

Court No. - 32

Case :- INCOME TAX APPEAL No. - 287 of 2011

Appellant :- The Commissioner Of Income Tax Alld And Anr.

Respondent :- Sh. Chandra Narain Chaudhri

Counsel for Appellant :- A.N. Mahajan, S.C.

Hon'ble Sunil Ambwani, J.

Hon'ble Surya Prakash Kesarwani, J.

1. We have heard Sri Bharat Ji Agrawal, Senior Advocate, assisted by Sri Shambhu Chopra, for the appellant-revenue. Sri Krishna Agarwal appears for the respondent-assessee.

2. This Income Tax Appeal under Section 260-A of the Income Tax Act 1961 (the Act) is directed against the judgement and order dated 10.05.2011, passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad in ITAT No. 304/Alld/2010, relating to Assessment Year 2005-06. The department has preferred the appeal, on the following questions of law.-

"1. Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in confirming the order of the CIT (A) determining the value of the capital assets at rs.33,77,186/- and indexed cost of acquisition at Rs.18,72,000/- as against Rs.78,48,000/- and Rs.14,97,072/- as respectively taken by the AO by ignoring the fact that property is in the main market of Civil Lines and is meant for commercial use and that the assessee had not disputed the Stamp Duty valuation?"

2. Whether the AO rightly adopted the market value of the land as per the Stamp Duty valuation which the assessee has never objected to, for working out the long term capital gain u/s 50-C of the Act?"

3. After having heard the learned counsel for the parties and perusing the orders passed by the AO, CIT (A) and ITAT, we find that appropriate question, which should have been framed for consideration is as to whether if the assessee claims before the AO that the value adopted or assessed or assessable by Stamp Valuation Authority under sub-section (1) of Section 50C of the Act exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should refer the valuation of the capital asset to a Valuation Officer under Section 50 C (2) of the Act; and whether in the facts and circumstances, if the assessee has filed a report of the approved valuer under Section 12-A of the Wealth Tax Act 1957, and to which no objection was filed by the Income-tax Department at any stage, it is necessary for the AO to refer the valuation of the capital assets to the Valuation Officer under Section

50-C (2) of the Act?

4. In the present case, the assessee did not disclose the capital gain in his return. In proceedings under Section 143 (2) of the Act, the assessee was required to give reply in which he disclosed the sale of capital asset viz., property No. 153/33-A M.G. Marg, Allahabad at Rs.25,00,000/- for which he also filed a report of the approved valuer. The revenue asserted that the purchaser had paid stamp duty on the valuation of the property fixed by the stamp valuation authority appointed by the State Government, according to which, the valuation of the property was Rs.78,48,000/-. The capital gain was accordingly worked out on the basis of valuation fixed by the stamp valuation authority under Section 50 C (2) of the Act.

5. The AO referred to the objections filed by the assessee in his reply dated 16.12.2009 and 18.12.2009, and the request of the assessee to accept the valuation shown by him in his reply dated 8.12.2009, on the basis of indexation of the value of property, on the ground that the building was under the tenancy of Sri Om Prakash Jaiswal - the father of the purchaser since 1967. The assessee filed two valuation report – one for valuation as on 1.4.1981 at Rs.3,90,280/-, and the other for valuation as in October 2004 at Rs.33,77,186/-. The AO did not accept the report of the approved valuer submitted by the assessee as fair market value and found that the value adopted by the stamp duty authority has to be taken as fair market value as on October 2004, and accordingly computed the long term capital gain.

6. In appeal before the CIT (A), the assessee submitted additional evidence under Rule 46-A on 13.08.2010, wherein he submitted another valuation report dated 3.12.2009, from the same approved valuer suggesting that the actual distress sale value of the property is Rs,17,30,713/- as against the valuation of the property inclusive of land and building at Rs.33,77,185/- The additional evidence was sent to the AO for comments. The AO submitted his comments vide his letter dated 26.08.2010, observing that the assessee attended the assessment proceeding through his counsel/authorized representative on 3.12.2009, 8.12.2009 and 16.12.2009 and 18.12.2009, but the said the valuation report dated 3.12.2009 was never furnished before him and therefore the additional evidence may not be accepted at this stage. The CIT (A) thus rejected the additional evidence. The CIT (A) thereafter relied on Section 50 C of the Act and held as follows.

“5.1 From the provisions of the said section it is seen that the following elements are essential before any valid addition can be

made under the said section, as also endorsed by various Courts of law.

5.1.1. It is mandatory on the part of the AO to make reference to Valuation Officer as per provisions of section 50C where the assessee contended that valuation as done by Stamp Valuation Authority is not acceptable to him. The decision of the AO was not correct where he held that reference to Valuation Officer is optional since the assessee had not objected to value adopted by the State Valuation Authority, there was no need to refer matter to the Valuation Officer [Kalpataru Industries Vs. ITO ITAT No. 5540/Mum/07 decided on 24.08.2009.

