

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'A', मुंबई।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

Before Shri Mahavir Singh, JM and Shri Ramit Kochar, AM

ITA No.1144/Mum/2014: Asst.Year 2010-2011

Shri Atul Shantilal Maradia 6/64, Navjivan Society Lamington Road, Mumbai Central Mumbai – 400 008. PAN : ADYPM7131K.	बनाम/ Vs.	The Asst.Commissioner of Income- tax Circle 20 Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : Ms.Bhumika Vora
प्रत्यर्थी की ओर से /Respondent by : Shri A.Ramachandran

सुनवाई की तारीख / Date of Hearing : 05.10.2016	घोषणा की तारीख / Date of Pronouncement:05 .10.2016
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आदेश / ORDER

Per Mahavir Singh, JM:

This appeal by the assessee arising out of order of Commissioner of Income-tax (Appeals)-39, Mumbai in appeal No.CIT(A)-39/DC.CC.20/IT-189/2012-13 dated 22.11.2013. The assessment was framed by DCIT, Central Circle 20, Mumbai for the assessment year 2010-2011 vide her order dated 06.02.2013 u/s 143(3) of the Income-tax Act, 1961 (hereinafter, "the Act").

2. The first issue in this appeal of assessee is against order of CIT(A) confirming the action of the Assessing Officer in applying the provisions of section 50C of the Act, adopting the value as estimated by Stamp Valuation Authority instead of referring the matter to the Valuation Cell for ascertaining the fair market value in terms of section 50C(2) of the Act.

3. We have heard rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee has declared long term capital gain on sale of six shops situated in the ground floor at Municipal premises, No.40 Strand

Road, Kolkata. The assessee has declared sale consideration of these shops in sale deed at Rs.50,00,000 whereas the Sub-Registrar adopted the market value for the purpose of stamp duty payment at Rs.59,65,950. According to A.O. in view of the provisions of section 50C of the Act, the full value of consideration is to be taken at Rs.59,65,950 as against claimed and declared at Rs.50,00,000 and long term capital gain is to be computed accordingly. The A.O. adopted the full value of consideration for the purpose of section 50C at Rs.59,65,950 as computed by Sub-Registrar for the purpose of computation of stamp duty payment. Aggrieved, the assessee preferred appeal before CIT(A), who also confirmed the action of the A.O.

4. Before us, the learned Counsel for the assessee stated that it was claimed before A.O. as well as before CIT(A) that the property must be referred to Valuation Cell for ascertaining the fair market value in terms of section 50C(2) of the Act. The assessee before us stated that he has not accepted the value adopted by the Assessing Officer for computation of long term capital gains i.e. stamp duty valuation/registration rate and requested to refer the matter to Valuation Cell for ascertaining fair market value of the property in terms of Section 50C (2) of the Act. We find that this issue is covered by the decision of the Hon'ble Calcutta High Court in the case of Sunil Kr. Agarwal Vs. CIT in GA No.3686 of 2013 ITAT No.221 of 2013 vide judgment dated 13.03.2014, wherein it is held that to ascertain the full value of consideration in the case of transfer of capital asset, the full consideration of the capital asset is to be taken on the basis of value adopted by the Stamp Valuation authority under sub- section (1) of section 50C or the capital asset is to be referred to Valuation Officer for determining the fair market value of the property for assessing the capital gains. On query from the Bench Ld. Sr. DR fairly stated he has no objection in case the appeal is set aside to the file of the AO for reference to the DVO to ascertain the full value of consideration u/s. 50C of the Act. He also stated that in case the assessee is disputing the value assessed by the Stamp Valuation Authority i.e., the rate assessed by the Sub-Registrar is challenged by the assessee, then the matter has to be referred to DVO for ascertaining the full value of consideration for assessing long term capital gain under section 50C of the Act in terms of the decision

of the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal, supra. In the case of Sunil Kumar Agarwal, Hon'ble Calcutta High Court held as under:

"We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has not been met by the assessee, can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of clause (a) of sub-Section 2 of Section 50C was met by the assessee.

We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 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 assessing officer, 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."

5. From the above facts and legal proposition laid down by Hon'ble jurisdictional High Court in the case of Sunil Kumar Agarwal, supra, we are of the view that the value so adopted or assessed or assessable by the Stamp Valuation Authority based on circle rates is deemed to be the full value of consideration received or accruing as a result of transfer of capital asset, being land or building or both, for the purposes of section 48 of the Act. But if the assessee disputes the value so adopted or assessed or assessable u/s. 50C(2) of the Act, the AO should refer the capital asset to valuation Officer to determine the full value of the consideration received or accruing as a result of transfer of capital asset. Hence, in the present case, we set aside the orders of the lower authorities and remit the issue back to the file of the AO for fresh adjudication of the issue of long term capital gain arising out of sale of above two assets after ascertaining the full value of consideration of these two assets as determined by Valuation Officer concerned. The AO will take the full value of consideration of the capital asset in terms of section 50C(3) of the Act for ascertaining the long term capital gain arising out of these two assets. In term of the above, appeal of assessee is restored back to the file of the AO for fresh adjudication and allowed for statistical purposes.

6. The second issue in this appeal of assessee is against the order of the CIT(A) in enhancing the disallowance of exemption claimed by the assessee u/s 54F of the Act at Rs.50,00,000 as against disallowance made by the A.O. at Rs.11,00,000 without appreciating the fact that the entire sale consideration of Rs.50 lakh was deposited in the capital gains deposit account before the due date of filing of return of income u/s 139(1) of the Act.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has deposited a sum of Rs.50 lakh in the bank account under the capital gain account scheme on account of sale of office premises and claimed exemption u/s 54F of the Act. This amount of Rs.50 lakh was deposited in the capital gain account scheme with Union Bank of India, Mulund (West) Branch in Account No.318502090045660 as under:-

<u>Date of deposit</u>	<u>Amount deposited.</u>
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04.10.2010	Rs.39,00,000
11.10.2010	Rs.11,00,000

The Assessing Officer allowed the claim of exemption u/s 54F of the Act to the extent of Rs.39 lakh only as the same was deposited on 04.10.2010. The CIT(A) enhanced the disallowance and entire deposit of Rs.50 lakh was treated as not invested for the reason that this was deposited after the due date of filing of the return u/s 139(1) of the Act, i.e., 30.09.2010. According to CIT(A) the extension of due date of filing of return of income by CBDT for the assessment year 2010-2011 from 30.09.2010 to 15.10.2010 is for extension of due date of filing of return of income and not for making any deposits. For rejecting the claim of the assessee, the CIT(A) recorded following reasons in para 5.4 as under:-

“5.4 In response to the enhancement notice, the appellant has replied that as long as there is an extended period of time granted, all acts done within that extended period must be deemed to have been done within the period of time originally stipulated. It is further submitted that the provision of section 54F being an exemption provision, and as the appellant has deposited the money within the extended due date, the same should be read liberally and all the benefits accruing shall be granted. I am unable to concede to the said contention of the appellant. The deed of conveyance was made on 29th March, 2010. The net consideration, to the extent not appropriated was to be deposited in a designated account in such bank as specified in Capital Gains Account Scheme. There is no dispute that the said consideration was to be deposited within the due date for filing the return as prescribed. The due date prescribed statutorily is 30th September of the assessment year. The said due date has certainly not been complied with. The said due date for making the deposit has not been extended as per the terminology used in the Board Notification dated 28.9.2010. The appellant seeks to argue that the said “due date” ought to be treated as extended through implication. However there can be no presumption as to a tax; in a taxing statute one has to look merely at what is clearly said, there is no room for any intendent (Rowlatt J in Cape Brandy Syndicate vs. IRS (1921) 1 KB 64 (KB) 71. Hence it is held that the amount of net consideration, not having been deposited as per the due date as stipulated in the said provision, the appellant is not entitled to the claim under s.54F. The entire claim of Rs.50,00,000/- is declined; the claim to the extent thereof granted by the A.O. stand withdrawn. The income will be enhanced accordingly; it is accordingly directed.”

Aggrieved, the assessee is in second appeal before the Tribunal.

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that admittedly the assessee made deposit of long term capital gain arising out of sale consideration of shops in capital gain account

scheme with Union Bank of India, Mulund (West) Branch. Admittedly, these deposits are made on 04.10.2010 amounted to Rs.39 lakh and on 11.10.2010 amounted to Rs.11 lakh. Admitted fact is that the CBDT on consideration of reports of disturbance of general life caused due to floods and heavy rains, in exercising of powers conferred u/s 119 of the Act, extended the due date of filing of return of income from the Asst.Year 2010-2011 from 30.09.2010 to 15.10.2010. Board also clarified that the due date for Tax Audit Report u/s 44AB of the Act is also extended up to 15.10.2010. It means that for all intend and purposes, the due date of filing of return is extended up to 15.10.2010. Now we have to go through the provisions of section 54F(4), which reads as under:-

“(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset” :

9. As per the above provisions of section 54F(4), the amount of net consideration shall be deposited in the capital gain account scheme before the due date of furnishing of return of income as provided u/s 139(1) of the Act. In the instant case, the deposit was made within the date as extended vide Board’s Notification No.402/92/2006-MC(42) of 2010 dated 28th September, 2010, which reads as under:-

“On consideration of the reports of disturbance of general life caused due to floods and heavy rains, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income Tax Act, 1961, hereby extends the due date of filing of returns of income from the Assessment Year 2010-11 from 30.09.2010 to 15th October, 2010. Accordingly the due date for Tax Audit Report u/s 44AB of the Income Tax Act is also extended to 15th October, 2010.”

10. From the above notification of the CBDT extending the date for filing of return of income from 30/09/2010 to 15/10/2010, it is clear that the board had extended the date for all intents & purposes of the computation/assessment of income under Income Tax Act. In view of the above, we are of the view that whenever a return of income has been filed by an assessee within the extended time by the CBDT u/s. 119 of the Act, such a return is to be regarded as a return filed u/s. 139(1) of the Act and not u/s. 139(4) of the Act. Hon'ble Delhi High Court in the case of CIT vs. Narender Anand (2011) 332 ITR 483 (Del.), exactly in similar situation, held that what the assessee was required to do an act up to a particular date u/s. 139(1) of the Act, was permitted to be done by a subsequent date. Hon'ble High Court observed that the benefit was sought to be extended only on account of the actual payment of sales tax within that extended period of time as extended by CBDT. Hon'ble Delhi Court in case of Narender Anand (supra) held as under:-

“9. It is the submission of the Department that authorization bestowed on the AO on account of a proviso to section 139(1) of the IT Act to extend the date for furnishing the return in its discretion does not empower the AO to change the due date for filing the return as mentioned in the main clause of s. 139 of the IT Act and, that is the reason that as per the proviso interest has to be paid by the assessee in accordance with s. 139(8) of the IT Act mandatorily even if the date for filing of return is extended by the AO. The proviso to s. 43B was, thus, contended not to be applicable where the amount is not paid as per the due date as specified in the main provision of s. 139(1) of the IT Act.

It was emphasized that the object with which the proviso to s. 43B was inserted must be kept in mind. This was a sequitur to the Department finding out that certain assesseees were claiming a liability on the basis of accrual following the mercantile system of accounting but were disputing the payment of such liabilities or not paying such liabilities altogether. Thus, the benefit was extended to the assesseees only if they had actually paid the amount within the dates specified for filing of the return as per the main proviso of s. 139(1) of the IT Act.

10. To support the aforesaid interpretation learned counsel also referred to the provisions of s. 80 of the IT Act providing for submission of return for losses to contend that where the legislature wanted the benefit to be extended not only to a return filed within the time allowed under sub-s. (1) of s. 139 of the IT Act or within such further time as may be allowed by the AO a specific provision has been made as in case of s. 80 of the IT Act. Thus, it has been specifically stipulated "in pursuance of a return filed within time allowed under sub-s. (1) of s. 139 or within such further time as may be allowed by the AO". To appreciate the submission we asked learned counsel to set forth as to how these provisions stood at different intervals of time. The provision as it stood at different periods of time shows that the phraseology "or within such further time as may be

allowed by the AO" did not exist till 1st April, 1985 when it was so introduced and continued so till 31st March, 1989. From 1st April, 1989 the provision provided for "in accordance with the provisions of sub-s. (3) of s. 139".

11. *Form No. 6 under r. 13 of the IT Rules, 1962, which gives the format for the application for extension of date for furnishing of return of income under s. 139(1) of the IT Act has also been referred to where the request made is for "time for furnishing the return may be extended up to"*

12. *To support his plea learned counsel referred to various judgments. In Krishna Chandra Dutta (Cookme) (P) Ltd. vs. CIT (1994) 117 CTR (Cal) 88 : (1993) 204 ITR 23 (Cal) the return for the asst. yr. 1983-84 was filed belatedly on 2nd July, 1985 claiming loss on account of premature encashment of cash certificates for paying of debt to bank. The amendment to s. 80 of the IT Act effective from 1st April, 1984 requiring the return of losses to be filed within time for benefit of carry forward and set off was held not to be retrospective in character but effective in respect of assessment years subsequent to the asst. yr. 1983-84."*

11. Further, Hon'ble Delhi High Court deliberated on the issue by considering Hon'ble Gujrat High Court decision in the case of Mehsana Ice & Cold Storage (P) Ltd. vs. CIT (2005) 275 ITR 601 (Guj) and Hon'ble Calcutta High Court in Amin Chand Pyarelal vs. IAC & Ors. (1989) 180 ITR 330 (Cal) as under:-

"We may refer to two judgments cited in this behalf, which are germane to the issue. The first is in the case of Mehsana Ice & Cold Storage (P) Ltd. vs. CIT (2005) 195 CTR (Guj) 571 : (2005) 275 ITR 601 (Guj) by the Division Bench of the Gujarat High Court. For the asst. yr. 1985-86 the assessee sought extension of time upto 31st Dec., 1985 and tendered the return within that time. The application seeking extension of time was neither rejected nor granted and it was held that in view of the pronouncements the extension application was construed to have been granted and thus the return was within time, and as a sequitur to that, the assessee could not be denied the benefit of carrying forward the business losses. In that context it was observed as :

"Under s. 139(3) of the Act a return of loss has to be furnished within the time allowed under subs. (1) or within such further time which, on an application made in the prescribed manner, the AO may, in his discretion, allow. The assessee being a limited company, under normal circumstances the time to furnish a return under s. 139(1) of the Act would be before the expiry of four months from the end of the previous year, i.e., 31st July, 1985. However, under the proviso to s. 139(1) of the Act an AO is granted discretion to extend the date for furnishing the return on an application made in the prescribed manner. Therefore, the scheme of the Act envisages that the due date is either the one stated under cl. (a) or cl. (b) of sub-s. (1) of s. 139 of the Act, or the extended date which may be fixed on exercise of discretion by the AO on an application moved by an assessee under

the proviso. However, as to what is the effect in a case where an application is made in time before the AO under the proviso to sub-s. (1) of s. 139 of the Act, and where such application is not dealt with by the AO, i.e., it is neither rejected nor granted, is no longer res integra."

19. The Calcutta High Court in Amin Chand Pyarelal vs. IAC & Ors. (1989) 78 CTR (Cal) 84 : (1989) 180 ITR 330 (Cal) dealt with the issue of imposition of penalty in case the return was filed within the extended time allowed. The effect of the AO extending the date for filing the return under s. 139(1) of the IT Act was, as contended by the assessee, is as under :

"When the ITO extends the date for furnishing the return under proviso (iii) to s. 139(1), he does so in exercise of the authority conferred by the statute and the additional time available to the assessee consequent upon such extension is, for all relevant purposes, of the same character and as effective as the statutory period specifically enacted by Parliament. It constitutes an integral part of the time allowed for furnishing a return. Therefore, where the ITO extends the date, then all the time upto that date is the time allowed for furnishing the return. The additional period consequent upon such extension falls within the expression 'the time allowed' in cl. (a) of s. 271(1) and the penalty provisions do not come into play during the period of extension of time by the ITO. It has also been observed that, from the language of proviso (iii) to s. 139(1), it is apparent that interest becomes payable only upon the ITO acting on an application made by the assessee for the purpose and extending the date for furnishing the return. The ratio of the said decision is (i) that in the ordinary course of things, the ITO could have extended the date only upon being satisfied that there was good reason for doing so, and that would have been on the grounds pleaded by the assessee and that in the circumstances of this case, a presumption could validly be raised that all that was done; (ii) that, on the facts, the extension was a matter falling within s. 139(1) and the returns furnished by the assessee must be attributed to that provision; they were not returns furnished within the contemplation of s. 139(4); (iii) that, therefore, the penalty provisions did not come into play at all."

The stand of the Department was :

"Learned lawyer appearing for the IT authorities has, however, submitted that the acts done and/or caused to have been done by the respondent are well justified and in accordance with law and the acts complained of are neither contrary to and/or inconsistent with the provisions of the IT Act and the allegations in the writ petition are otherwise unwarranted and uncalled for."

On the basis of the submissions, it was observed as under :

"With all anxiety, this Court has heard the arguments advanced on behalf of the respective parties. Undisputedly, the petitioner has paid all income-tax dues and the grievance of the petitioner is only against the imposition of penalty and the notice of demand in this behalf. The question to be decided in this writ petition is as to whether the steps taken by the respondents to impose penalty are without jurisdiction or not. Regard being had to the facts of this case and applying the test

laid down by the Supreme Court, this Court finds that the IAC has no jurisdiction to impose penalty. Time is already extended to file the return and the assessed amount being paid should be deemed to have been paid within the extended time and there cannot be any further demand for penalty in the manner sought to be done in the instant case."

12. From the above precedent and the facts of the case before us, it is clear that the assessee has invested the amount in Capital Gain Account Scheme before the extended due date of filing of return of income u/s. 139(1) of the Act. Hence, we are of the view that once no negative consequences will follow to the assessee by reason of deposit of sale consideration of shops within extended period of time granted by Central Board of Direct Taxes, all acts done within the extended period must, thus, have to be considered as done within the prescribed period of time as originally stipulated. For all intend and purposes the date for filing of return is extended up to 15/10/2010 and assessee had invested the sale consideration in Capital Gains Account Scheme on or before 15/10/2010, the deduction u/s. 54F of the Act cannot be denied. Accordingly, we allow this deduction. This issue of assessee's appeal is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced on this 05th day of October, 2016.

आदेश की घोषणा दिनांक: को की गई ।

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

मुंबई Mumbai;
Devdas*

दिनांक Dated: 05th, October, 2016.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A) - 39, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**