

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri K. Narasimha Chary, JM]

I.T.A No. 405/Kol/2013
Assessment Year: 2007-08

Sitara Begum
(PAN: AVBPB4420D)
(Appellant)

Vs. Assistant Commissioner of Income-tax,
Circle-1, Hooghly
(Respondent)

Date of hearing: 04.08.2016
Date of pronouncement: 24.08.2016

For the Appellant: Shri Anikesh Banerjee, Advocate &
Mrs. Saswati Mitra (Dutta), Advocate
For the Respondent: Md. Ghyas Uddin, JCIT, Sr. DR

ORDER

Per Shri K. Narasimha Chary, JM:

This appeal by assessee is arising out of order of CIT(A)-XXXVI, Kolkata vide appeal No. 203/CIT(A)-XXXVI/Kol/Cir-1,Hgl./2010-11/1909 dated 20.12.2012. Assessment was framed by ACIT, Circle-1, Hooghly u/s. 147/143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2007-08 vide his order dated 02.11.2010.

2. Brief facts of the case are that the assessee is an individual. She had a share in the property situated at 9K, G. R. Road, Dharsha, district-Hooghly with her three sisters. The nature of the property was brick field and the said property was sold at Rs.1.80 cr. on 26.06.2006 to M/s. R.D.B. Industries Ltd. The assessee got Rs. 45 lacs towards her share in the property. Since she did not file any return, the AO issued notices u/s. 148 of the Act to the assessee and pursuant thereto the assessee filed her return of income. After following the procedure, the AO calculated the capital gains u/s. 50C of the Act on the basis of the rate provided by Stamp Duty Authority and accordingly, the deemed sale price in respect of the share of the assessee to the property was reached at Rs.83,45,034/-. On this deemed sale price the capital gains was calculated at Rs.58,99,275/-. Aggrieved by the said calculation of capital gains by the AO, the assessee preferred an appeal before the CIT(A) and at the request of the assessee, the report of the Departmental Valuation Officer (DVO) was called for. The DVO calculated the value of the property at Rs.62,97,516/- instead of

Rs.83,45,034/-. Basing on this valuation, the capital gains were calculated. The Ld. CIT(A) by way of impugned order considered the sale consideration at Rs.62,97,516/- and on that basis he reached the net capital gains at Rs.37,14,348/-. Challenging the same, the assessee filed this appeal before us on the following grounds:

“1. For that the Assessment Order u/s. 147/143(3) is bad in law owing to the non-supply of reasons for the reopening of case u/s.148 of the I. T. Act, 1961.

2. For that the agreement of Sale was made on 01/08/04 and the 1st payment was received on 30/06/2004. Accordingly, the assessee vacated the possession to the purchaser. Hence, the valuation should be made as per the valuation of the Financial Year 2004-05, i.e. Assessment Year 2005-06.

3. For that the assessee received the amount of Rs.45,00,000/-. There is no dispute in the sale figure by the Assessing Authority. Hence, the excess valuation Rs.17, 97, 516/- is bad in law.

4. For that the calculation of index cost is not as per the law. The valuation on 01.04.81 was not taken here properly which is arbitrary in nature. The valuation is required also in the valuation of cost of acquisition.

5. For that this ancestral property was acquired on 31/12/1964. Hence the valuation of the property on 01/04/81 is required through DVO in this Case.”

3. It is the argument of the Ld. AR that even in the absence of any specific request from the assessee the AO is duty bound to furnish the reasons u/s. 148 of the Act and for want of supply of such reasons proceedings are bad. He placed reliance on the decision of Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs. ITO (2003) 259 ITR 19 (SC). He also contended that the sale was concluded on 01.08.2004 with the first payment on 30.06.2004 whereupon the assessee vacated the portion of the property and handed-over to the purchaser, as such, the valuation should be made as per the valuation of FY 2004-05 i.e. AY 2005-06. He further argued that the actual sale consideration received by the assessee is only Rs.45,00,000/- and the assessing authority did not dispute the same, as such, the valuation at Rs.62,97,516/- is bad. Lastly, he contended that the valuation on 01.04.1981 has to be taken since the property was acquired on 31.12.1964.

4. Ld. DR, on the other hand, submitted that the AO would have furnished the reasons u/s. 148 of the Act at the request of the assessee but the assessee never made any such request, as such, now it is not open for the assessee to contend that for want of furnishing the reasons the proceedings are bad. He also contended that absolutely there is no material whatsoever on record to show that the sale was concluded on 01.08.2004 or that the first payment was made on 30.06.2004. He submitted that at no point of time the assessee

revealed such facts by filing the return of income or by producing any convincing material either before the CIT(A) or before this Tribunal. On the question of section 50C of the Act, he submits that law provides that when the consideration shown on the transfer of a capital asset is less than the value adopted by the State Govt. for the purpose of payment of stamp duty in respect of such transfer, the value so adopted for the purpose of Government Stamp duty shall be deemed to be the full value of consideration received for the purpose of section 48 of the act. On the face of this provision, the AO had no option but to abide by law. He also contended that the assessee herself in her return of income claimed Rs.16,06,545/- towards the price as on 01.04.1981 but the CIT(A) has taken the same as Rs.16,07,906/- which is higher than the one claimed by the assessee as such, the assessee cannot have any grievance on that score.

5. We have heard rival submissions and gone through the material available on record. We find that admittedly, the assessee never sought the reasons, and as a matter of fact it is not canvassed before the Ld. CIT(A) also. At no point of time the assessee sought the reasons forming satisfaction of the AO for notice u/s. 148 of the Act. In G.K.N. Driveshaft (India) Ltd., supra, the Hon'ble Supreme Court has held as under:

“when a notice under section 148 is issued, the proper course of action for the notice is to file a return and if he so desires, to seek reasons for issuing notice. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objection to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.”

In these circumstances, we find it difficult to agree with the assessee to hold that for want to furnishing of reasons for issuing notice u/s. 148 of the Act, the proceedings are bad. This ground of appeal of assessee is dismissed.

6. In respect of ground nos. 2 to 5 in so far as the contention of the assessee that the sale was concluded on 01.08.2004 as the first payment was made on 30.06.2004 and the assessee delivered vacant possession of the property to the purchaser, is concerned, absolutely no material is forthcoming before us. The Ld. DR submitted that at no point of time the assessee canvassed this point either before the AO or before the Ld. CIT(A) and even before us also, the details are not furnished as to the manner and mode of payment of first installment and whether the assessee revealed the same to the authorities below. Under these circumstances, this contention of the assessee does not hold much water. As stipulated by

section 50C of the Act when the consideration shown to have been received by the assessee is at variance and to be specific is less than the value adopted by the Stamp Valuation Authority, the value so adopted by the Stamp Valuation Authority shall be deemed to be the full value of consideration for the purpose of section 48 of the Act. On the face of this provision, we are unable to see any merit in the contention of the assessee that since the actual consideration received by her is only Rs.45 lacs, the valuation of her share at Rs.62,97,516/- and the excess valuation of Rs.17,97,516/- is bad in law. Lastly, it could be seen from the record vide page no. 9 of the paper book i.e. computation of income for the year ended 31.03.2007 the assessee claimed the indexed cost of acquisition at Rs.16,03,710/-. This fact was noticed by the AO in page no. 2 para 2(c) of this order. However, since the assessee pleaded that she had no document or proof whatsoever which can be accepted as the basis of cost price of the land during the year 1980-81, the AO resorted to fair market value and calculated the indexed cost of acquisition at Rs.16,07,906/- which is obviously higher than the indexed cost of acquisition claimed by the assessee. On this score, the assessee shall not have any grievance at all. We agree with the argument of the Ld. DR that since the indexed cost of acquisition calculated by the AO is more than the indexed cost of acquisition claimed by the assessee, the assessee cannot complain against the same. Hence, ground nos. 2 to 5 of assessee's appeal are dismissed.

7. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 24.08.2016

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(K. Narasimha Chary)
Judicial Member

Dated :24th August, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Sitara Begum 74K. G. T. Road, Dharsa, Hindmotor, Hooghly-712233
2. Respondent – ACIT, Circle-1, Hooghly.
3. CIT(A)-XXXVI, Kolkata.
4. CIT, Kolkata.
5. D.R. ITAT, Kolkata.

True copy

By Order

Assistant Registrar,
ITAT, Kolkata.