5.1.2. Clauses (a) & (b) of sub-section (2) of section 50C are continuation to each other and therefore, conditions laid down in both the clauses are required to be satisfied together-AO has to refer the valuation to the DVO for determining the fair market value if the property under transfer is less than valuation made by the State Valuation Authority and further that he has not disputed the valuation by the State Valuation Authority before Appellate Authorities under Stamp Duty Act [Mohd. Shoib Vs. DCIT [2009] 29 DTR 306 (Lko-B).

5.1.3. In a case where the AO applied provisions of section 50C(1) and came to a conclusion that the value of sale consideration had to be taken at a value as per the sale deed of Sub-Registrar but the matter was not referred to the DVO, it was held that the matter should have been referred to the DVO for getting its market rate established as on date of sale to arrive at a correct sale consideration. [2008] 23 SOT 25 (Jodh.) (URO) Meghraj Baid V. ITO/114 TTJ 841 (Jodh).

5.1.4. If an assessee objects to stamp duty valuation, the assessing officer is duty bound to refer the matter to the Valuation Officer – [2009] 34 SOT 57 (Mum)- Ajmal Fragrances & Fashions (P) Ltd. V. C.I.T.

5.2 Considering the judgments above and also considering the judgment in the case of CIT Vs. Chandani Bhochar [2010] 323 ITR 510 (P&H) as well as the judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Smt. Raj Kumar Vimla Devi [2005]279 ITR360 (Alld.), I am of the firm view that the stand taken by the AO that the value adopted by the Stamp Duty Authority alone is taken to be the fair market value as on October, 2004 is not correct since he should have referred the matter in assessment to the DVO as in the present case, both the ingredients of provisions of section 50C(2) are present which compels the AO to refer such matter for valuation by DVO in accordance with provisions of section 55A of the I.T. Act, 1961 and the said provisions of section 50C(2) are essentially to be read in conjunction with the provisions of section 50C(1) of the I.T. Act. However, considering the fact that the assessee has furnished a report from Approved Valuer and has relied on the same during the course of assessment proceedings, the value of the Capital Asset as determined by the said Approved Valuer for the month of October, 2004 should be taken to be the Sale Consideration received by the assessee i.e. Rs.33,77,186/-. Similarly, the value taken by the Approved Valuer as on 01.04.1981 should be taken as a value for the purpose of arriving at the indexed Cost of Acquisition. This is more so as the property under consideration was very old and under tenancy since 1969 fetching a nominal rent of Rs.625 per month (approx.), in the year of sale and since the assessee could not vacate the property even after a legal battle, had to sell the property to the son of the tenant.

5.3 Therefore, the Capital Gains of the appellant is computed as below for the purpose of assessment :

| | |
|--|-----------------------|
| Sale Consideration Received | Rs.33,77,186/- |
| Less : Indexed Cost 3.9 lakh X 480/100 | Rs.18,72,000/- |
| Long Term Capital Gain | Rs.15,05,186/- |

5.4 The Long Term Capital Gains is to be taxed @20% based on the computation as above.

6. So far as the Additional Ground taken by the appellant regarding charge of interest is concerned, the same has not been pressed by the appellant during the course of appellate proceedings. In any case charge of interest is mandatory and consequential to the proceedings under consideration. Therefore, this additional ground of appeal is hereby dismissed.

In result, the appeal is partly allowed

7. The Appeal filed by the revenue and the cross appeal filed by the assessee were dismissed by the ITAT vide its order dated 10.05.2011. The ITAT did not agree with the reasoning adopted by the CIT (A) and held that provisions of Section 50 C (2) of the Act are essentially be read in conjunction with the provisions of Section 50 C (1) of the Act, and that in the facts and circumstances of the case, the value of capital asset as determined by the approved valuer for the month of October 2004 at Rs.33,77186/- has to be taken as the sale consideration and similarly the value taken by the approved valuer as at 1.4.1981 has to be taken into consideration for the purposes of arriving at indexed cost of acquisition. The ITAT did not find any infirmity in the order of CIT (A) and dismissed the appeal filed by the revenue.

8. In order to appreciate the question raised in this appeal, it is necessary to quote the provisions of Section 50-C of the Act.

“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 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 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.

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

(a) the assessee claims before any Assessing Officer that the value adopted 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 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.

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

Explanation 2.—For the purposes of this section, the expression “assessable” 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 or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted 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.”

9. This Court had an occasion to consider the provisions of Section 50 C of the Income Tax Act 1961, inserted by the Finance Act 2002, w.e.f. 1.4.2003, in **Commissioner of Income Tax Vs. Smt. Raj Kumari Vimla Devi and another** [(2005) 279 ITR 360 (All)], in which it was held as follows:-

“The apex court in the case of *Jawajee Nagnatham v. Revenue Divisional Officer* [1994] 4SCC 595 has held that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty cannot form the foundation to determine the market value mentioned thereunder in instruments brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Land Acquisition Act, of the lands acquired in that area or town or the locality or the taluk, etc.

This Court in the case of *Dinesh Kumar Mittal v. ITO* [1992] 193 ITR 770 ; [1991] UPTC 1209 has held that we cannot recognise any rule of law to the effect that the value determined for the purpose of stamp duty is the actual consideration passing between the parties to a sale. The actual consideration may be more or may be less. What is the actual consideration that passed between the parties is a question of fact to be determined in each case, having regard to the facts and circumstances of that case.

It may be mentioned here that to overcome this difficulty for the

purposes of bringing to tax on capital gain, Parliament has inserted Section 50-C of the Income-tax Act, 1961, by the Finance Act, 2002, with effect from April 1, 2003, wherein it has been provided that the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of land or building or both 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. There was no such provision applicable during the relevant period, therefore, the value of assets by the stamp valuation authority cannot be treated as full market value for the purposes of imposition of tax.

In this view of the matter, we are of the considered opinion that the rules framed under the Stamp Act cannot be pressed into service for determining the market value of the property and, therefore, there is no deemed gift in the present case. We, accordingly answer both the questions referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs."

10. Section 50-C of the Act is a rule of evidence in assessing the valuation of property for calculating the capital gain. The deeming provision under Section 50 C (1) of the Act is rebuttable. It is well known that an immovable property may have various attributes, charges, encumbrances, limitations and conditions. In the present case, it is stated that the property was under the tenancy of father of the purchaser since 1969 and thus the assessee being landlord of the property, offered it for sale to the tenant, which could not have attracted fair market value, as a willing purchaser may have offered for a property in vacant condition. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value in the condition the property is a offered for sale and is purchased. He is required to value the property in accordance with the circle rates fixed by the Collector. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as it occupation by tenant, any charge or legal encumbrances.

11. The question as to whether the assessee filed any objections before the Stamp Valuation Authority to dispute the valuation, or filed appeal or revision or made reference before any authority, court or the High Court under sub section (2) (b) of Section 50 C of the Act is not of any relevance in this case, as the AO himself observed that the assessee did not dispute the stamp valuation before the Stamp Valuation Authority. There may be several reasons for the purchaser not to file such objection. A purchaser may not go into litigation, and pay stamp duty, as fixed by the Stamp Valuation Authority, which may be over and above the fair market value of the property, as on the date of

transfer, though the amount so determined has not been actually received by owner of the property. Whenever the assessee claims before the Assessing Officer that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub section (1) of Section 50-C exceeds the fair market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the capital asset to a Departmental Valuation Officer (DVO) and for that purpose, the procedure prescribed under the Wealth Tax Act are to be applied. In case of any such claim, the AO may rely on the report of registered valuer under Section 55-A of the Act and in such case it will not be necessary for him to refer the matter to the DVO. However, in any event, the AO has to record sufficient reasons. He has to record reasons for accepting the report of the approved valuer submitted by the assessee along with his claim/objection under Section 50 -C (2) of the Act. If he does not accept the report, he has to record the reason for referring the matter to the DVO. The reasons in either case must have nexus with the objection/claim made by the assessee and the objection, which may be raised by the department against the valuation determined in the report of the approved valuer.

12. In the present case, we find that CIT (A) has correctly observed in his order that the provisions of Section 50 C (2) are essentially to be read in conjunction with the provisions of Section 50 C (1) of the Act. He also found that in the present case both ingredients of provisions of Section 50 C (2) are present, which made it necessary for the AO to refer the matter for valuation to DVO in accordance with provisions of Section 55-A of the Income Tax Act. The ITAT in allowing the appeal committed serious error of law in finding that in such circumstances and facts of the case, the value of the capital asset as determined by the approved valuer for the month of October 2004 at Rs. 33,77,186/- has to be taken as the sale consideration and similarly the value taken by the approved valuer as on 1.4.1981 has to be taken for the purposes of arriving at indexed cost of acquisition. The ITAT failed to consider that the AO did not record any finding either on the validity of the claim/objection filed by the assessee nor did he record any finding on the sufficiency of valuation of the approved valuer submitted by the assessee.

13. In the present case, the assessee has submitted three different valuation reports of the approved valuer. The first report was based on the valuation as on 1.4.1981; the second report was based on the valuation as on October

2004 and the third report by the same approved valuer was based on distress sale value of the property. The third valuation report was prepared during the proceedings before AO. The assessee however did not choose it to file the same before AO in remand proceedings, and filed it as an additional evidence in appeal, which was rejected by the CIT (A) after considering the report of AO on remand.

14. We are of the view that whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub-section (1) of Section 50-C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessee. He may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55-A of the Act. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A of the Act as a matter of course, without considering the report of approved valuer submitted by the assessee. In all such cases, the reasons recorded by the AO may be questioned by the assessee or the department as the case may be.

15. The questions of law, as framed in the memo of appeal, are decided in favour of the revenue and against the assessee. The order of ITAT dated 10.05.2011, is set aside. The matter is remanded to AO, to decide the valuation of the capital asset in accordance with law as explained by us in this judgement.

16. The Income Tax Appeal is **allowed**.

Order Date :- 29.08.2013
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