

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI M. K. AGARWAL, AM

आयकर अपील सं./I.T.A. No. 1796/Mum/2014

(निर्धारण वर्ष/Assessment Year: 2009-10)

ITO-16(2)(2), Matru Mandir, Mumbai-400 007	बनाम/ Vs.	Nayan Rasiklal Shah, 3-8, 15-B, Aruna Niwas, Lady Pochkanwala Road, Sleater Road, Mumbai-400 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAJPS 8347 M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri J. P. Jangid
प्रत्यर्थी की ओर से/Respondent by	:	None
सुनवाई की तारीख / Date of Hearing	:	03.11.2016
घोषणा की तारीख / Date of Pronouncement	:	11.11.2016

आदेश / ORDER

Per Saktijit Dey, J. M.:

This is an Appeal by the Revenue against the Order dated 27.12.2013 of the Id. CIT(A)-28, Mumbai ('CIT(A)' for short) for the assessment year 2009-10. The effective grounds raised by the department are as under:

1. Whether on facts and circumstances and in law, the Id. CIT(A) was justified in deleting the addition u/s. 50C of the I. Tax Act which is deeming provision and does not provide scope to take recourse to valuation report when price determined by Stamp duty authority of the State is higher than the sale value or cost realized by the seller?
2. Whether on facts and circumstances and in law, the Id. CIT(A) was justified in deleting Assessing Officer to adopt the valuation by DVO, which was not called for by Assessing Officer, and further

the value adopted by DVO is less than 39% of the stamp duty Authority.

3. Whether on facts and circumstances and in law, the Id. CIT(A) was correct in not taking cognizance of decision of Bombay High Court in *Bhatia Nagar Premises CHS Ltd. vs. UOI* (2010) 234 CTR 175 (Bombay High Court) where in it is held that, (1) there is distinction between the subject matter of a tax and the standard by which the amount of tax is measured. Section 50C is only a standard of measuring for imposition of tax hence valid, which was as per principle laid down in by Hon. Supreme Court Judgement in case of *A Sanyasi Rao ITR 330 (SC)*.

2. The assessee is an individual. For the assessment year under consideration, assessee filed his return of income on 31.7.2009 declaring total income of Rs.1,47,370/-. During the assessment proceedings, the A.O. on going through the return of income as well as the details filed by the assessee noticed that in the relevant previous year, assessee along with some other persons has sold a property at Village Kanjurmarg, Bhandup on 19.4.2008 for a total sale consideration of Rs.1,50,00,000/-, wherein, the assessee's 35% share works out to Rs.52,50,000/-. He further noted that after claiming deduction towards indexed cost of acquisition, the assessee had shown long term capital gain (LTCG) of Rs.50,50,394/- and after claiming exemption u/s. 54EC for an amount of Rs.50 lacs net taxable LTCG was shown at Rs.50,394/-. The A.O. observed, as per the index of Stamp Value Authority, the fair market value of the property sold is Rs.4,18,61,000/-. The value shown by the assessee being less than the fair market value as per the Stamp Valuation Authority (SVA), the Assessing Officer proposed to invoke the provisions of section 50C(1) of the Act. However, after considering the objections of the assessee against adoption of the value as per the SVA, the A.O. made a reference to the Departmental Valuation Officer (DVO) for determining the value of the property as on 19.4.2008. As observed by the A.O., since the assessment is getting time barred, without waiting for the DVO's valuation report, the A.O. proceeded to compute LTCG by adopting the value as per SVA which resulted in determination of net taxable LTCG of Rs.94,51,744/-. However, the A.O.

also observed, after receiving DVO's report computation of LTCG would be modified. Being aggrieved of the addition so made, the assessee preferred an appeal before the ld. CIT(A).

3. During the pendency of assessee's appeal before CIT(A), the A.O. received the DVO's valuation report determining the value of the property at Rs.2,53,45,819/- and on the basis of such valuation report, the assessee's 35% share works out to Rs.88,71,000/-. After receiving the valuation report of the DVO, the A.O. passed an order u/s. 154 of the Act by adopting the valuation made by the DVO as a result of which the net LTCG was revised to Rs.36,71,394/-. The order passed u/s. 154 of the Act was again challenged by the assessee before the ld. CIT(A). The ld. CIT(A) disposed of both the appeals in a common order impugned before us in the present appeal. The ld. CIT(A) after considering the submissions of the assessee in relation to certain aspects of valuation made by the DVO, did not find merit. Therefore, upholding the valuation made by the DVO, he dismissed the appeals of the assessee. When the appeal was called for hearing, no one was present for the assessee. Therefore, we proceeded to dispose of the appeal *ex parte*, qua the assessee, after hearing the ld. DR.

4. The ld. DR relying upon the grounds raised submitted that the ld. CIT(A) was not justified in adopting the valuation determined by the DVO as against the value adopted by the A.O. as per the stamp value authority in terms of section 50C(1) of the Act. He further submitted, while directing the A.O. to adopt the valuation of the DVO, the ld. CIT(A) has not given any opportunity to the A.O.

5. We have heard the ld. DR and perused the material on record. As could be seen from the facts on record, the A.O. in the course of assessment proceedings has obtained information relating to the value of the property from the SVA and adopted that value, notwithstanding the fact that he has made reference to the DVO to

determine the value of the property as on 19.4.2008. Be that as it may, it is also evident that after completion of the assessment, the A.O. received the valuation report of the DVO and having found that the valuation of the property has been determined by the DVO at Rs.2,53,45,819/-, as against the value of Rs.4,18,61,000/- as per the valuation of SVA, suo motu initiated the proceedings u/s. 154 of the Act and passed an order on 10.10.2012 revising the LTCG on the basis of the valuation made by the DVO. Therefore, the claim of the department that the Id. CIT(A) has directed the A.O. to adopt the valuation by DVO is contrary to the facts on record and thoroughly misconceived. It is the A.O. who in the proceeding u/s.154 of the Act has adopted the value determined by DVO and revised the LTCG computed by him. In this context, it is worth mentioning, a perusal of the assessment order reveals, while computing the capital gain by adopting the valuation of the SVA, the A.O. in clear terms has stated that though he has referred the valuation to the DVO, however, considering that the assessment is getting time barred he is completing the assessment by adopting the valuation of the SVA. However, he has also observed, the long term capital gain/loss will be revised after receipt of report of DVO. In view of such observations by the A.O. in the assessment order itself as well as the order passed u/s. 154 of the Act, the allegation of the department that the Id. CIT(A) has adopted valuation made by the DVO in violation of section 50C is thoroughly misconceived and misleading. Hence, it deserves to be rejected outright. In view of the afore-said, we do not find any merit either in the argument of the Id. DR or the grounds raised by the department. Hence, the grounds raised are dismissed.

6. Before parting, we must observe, it has been the endeavor of the government as well as judicial institutions to reduce/avoid unnecessary litigation which not only creates enormous burden on courts and Tribunals but also results in harassment to the tax payers. However, this is a glaring instance of such harassment to the tax payer. When the assessee's appeal has been dismissed by the Id. CIT(A) and it is evident on

record that the A.O. himself has accepted the valuation made by the DVO, we fail to understand how the department can come up in appeal against such order of first appellate authority. This *prima facie* proves that the authorization for filing of appeal by the Id. CIT is without application of mind and in a thoroughly mechanical manner, which is not expected from such a high official. We hope and trust that the higher authorities of the department should take cognizance of the issue and prevent filing of frivolous and vexatious appeals in future. With the afore-said observation, we dismiss the appeal of the department.

6. In the result, the Revenue's appeal is dismissed.
परिणामतः राजस्व की अपील खारिज की जाती है ।

Order pronounced in the open court on November 11th, 2016

Sd/-
(M. K. Agarwal)

लेखा सदस्य / Accountant Member

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 11.11.2016

व.नि.स./Roshani, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai