

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAVISH SOOD, JM

ITA No.5402/Mum/2014
(Assessment Year :2007-08)

M/s. Krishna Enterprises, 103, 10 th Floor, Maker Chamber No.VI, Nariman Point, Mumbai – 400 021	Vs.	Addl. CIT – 12(1), Mumbai
PAN/GIR No.		AAAFK2860J
Appellant)	..	Respondent)

Assessee by	Shri. Sashank Dandu
Revenue by	Shri A. Ramachandran
Date of Hearing	27/10/2016
Date of Pronouncement	23/11/2016

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A) for the assessment year 2007-08 in the matter of order passed u/s. 143(3) of the I.T.Act.

2. The grievance of assessee relates to upholding addition of Rs.10,91,130/- being the difference in valuation of property arrived at by DVO.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that assessee is engaged in the business of construction and sale of flats. During the year under consideration, the Assessee had sold 4 flats on 07/08/2006 for a sale consideration of

Rs.1,96,60,000/-. On requiring the assessee to submit the sale agreements, it was submitted that the sale agreements were not registered and that it was not possible to determine the stamp duty value as per the provisions of Section 50C of the Income Tax Act, 1961.

5. Not convinced with assessee's reply, the AO referred the valuation of these flats to the District Valuation Officer (DVO), for the determination of the Fair Value of the property sold, who had declared the value to be Rs. 2,07,51,130/-. Difference in the valuation was added by the AO in assessee's income u/s.50C. By the impugned order, CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

6. Mr. Shashank Dandu, learned AR of the assessee vehemently argued that the total addition is only a small percentage of 5.5%(Approx) on the total amount of sale consideration declared by the Assessee being less than 10%, which may be ignored for the purposes of computing Long Term Capital Gains. In support of the proposition that where difference between the value declared by assessee vis-a-vis valuation arrived at by the DVO is only 5.5%, the same can be ignored, reliance was placed on the decision of Rahul Constructions vs. DCIT (Pune) (Trib.) 38 DTR 19 (2010) ITA No.1543/Pn/2007

7. It was further argued by Mr. Shashank Dandu learned AR that provisions of Section 50C are not applicable to the facts of case in the A.Y.2007-08 under consideration. He invited our attention to the fact that unregistered property was sold on 07/08/2006 which means, since the unregistered property was sold before the clarification was issued under

Circular No.5/2010 dated 03/06/2010 where it was clearly stated that the scope of the provisions do not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney and hence the provisions of Section 50C will not be attracted since the sale is before 01/10/2009, which is the date on which the circular becomes applicable.

8. Our attention was invited to the CBDT circular No. 5/2010 dated 03/06/2010, 324 ITR 319 and the decision of Madras High Court in the case of CIT vs Sugantha Ravindran 2013 352 ITR 488 (Mad).

9. On the other hand, learned DR Shri A. Ramachandran relied on the order of the lower authorities and contended that the AO altered the sale consideration value of the property, which was subject to transfer, based on report offered from District Valuation Officer. Thus, it is established that the market value determined of the said property is determined by an expert person i.e., DVO who is authorised to do the same as per his qualification. Accordingly it was argued that the addition so made by AO to Long Term Capital Gain of Rs.10,91,130/- is justified and correct. Accordingly, the addition so made by AO and confirmed by the CIT(A) should be upheld.

10. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also carefully gone through the Circular No.5/10 dated 03/06/2010 as cited by learned AR. We had also deliberated on the judicial pronouncements cited by learned AR during the course of hearing before us in the context of factual matrix of the instant

case. From the record we found that assessee had sold certain flats during the year under consideration and also executed sale agreements for the same. The sale agreements were not registered, therefore, it was not possible to determine the stamp duty value as per provisions of Section 50C. However, the AO referred the matter to the DVO, who valued the four flats at Rs.2,07,51,130/- against declared sale consideration of Rs.1,96,,60,000/- by the assessee. Thus, there was a difference of Rs.10,91,130/- which amounts to approximately 5.5% of the amount actually declared as the sale consideration.

Circular No.5/10 dated 03/06/2010 reads as under:-

“The existing provisions of section 50C provide that where the consideration received or accruing as a result of the transfer of a capital asset, being land or building or both, is less than the value adopted or assessed by an authority of a State Government (stamp valuation authority) 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 consideration received or accruing as a result of such transfer for computing capital gain. However, the present scope of the provisions does not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney.”

11. Thus, these amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to transactions undertaken on or after such date. In the instant case, the transactions were entered during the financial year 2006-2007 i.e., 1st April 2006 to 31st March 2007 which is prior to 01/10/2009. Therefore, as per CBDT, circular provisions of Section 50C are not applicable in so far as sales deed so executed were not registered with the Stamp Duty Violation Authority. We

are also inclined to agree with learned AR Mr. Shashank Dandu that in view of the decision of Co-ordinate Bench in case of Rahul Construction (supra) since the difference between the sale consideration of the property shown by the assessee and the FMV determined by the DVO under Section 50C(2) being less than 10 per cent, AO was not justified in substituting the value determined by the DVO for the sale consideration disclosed by the assessee.

12. We are also in agreement with learned AR that decision of Madras High Court in case of Sugantha Ravindran 353 ITR 488 is squarely applicable to the facts of the instant case where it has been held that since transfer was made prior to the amendment of Section 50C w.e.f. 1/10/2009, the provisions of section 50C would not be applicable.

13. It was also argued by learned AR that the unregistered property was sold on 07/08/2006 which means, since the unregistered property was sold before the clarification was issued under Circular No.5/2010 dated 03/06/2010 where it clearly states that the scope of the provisions do not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney and hence the provisions of Section 50C will not be attracted since the sale is before 01/10/2009, which is the date on which the circular becomes applicable.

14. In view of the above discussion, we set aside the order of the lower authorities and allow the appeal in favour of the assessee.

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

Order pronounced in the open court on this

23/11/2016

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated **23/11/2016**

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai