

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI SANJAY GARG (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.5216/Mum/2013
(Assessment Year: 2006-07)

Mrs Dilnavaz Sam Variava C/o M/s Kalyaniwalla & Mistry Army & Navy Bldg, 3 rd Floor 148, M.G. Road, Fort, Mumbai-1	Vs	ACIT 12(1), Mumbai
PAN : AACPV8677L		
(Appellant)		(Respondent)

I.T.A. No.1807/Mum/2014
(Assessment Year: 2006-07)

Meheru Mehta C/o M/s Kalyaniwalla & Mistry Army & Navy Bldg, 3 rd Floor 148, M.G. Road, Fort, Mumbai-1	Vs	ACIT, CC-23(Now ACIT, CC-4(1), Mumbai
PAN : AAGPM6680E		
(Appellant)		(Respondent)

Assessee by	Shri M.M. Golvala & Mrs Dilnavaz Variava (AR)
Revenue by	Shri B.S. Bist (Sr. DR)

Date of hearing : 17-10-2016
Date of pronouncement : 31 -10-2016

ORDER**Per ASHWANI TANEJA, AM:**

These appeals pertain to two different assesses involving identical issues, and therefore these appeals were heard together and are disposed of by this consolidated order.

First we shall take appeal of Mrs. Dilnavaz Sam Variava in ITA No.5216/Mum/2013:

2. This appeal has been filed against the order of Commissioner of Income-tax (Appeals)-10, Mumbai [hereinafter referred to as CIT (A)] dated 27-02-2013 passed against assessment order u/s 143(3) dated 31-12-2008 for A.Y. 2006-07 on the following grounds:

“This Appeal is against the Order of the Commissioner of Income-tax (Appeals)-10, Mumbai and relates to the Assessment year 2006-2007.

1) *The learned Commissioner of Income Tax (Appeals) erred in holding that an addition was called for under section 50C, while determining Long Term Capital Gains in respect of the sale of assessee's 1/8 share in Colaba property.*

2) *The learned Commissioner of Income Tax (Appeals) erred in confirming an addition of Rs.10,59,375/- under section 50C.*

3) *The Assessing Officer erred in not considering the fact that the buyer did not avail of 50% discount, to which she was entitled in payment of stamp duty.*

4) *Without prejudice to all that is stated above, the appellant submits that the market value of the property sold, as arrived at by the learned Commissioner of Income Tax (Appeals), is highly excessive and arbitrary and the same requires to be*

reduced substantially.”

3. The solitary issue to be decided by us in this appeal is whether the Assessing Officer was justified in making addition while determining long term capital gain in respect of sale of property situated at Colaba, Mumbai wherein assessee was co-owner to the extent of 1/8th share, by substituting the actual sale consideration with the amount determined by the DVO by applying provisions of section 50C of the Act.

4. The brief background and facts of the case are that in the return filed by the assessee for the year under consideration, the assessee disclosed long term capital gain on account of sale of a property situated at Colaba, Mumbai in which she was co-owner for 1/8th share. The sale price of the entire property was Rs.2,03,40,000. However, the Stamp Duty Valuation of the property was determined at Rs.3,46,50,000. Accordingly, the Assessing Officer asked the assessee as to why should not the sale consideration be substituted with the value assessed by stamp valuation authority in view of provisions of section 50C of the Act. In response, the assessee submitted its detailed reply dated 18-12-2008 wherein assessee raised various objections for automatic and blind application of provisions of section 50C and also raised various objections pointing out fallacies in valuation of the property. The assessee supported the valuation with the sale instances of the neighboring properties and also submitted that the building was more than 50 years old and therefore assessee was entitled for depreciation of 50%. The assessee also submitted in support of her claim, valuation report obtained from an architect indicating fair market value of the property. Lastly, the assessee submitted that since the

department had requested for valuation report from the DVO, the Assessing Officer could not have made the addition u/s 50C in absence of valuation report of the DVO. But, the Assessing Officer instead of waiting for the valuation of the DVO, completed the assessment due to time constraint by substituting the sale consideration at Rs.3,46,50,000 as against actual sale consideration of Rs.2,03,40,000 shown by the assessee for the proportionate $1/8^{\text{th}}$ share of the assessee, i.e. $1/8^{\text{th}}$ of Rs.1,43,10,000 (Rs.3,46,50,000 – 2,03,40,000).

5. Being aggrieved, assessee carried the matter before the Ld. CIT(A) and vehemently requested for considering all the objections made by the assessee for determining the fair market value of the property. In the meanwhile, valuation report was received from the DVO which was analysed by the Ld. CIT(A) in the light of the objections raised by the assessee. After analyzing all facts of the case, it was noted by the Ld. CIT(A) that though the comparable transaction in the same building was considered by the stamp duty authorities @ Rs.7,733/- per sq.ft., but keeping in view all the facts and circumstances, she directed the Assessing Officer to adopt rate of Rs.8,500 per sq.ft. as against the rate of R.6,000 per sq.ft., claimed to be received by the assessee. Accordingly, she directed the Assessing Officer to make addition of the differential amount equivalent to proportionate share of the assessee. Consequently, the addition made by the Assessing Officer for Rs.17,88,500 was reduced to Rs.10,59,375 by the Ld.CIT(A).

6. Aggrieved, assessee filed appeal before the Tribunal against the addition sustained by the Ld. CIT(A). It was stated by both the parties that

no appeal has been filed by the department against the order of the Ld. CIT(A). During the course of hearing before us, it was submitted by the Ld. Counsel at the very outset that in the assessments of all the co-owners, actual sale consideration has been accepted and no addition has been made. In the case of one of the co-owners, order has been passed u/s 143(3) wherein actual sale consideration has been accepted. It was submitted that there were total co-owners, out of whom two are in appeal before the Tribunal. In the case of five co-owners, their returns have been accepted u/s 143(1) and no objection / addition has been made. In the case of remaining one co-owner, i.e. Mrs Maneck Rushi Billimoria, assessment order has been passed u/s 143(3) on 15-12-2008 wherein returned income has been accepted, and no addition has been made in this regard. It was vehemently argued that once transaction has been accepted in the hands of other co-owners, similar treatment should be given in the hands of present assessee also, as per the mandate of the law. Reliance was placed in this regard on the judgments in CIT vs Kumararani Meenakshi 292 ITR 624 (Mad), Shri Madhu Tyagi vs DCIT 19 SOT 612 Del, Jaswantrai vs CWT 107 ITR 477 at page 481 (P&H). It was also argued by the Ld. Counsel that incorrect sale instances have been adopted by the Ld. CIT(A), and if correct sale instances are adopted, it would be clear that similar properties have been sold at a much lesser rate and, therefore, no addition at all deserves to be made. It was also submitted that benefit of depreciation has also not been given by Ld. CIT(A). It was submitted that the Ld. CIT(A) has herself arrived at an average rate of Rs.7733/- per sq.ft., and therefore, there was no basis with her to adopt higher rate of Rs. 8,500 per sq.ft. It was also submitted that

in the case of the assessee, since it was sale of property, which was co-owned by 5 persons, as per law 10% discount is to be allowed as the buyer pays lesser amount in the case of co-owned properties.

7. Per contra, the Ld. DR relied upon the orders of the authorities below.

8. We have gone through the facts of the case. It is noted by us that the assessee had sold the property @ 6,000/- per sq.ft. as per the actual sale consideration shown in the sale deed. As per the AO and the DVO, the stamp duty rate was Rs.10,221 per sq.ft., and therefore it was adopted as sale consideration. Ld. CIT(A), after making analysis of the sale price of the properties in the vicinity arrived at an average fair market value at Rs.7,733/- per sq.ft. But she adopted fair market value of Rs. 8,500/- and directed the AO for re-computing the capital gains accordingly.

9. We have analysed all the facts brought before us. We have noted at the outset that actual sale consideration as shown by the assessee has been accepted as such by the AO in the hands of other co-owners. In the case of one of the co-owners, the assessment order has been passed u/s 143(3) as stated above. No addition has been made in her hands. Ld. Counsel has rightly relied upon the aforesaid judgements wherein it has been held that identical treatment deserves to be given in the hands of all the co-owners. Thus, on this ground itself, the action of the lower authorities in making addition in this regard is not sustainable.

10. In addition to the above, it is also noted by us that while finding out comparable rate of neighbouring properties sold at that time, Ld.CIT(A)

had inadvertently taken the rate of a property which was not pertaining to the same building, but located in Sidhwa Building, whose stamp duty has been given at Rs.7,733 per sq.ft. On the other hand, rates of other properties located in the same building, i.e. BMP building are lesser than the sale price shown by the assessee and average rate of those properties were below the rate shown by the assessee. Thus, if correct sale instances were taken into consideration, no addition would have been called for. Further, it is clear from the evidences shown to us that the building of the assessee was constructed prior to 1940, whereas the aforesaid sale instances considered by the Ld. CIT(A) pertain to the building constructed in 1965. Thus, there cannot dispute on the point that appropriate adjustment on account depreciation must be given while determining the fair market values of two properties constructed at two different points of time. Further, none of the authorities has considered the aspect of providing discount with respect to sale price of properties owned by more than one person. It is noted by us that, if we properly consider all the objections raised by the assessee, the actual sale consideration shown by the assessee @ Rs.6,000 per sq.ft., would not be less than the fair market value in view of the facts brought before us. Under these circumstances, there is actually no case of any addition. Ld. CT(A) ought to have deleted the addition fully. Thus, amount of the addition sustained by the Ld. CIT(A) is directed to be deleted.

Mrs. Meheru Mehta ITA No.1180/Mum/2015:

11. In the case of co-owner, viz. Mrs Mehuru Mehta (ITA No.1807/Mum/2014), it is noted that she is co-owner of the same

property and facts and background of the addition made in her hands are identical to the case decided by us above. Under these circumstances, addition made in her hands is also directed to be deleted. The AO is directed to follow our order given in the case of Mrs. Dilnavaz Sam Variava.

12. As a result, both the appeals are allowed.

Order pronounced in the court on this 31st day of October, 2016.

Sd/-	Sd/-
(SANJAY GARG)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, D t:31st October, 2016

Pk/-

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, D-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES