

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI A.L. GEHLOT, ACCOUNTANT MEMBER**

ITA No. 1561/M/09  
Assessment Year: 2005-06

**Smt. Kishori Sharad Gaitonde,**  
15D, Kishori Vihar, M.B. Raut Road,  
Shivaji Park, Dadar, Mumbai – 400 028.  
(PAN – AGPPG8276K)

**... Appellant**

Vs.

**Income Tax Officer, 18(1)(1),**  
Piramal Chambers, 1<sup>st</sup> Floor, Room No. 103,  
Morarji Mills Compound, Jilibhoy Lane,  
Opp. Parel Post Office, Lalbaug,  
Parel, Mumbai – 400 012.

**...Respondent**

Appellant by : Mr. L.K. Doshi  
Respondent by : Mr. S.K. Madhukar

**ORDER**

This appeal filed by the assessee is directed against the order of CIT(A)- XVIII, Mumbai, passed on 05.02.2008 for the assessment year 2005-06 wherein the assessee has raised the following grounds of appeal:-

*“1. In the facts, circumstances of the case & in law, learned AO erred in assessing the long term capital gains on transfer of tenancy right at Rs. 2,07,466/-.*

*The learned CIT(A) also erred in confirming the action of AO.*

*2. In invoking the provisions of section 50C for ascertaining the long term capital gains on transfer of tenancy right, the AO has not considered the marginal difference of 9.43% between document price and market value in right perspective manner.*

*The learned CIT(A) erred in not deciding this ground of appeal.*

*3. Without considering the fact that provision of section 50C is applicable for transfer of capital assets being land or building or both, the learned AO erred in applying the said provisions for transfer of tenancy right.*

*In deciding this ground, the learned CIT(A) erred in not considering the qualifying words 'capital assets being land or building or both'.*

*4. Though the working of long term capital gains of Rs. 2,07,466/- was supplied to the AO without prejudice the submission made in my letter dated 16.08.2007, the AO has made wrong observation that I have agreed for additional amount of consideration being difference between market value & document price amounting to Rs. 2,07,466 (being appellant's 2/3<sup>rd</sup> share of Rs. 3,11,200) be considered in working out long term capital gains.*

*The learned CIT(A) erred in not deciding this ground.*

*5. Before applying the provision of section 50C, the AO has not referred the matter to valuation officer for ascertaining the value of transfer of tenancy right."*

*The learned CIT(A) erred in not deciding this ground in right perspective manner."*

2. Briefly, the facts of the case are that during the assessment proceedings, the AO noticed that the assessee has sold the flat No. 6 in Kishori Vihar for Rs. 30 lakhs as per the perusal of tenancy agreement dated 25.05.2004. The market value adopted the Sub-Registrar of Mumbai was Rs. 33,11,200/-. The AO has taken the market value of the property sold at Rs. 33,11,200/- in stead of Rs. 30 lakh as taken by the assessee. Before the AO, it was submitted by the assessee that long term capital gain arising from transfer of tenancy right and not out of the flat No. 6 sold. The agreement dated 25.05.2004 was the agreement of tenancy and the market value adopted by the Sub-Registrar for the purpose of stamp duty was Rs. 33,11,200 whereas the actual amount of consideration received by two outgoing tenants and the assessee was Rs. 30 lakhs. It was submitted by the assessee that there is a marginal difference of Rs. 3,11,200 (Rs. 3311200 – 300000) which constitutes about 9.43% of the market value. It was submitted that the said property was given on tenancy basis for last number of years which was transferred by the existing two tenants to the new tenant with the assessee's consent. Out of total consideration of Rs. 30 lakhs for transfer of tenancy rights, the

old two tenants i.e. outgoing tenants have retained their shares of Rs. 10 lakhs and balance amount i.e. Rs. 20 lakhs has been received by the assessee by account payee cheque. The entire amount of consideration of Rs. 20 lakh received by the assessee has been invested in NABARD Bonds u/s 50EC of the Act. It was submitted by the assessee that it was alternate submission of the assessee that if at all any amount is to be considered in working out the capital gains by applying the provisions of section 50C, it will be 2/3<sup>rd</sup> of Rs. 3,11,200/- i.e. Rs. 2,07,447/- & not the entire amount of difference Rs. 3,11,200/- taxable in assessee's hand. This alternate submission of the assessee is without prejudice to the submission i.e. section 50C is not applicable to the case under consideration. The AO noted that the assessee has agreed that an additional amount is to be considered in working out the capital gains by applying the provisions of section 50C. The AO accordingly calculated the long term capital gain as per section 50C of the Act. The CIT(A) confirmed the action of the AO. The CIT(A) had also rejected the assessee's contention that the AO has not referred the matter to valuation officer for computing the value of transfer of tenancy right.

3. I have heard the rival submissions and perused the relevant material on record. The ld. A.R. has vehemently argued that section 50C is not applicable to this case as same is applicable to in case a capital asset, being land or building or both and not in the case of tenancy right..

3.1 At this juncture, it would be relevant to consider the relevant provision, which runs as under :

*“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 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 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.”

3.2 It is observed that section 50C was inserted by the Finance Act, 2002 with effect from 1-4-2003. Clause 24 of the Finance Bill as per Notes on clauses states that the insertion of this provision is to provide for a special provision for the full value of consideration in certain cases. It has been provided that 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 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 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.

3.3 Memorandum explaining provisions of Finance Bill, 2002 states in this regard as under:

*“The Bill proposes to insert a new section 50C in the Income-tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property.*

*It is proposed to provide that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration, and capital gains shall be computed accordingly under section 48 of the Income-tax Act.*

*It is further proposed to provide that where the assessee claims that the value adopted or assessed for stamp duty purposes exceeds the fair market value of the property as on the date of transfer and he has not disputed the value so adopted or assessed in any appeal or revision or reference before any authority or court the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the Income-tax Act. If the*

*fair market value determined by the Valuation Officer is less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be full value of consideration. However, if the fair market value determined by the valuation officer is more than the value adopted or assessed for stamp duty purposes, the Assessing Officer shall not adopt such fair market value and will take the full value of consideration to be the value adopted or assessed for stamp duty purposes.*

*It is also proposed to provide that if the value adopted or assessed for stamp duty purposes is revised in any appeal, revision or reference, the assessment made shall be amended to recompute the capital gains by taking the revised value as the full value of consideration.*

*These amendments will take effect from 1-4-2003, and will, accordingly, apply in relation to the assessment year 2003-04 and subsequent years.”*

3.4 From the perusal of Notes on clauses and Memorandum explaining the provisions in the Finance Bill, 2002, it becomes explicitly clear that if the consideration declared to be received on sale of land or building or both is less than the value adopted or assessed by any authority of the State Government for the purposes of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of consideration and capital gain shall be computed accordingly under section 48 of the Act. A deeming provision has been enshrined in section 50C by virtue of which a legal fiction has been created for assuming the value adopted or assessed by any authority of State Government as the full value of sale consideration received in respect of such transfer. A legal fiction has been created only in respect of the cases where the consideration received by the assessee is less than the value adopted or assessed by the stamp valuation authority of the State Government for the purpose of payment of stamp duty ‘in respect of such transfer’. It is a trite law that the legal fiction cannot be extended beyond the purpose for which it is enacted. Section 50C embodies the legal fiction by which the value assessed by the stamp duty authorities is considered as the full value of consideration for the property

transferred. It does not go beyond the cases in which the subject transferred property has not become the subject-matter of the provisions of section 50C. By no stretch of imagination, the legal fiction confined to restricted operation can be widened to include within its sweep all the cases where 'such property' is not covered. The Hon'ble Supreme Court in the case of CIT v. Amar Chand Shroff [1963] 48 ITR 59 has held that 'legal fiction' is only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond the legitimate field'. Similar view has been reiterated by the Hon'ble Supreme Court in the case of CIT v. Mother India Refrigeration Industries (P.) Ltd. [1985] 155 ITR 7111. Hon'ble Supreme Court in the case of Orisa State warehousing Corporation/ Rajasthan State warehousing Corporation 237 ITR 589 (SC) observed as under:-

**Page No 604** *"Let us, however, at this juncture, consider some of the oft cited decisions pertaining to the interpretation of the fiscal statutes being the focal point of consideration in these appeals. Lord Halsbury as early as 1901, in Cooke v. Charles A. Vogeler Company [1901] AC 102 (HL) stated the law in the manner following:*

*"a court of law has nothing to do with the reasonableness or unreasonableness of a provision of a statute except so far as it may hold it in interpreting what the Legislature has said. If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results. If the language of this sub-section be not controlled by some of the other provisions of the statute. It must, since, its language is plain and unambiguous, be enforced, and your Lordships' House sitting judicially is not concerned with the question whether the policy it embodies is wise or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous."*

*The oft-quoted observations of Rowlatt J. in the case of Cape Brandy Syndicate v. IRC [1921] 1 KB 64 ought also to be noticed at this juncture. The learned judge observed:*

*"... In a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

*The observations of Rowlatt J. as above stand accepted and approved by the House of Lords in a later decision, in the case of Canadian Eagle Oil Co. Ltd. v. The King [1946] AC 119; [1945] 2 All ER 499. Lord Thankerton also in a manner similar in IRC v. Ross and Coulter (Bladnoch Distillery Co. Ltd.) [1948] 1 All ER 616 at page 625 observed :*

*"If the meaning of the provision is reasonably clear, the courts have no jurisdiction to mitigate such harshness."*

*The decision of this court in Keshavji Rauji and Co. v. CIT [1990] [183 ITR 1](#) also lends concurrence to the views expressed above. This court observed: (Page9)*

**Page 605-***"As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature..."*

*Artificial and unduly latitudinarian rules of construction, which with their general tendency to 'give the taxpayer the breaks', are out of place where the legislation has a fiscal mission."*

*Be it noted that individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction by attributing normal meanings to the words used since "hard cases do not make bad laws".*

*In fine thus, a fiscal statute shall have to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The court is to ascribe the natural and ordinary meaning to the words used by the Legislature and the court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions".*

3.5 From above discussions I noticed from plain reading of the section 50C that unless the property transferred has been covered by that section 50C, that is a capital asset, being land or building or both registered by sale deed and for that purpose the value has been assessed and stamp duty has been paid by the parties, only then section 50C cannot come into operation. In the case under consideration there is transfer of tenancy right though that is capital asset but not a capital asset, being land or building or both. Therefore, section 50C is not applicable to the facts of the case under consideration. Accordingly, the AO is not correct in taking the value adopted or assessed by the authority of a State Government/ the 'stamp valuation for the purpose calculation of capital gains on transfer of tenancy right. The orders of AO and CIT (A) are set aside and the claim of the assessee is allowed.

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

Order pronounced on 27.11.2009.

**Sd/-**  
**(A.L. GEHLOT)**  
**ACCOUNTANT MEMBER**

Dated: 27<sup>th</sup> November, 2009

Copy to:-

- 1) *The Appellant.*
- 2) *The Respondent.*
- 3) *The CIT (A) concerned.*
- 4) *The CIT concerned.*
- 5) *The Departmental Representative, "SMC" Bench,  
I.T.A.T., Mumbai.*

*By Order*

*//true copy//*

*Asst. Registrar,  
I.T.A.T., Mumbai.*

*Kv*

S.No.	Description	Date	Initls	
1.	Draft dictated on	13.11.09		Sr.P.S./P.S
2.	Draft placed before author	17.11.09		Sr.P.S/PS
3	Draft proposed & placed before the second Member			JM/AM
4	Draft discussed/approved by second Member			JM/AM
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
7.	File sent to the Bench Clerk			Sr.P.S./P.S
8	Date on which file goes to the Head Clerk			
9	Date of Dispatch of order			