from para 6.2 of the assessment order, he also concluded that the

request to make reference to the registered valuer u/s 55A cannot be acceded at the fag end of the time barring date.

3.0 The Ld. Counsel of the assessee further submitted that the Ld.CIT(A) affirmed the action of the Ld. AO without properly appreciating true facts of the case. It is the case of the assessee that section 50C mandating stamp duty valuation is different than section 56(2)(vii)(b). It has been argued that section 50C(2) mandates that in cases where the stamp duty valuation is contested by the assessee then the assessing officer may refer the valuation to a valuation officer. It has been argued that by denying the assessee its above legal right the Ld.AO has passed an erroneous order and violated principles of natural justice available to the assessee. The Ld.Counsel has also contested the assessment order on the premise that the ex-parte order was concluded by relying upon unserved statutory notices sent to wrong email Id's.

4.0 The Ld. DR relied upon the order of the lower authority. It was submitted that the assessee is a non-filer and that it had not responded to the Ld.AO's notices. It was submitted that acceding to assessee's request for sending to DVO would have resulted into order getting time barred. It was stated that the law does not gives any right to the Ld.AO to extend the time barring lines as those available u/s 142A. It was submitted that only section 142A gives the Ld.AO benefit of extension of time barring period in cases where a reference is made to DVO.

5.0 We have heard rival submissions in the light of material available on records. Before proceeding further we deem it necessary to reproduce the relevant provisions of statute which are seminal to the controversy at hand.

“.....Section 50C

5[50C. Special provision for full value of consideration in certain cases. —
(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted 6[or assessed or assessable] by any authority of a State Government (hereafter in this section referred to as the —stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted 6[or assessed or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.]

7[Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

*Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system **through a bank account, on or before the date of the agreement for transfer.]***

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted 1[or assessed or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted 1[or assessed or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

2[Explanation 1.]—For the purposes of this section, —Valuation Officerll shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

3[Explanation 2.—For the purposes of this section, the expression —assessablell means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted 1[or assessed or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted 1[or assessed or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

Section 56 (2) (vii)(b)

“....1[(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

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

2[(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) 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:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;]

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections:

Section 142A

1[142A. Estimation of value of assets by Valuation Officer.—(1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

*Explanation.—In this section, —Valuation Officer*ll has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

1. Subs

2[143. Assessment.—3[(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:— (a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; 1*** (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

2[(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1)

of section 139; (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:..."

6.0 There is no denying the fact that section 50C mandates adoption of stamp duty valuation for the purposes of determination of value of a capital asset in cases where the same is below the prescribed stamp duty valuation. Further section 56(2)(vii)(b) mandates that, the Revenue can treat the differential amount between the stamp duty valuation of the asset and the transaction price as deemed income of the tax payer. It is however noted that section 50C(2) provides a taxpayer a right to contest or challenge the impugned stamp duty valuation before the Ld. AO by requesting him to make a reference to the valuation officer for valuation. It is to be noted in this context that the use of the word "may" is not an option available to the Ld.AO but it is rather his / her statutory duty to oblige the taxpayer once such a request is made. Further third proviso to section 56(2)(vii)(b) provides that where the stamp duty valuation is contested by the taxpayer on the grounds indicated in section 50C(2), then the Ld. AO would be obligated to make a reference to the valuation officer.

7.0 The above statutory stipulations clearly allude that once the assessee had through his request dated 28.02.2022 before Ld.AO, requested for reference, the Ld.AO ought to have made the impugned reference. The argument of the Ld.AO of the same being made at the fag end of the assessment year, does not comes to his rescue. There is nothing in the law which provides as to timeline when such request can be made by a taxpayer. Merely because conclusion of assessment proceedings was coming to time limitation period, would not mean that a statutory right available to taxpayer can be denied. We have also noted that there is insufficient strength qua arguments of the Ld. AO. The request for reference to the valuation officer was admittedly made by the assessee through his request dated 28.02.2022, whereas the order u/s 144 has been passed on 30.03.2022 i.e almost after a month of a request. Ordinarily one month time is sufficient for a valuer to complete the valuation process through a fast-track mode. The Ld. AO cannot therefore avoid the blame of depriving the taxpayer of a statutory right available to him.

8.0 We have noted that Hon'ble Supreme Court in the case of Orissa State Warehousing Corporation vs. CIT, 237 ITR 589 have held that a fiscal statute has to be interpreted on the basis of the language used therein and not de hors the same. Further, Hon'ble Supreme Court in the case of IPCA Laboratory Ltd. vs. DCIT, 266 ITR 521 have held that where

there is no ambiguity in the provisions of statute, provisions cannot be interpreted to confer benefit on the assessee and benefits which are not available cannot be conferred by ignoring or misinterpreting clear word in the section. It is evident in this case that the law provides the taxpayer a right to contest a stamp duty valuation u/s 50C. This right therefore could not have been violated. The Revenue has thus violated a specific provision of law by not allowing the assessee to exercise its right available u/s 50C(2).

9.0 Coming to the controversy of timelines for limitation in assessment proceedings getting extended once a reference is made u/s 142A(1) of the Act. At the outset, there is no confusion there as the law clearly stipulates that an assessing officer is empowered to make a reference to the valuation officer, to estimate fair market value of a property, during the course of an assessment or reassessment proceedings. Such a reference can be made, whether or not, the assessing officer is satisfied about correctness or completeness of accounts of the assessee. In the event of such a reference being made, the time consumed by the valuation officer gets excluded for the purposes of calculation of limitation period to complete the assessment. The question that thus comes is as to whether the power of the assessing officer to make a reference to the valuation officer is absolute discretionary power or it is to be judiciously exercised. It is pertinent to

note that the discretionary power accorded to an assessing officer under the Act are not authoritarian dictacts but are powers which have to be exercised with judicious reasonableness. U/s 142A(1) also the impugned discretion comes with a rider of the assessing officer mandated to make the reference whether or not, the assessing officer is satisfied about correctness or completeness of accounts of the assessee. The phrase “correctness or completeness of accounts of the assessee” would ordinarily, mean a situation where there is a difficulty in ascertaining correct tax liability of an assessee.

10.0 In the above background the assessing officer in the present case could have also made a reference to the valuation officer by invoking provisions of section 142A(1). Naturally the situation was that the assessee had transacted in respect of an immovable property for amounts less than those stipulated by the stamp valuation authorities. The assessee held a bonafide belief that it was entitled to transact for lesser amounts and in furtherance of its claims it had requested the department to refer the matter to a valuation officer u/s 50C(2) so as to validate the correctness of its arguments qua lower valuation of immovable property. True the assessee does not possess any right for invoking provisions of section 142A(1), but the Ld.AO did. Assuming that the time period of one month (from the date of assessee’s request for reference till the date of time limitation) was deemed inadequate by the

Ld.AO for completion of expeditious valuation, it could have been worthwhile to make a reference u/s 142A(1).

11.0 We have also noted that Ld. First Appellate Authority has taken a myopic view of the controversy by merely saying that the assessing officer is bound by section 50C r.w.s 56(2)(vii)(b). The Ld. Appellate authority has totally ignored the rights of requesting reference to valuation officer available to an assessee both under provisions of section 50C as well as 56(2)(vii)(b) extracted herein above. Pertinently, the Ld. First Appellate Authority enjoys powers coterminous to those available to an assessing officer and hence himself could have either made a reference to the valuation officer for estimation of fair market value of the property or else could have got it done through the Ld.AO by way of remand proceedings. We are therefore of the considered view that the lower authorities have exceeded their jurisdiction by not acceding to assessee's request for reference to valuation officer to estimate the fair market value of the property. Accordingly, we set aside the order of lower authorities and direct the Ld.AO to make a reference to the valuation officer to estimate the fair market value of the property, in accordance with law and thereafter pass an assessment order de novo considering the report. While doing so, it shall be bounden upon the Ld.AO to give due opportunity of being heard to the assessee. The assessee shall be bounden to comply with all the statutory notices issued to him and any

non-compliance would be adversely viewed. **All the grounds of appeal raised by the assessee are allowed for statistical purposes.**

12.0. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 23rd , April-2025 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 23rd , April-2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Assessee:
2. प्रत्यर्थी/Revenue
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF