

आयकर अपीलीय अधिकरण, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'E' MUMBAI

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य एवं श्री आर.सी. शर्मा , लेखा सदस्य के समक्ष ।

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND

SHRI R.C.SHARMA , ACCOUNTANT MEMBER

ITA NO.2835/MUM/2013 (A.Y.2009-10)

Seksaria Industries Pvt. Ltd.,
5th Floor, Seksaria Chambers,
139, Nagindas Master Road,
Fort, Mumbai 400 023.
PAN:AAACS 6145H
(Appellant)

Vs.

Income Tax Officer,
Ward 2(3)(2), Aaykar Bhavan,
MK Road, Mumbai 400020

(Respondent)

Appellant by : Shri Y.P.Trivedi & Ms. Usha Dalal
Respondent by : Shri Manjunatha Swamy

Date of hearing : 16/10/2014
Date of pronouncement : 31/10/2014

ORDER

PER I.P.BANSAL, J.M:

This is an appeal filed by the assessee and it is directed against the order passed by Ld. CIT(A)-6, Mumbai dated 12.02.2013 for assessment year 2009-10. Grounds of appeal read as under:

1.0 The Learned Commissioner of Income Tax (Appeal) (CIT (A)) erred in law and on facts in upholding the adoption of Sale consideration at Rs. 57,74,51,000/- instead of actual sale consideration of Rs.41,51,00,000/- in respect of transfer of Reversionary rights in Land at Juhu while computing Long Term Capital Gains.

1.1 The Learned CIT (A) erred in law and on facts in ignoring the Valuation Report of The Joint Director, Town Planning (Valuation), Maharashtra State, Pune valuating the Land at Rs. 41,51 00,000/- for the purpose of Stamp Duty.

1.2 The Learned CIT (A) erred in law and on facts upholding that the assessee did not dispute valuation by Stamp duty authorities ignoring the fact that appellant's appeal u/s. 53A of the Bombay Stamp Act, 1958 was pending before the Appropriate

Authorities for finalization of value of Stamp Duty purpose based on Valuation Report of The Joint Director, Town Planning (Valuation), Maharashtra State, Pune and Valuation as per The Joint Director, Town Planning (Valuation), Maharashtra State, Pune is equal to sale consideration mentioned in the document and received by the appellant.

1.3 The Learned CIT(A) ought to have appreciated that the Valuation done by Stamp office is excessive and unreasonable.

1.4 The Learned CIT(A) failed to exclude value of TDR from the total valuation made by Stamp Office and computation of Capital Gains being a capital assets without any cost.

1.5 . The Learned CIT (A) failed to appreciate the peculiar nature and status of this property and transaction.

2.0 The Learned CIT (A) erred in law and on facts in confirming the adoption of Fair Market Value as on 01.04.1981 at Rs. 3,10,14,000/- instead of Rs. 5,62,50,775/- in respect of Appellant's rights in Land at Juhu while computing Long Term Capital Gains.

2.1 The Learned CIT (A) erred in law and on facts in ignoring the Valuation Report of Shri Rajesh Shah of M/s. Shah & Shah, Government Approved Valuer valuating the Appellant's rights as on 01 .04.1981.

2.2 The Learned CIT (A) failed to appreciate the peculiar nature and status of this property and transaction.

3.0 The CIT (A) failed to appreciate that the provisions of Sec.50 C can not be applied in a case where there is no proof, or even a suggestion that something more is paid, over and above the agreement price.

2. The assessee is a Private Limited Company engaged in the business of trading in Optical Goods besides investments and financing. During the year under consideration the assessee sold reversionary right in a property on which long term capital gain was declared. The ownership history of the property, for the sake of convenience, has been taken from the report of District Valuation Officer, copy of which has been filed at pages 26 to 42 of the paper book and the facts narrated therein were not disputed by either of the parties.

“3.1 Ownership History:

The assessee though a decree operating as conveyance in respect of the property granted by Hon'ble High Court of Mumbai on 21/12/1996 in suit No.547 of 1966 had become the absolute owner of the plot.

By an indenture of Lease made on 4/3/1968 M/s. Seksaria Industries Pvt. Ltd. the assessee (Lessor) and M/s. Hind Raj Syndicate (Lessee) the property admeasuring appr. 9350 sq. yd. was demised unto the lessees.

The lease was for a period of 98 (Ninety-eight years) w.e.f. 4/3/1968 for a rent of Rs.19,971/- p.m. It was a term of the lease deed that the lessee shall within 3 years construct a building (Hotel etc.) of value not less than Rs. 5 lakhs and an interest free deposit of Rs.59,913/- was to be deposited on this account to the lessor by the lessee till completion of construction.

All the taxes, fees, duties, out goings etc. were to be paid by the lessees as per the covenant.

In the event of breach of any clauses of the covenants, the lessor may re-enter upon the premises.

On expiration of the lease period, the lessee will have to give vacant possession of the premises.

Supplementary to this indenture of lease deed, an agreement was further entered into between the lessor and lessees dt. 23/5/1968.

By a letter dated, 21/4/1969, the lessor has granted its license and consent to assign the rights of the lessee to M/s. HOTEL HORIZON Pvt. Ltd., Accordingly, vide a deed of assignment dated 21/4/1969, the lessees being assignors assigned all their right to the assignee M/s. HOTEL HORIZON Pvt. Ltd.

Another supplementary agreement of lease was entered into between M/s. Seksari Industries Pvt. Ltd. the assessee(Lessor) and M/s. HOTEL HORIZON Pvt. Ltd. (Lessee) on 9/12/1970, reaffirming the covenants and clarifying the consent for obtaining financial assistance by way of mortgage etc.

The assessee sold the reversionary right in the property before the expiry of lease period of 98 years, which commenced from 04.03.1968 vide an agreement for sale dated 5/8/2008 for a consideration of Rs.41,51,00,000/-.

2.1 As it can be seen from the above facts the assessee sold the reversionary right in the said property before the expiry of lease period of 98 years which commenced from 04/03/1968 vide an agreement for sale dated 05/08/2008 for a consideration of Rs.41.51 crores.

2.2 Initially the assessee filed return (first return) in which the sale consideration was taken at Rs.57,74,51,000/- as taken by the Collector of Stamps and computed the long term capital gain at Rs.7,57,75,034/- as under:

Sale consideration-Market Value as assessed by The Collector of Stamps, Mumbai (Actual consideration Rs.41,51,00,000/-)		577451000
Fair Market Value as on 01.04.1981 – estimated	86099000	
Indexed cost	582	501096180

Selling Expenses		579786
Long Term Capital Gain		75775034

Subsequently, the return was revised(second return) in which long term capital gain was shown at Rs.19,17,041/- by taking the actual consideration received as under:

Sale consideration-Market Value as valued by The Joint Director, Town Planning (Valuation), Maharashtra State, Pune (Actual consideration Rs.41,51,00,000/-)		415100000
Fair Market Value as on 01.04.1981 - As per Valuation Report of Mr. S.S. Rahalkar, Government Approved Valuer	70894016	
Indexed cost	582	412603173
Selling Expenses		579786
Long Term Capital Gain		1917041

The return was again re-revised (third return) and capital gain was computed at Rs.8,71,40,704/- as under:

Sale consideration-Market Value as valued by The Joint Director, Town Planning (Valuation), Maharashtra State, Pune (Actual consideration Rs.41,51,00,000/-)		415100000
Fair Market Value as on 01.04.1981 - As per Valuation Report of Mr. Mr. Rajesh Shah of M/s. Shah & Shah, Government Approved Valuer	56250775	
Indexed cost	582	327379510
Selling Expenses		579786
Long Term Capital Gain		87140704

During the course of hearing the AO also referred the matter to the District Valuation Officer, who ascertained the fair market value of the property as on 01/04/1981, at a sum of Rs.3,10,14,000/-. Accordingly, the long term capital gain was computed by the AO at Rs.39,63,69,734/- as under:

Sale consideration-as per Market Value as assessed by The Collector of Stamps, Mumbai subject to outcome to the appeal filed by the assessee under section 53A of the Bombay Stamp Act, 1958 (Actual consideration Rs.41,51,00,000/-)		577451000
Fair Market Value as on 01.04.1981 - As per Valuation Report of District Valuation Officer II, Income tax Department, Mumbai.	31014000	
Indexed cost	582	180501480
Selling Expenses		579786
Long Term Capital Gain		396369734

2.3 All the above facts are mentioned in the statement of facts filed by the assessee before Ld. CIT(A).

3. Before Ld. CIT(A) the assessee firstly contested the action of AO in adopting the sale consideration of Rs.57,74,51,000/- as against actual sale consideration of Rs.41.51 crores. The assessee also contested the action of AO in adopting fair market value as on 1/04/1981 at a sum of Rs.3,10,14,000/- in place of value determined by the Government approved valuer at Rs.5,62,50,775/-.

3.1 Before proceeding further it may also be mentioned here that for the purpose of determining the value all the valuers who have valued the impugned property either at the time of sale or as on 1/4/1981 have adopted different ratio of apportionment of fair market value and such difference in the various valuation reports have been brought out by the assessee in a table which is reproduced at page-3 in para 1.2 of the order passed by Ld. CIT(A) and the said table is reproduced below:

3. All the Valuers adopted 'Apportionment of Fair Market Value Method' for valuation for valuation as on 01.04.1981 as well as that as on date of sale i.e. the fair market value is split between the lessor and the lessee. However, different ratios of proportion between lessor and lessee have been adopted by different valuers as listed below:

Valuer	Lessor (Assessee)	Lessee
As per Departmental Valuer for valuation as on 01.04.1981- Page 33 of paper book.	30	70
As per Registered Valuer for valuation as on 01.04.1981 - Page 11 of paper book	45	55
As per Stamp Duty - as mentioned in valuation for date of sale - Page 61 of paper book	60	40
AS per Town Planner - as mentioned in valuation for date of sale - Page 66 of Paper book.	40	60

3.2 It was the submission of the assessee that ratio of apportionment between lessor and lessee has been a contentious issue and different judicial pronouncements have taken different view from time to time as is evident from the following table.

Valuer	Lessor (Assessee)	Lessee
As per custom	40 to 50	60 to 40

As per judgment in Daulatjada case in the event of 999 years lease. Our lease was for 98 years only.	35	65
Azimuddin Asharaf Chaudhri Vs. Municipal Board, Bara Banki, I.L.R (1961) 1,ALL 988	50	50
Shamlal Vs. Collector of Agra, AIR 1934 ALL, 239 ;ILR 55ALL 897 (FB)	60	40
Dossibai Nanabhoy Jeejeebhoy vs. P.M.Bharucha (1958) 60 BLR 1208	60	40
Union of India vs. A. Ajitsingh (1997) 6SCC50	60	40
Roshanlal Vs. Collector of Etah, AIR 1929ALL525	60	40
Deepchand vs. State of UP AIR 1980 SC 633	62	38
State of UP vs. BEgam Saleha Hadi Hasan 1986 ALJ 1244	62	38
Indraprasth Ice & Cold Storage vs. Union AIR 1987 DEL 171	87.5	12.5

3.3 Further the assessee objected to the adoption of valuation done by DVO as on 1/4/1981 relying upon several decisions of ITAT in which it was held that section 55A authorize the AO to refer for valuation if in the opinion of AO the value of the asset as claimed by the assessee is less than its fair market value or say, value in his opinion could be higher than that disclosed by the assessee and all these decisions of Tribunal are mention in para 1.2 of the order of Ld. CIT(A). It was also pleaded that the amendment which enable the AO to refer the issue regarding valuation even in a case where the value is less than its fair market value is brought on the statute only w.e.f. 1/7/2012 which could not be applied to the case of the assessee as the amendment is not retrospective.

3.4 The assessee further objected to the adoption of sale value at Rs.57,74,51,000/- based on value adopted by the Collector of Stamps on the ground that when main value was taken at 60% then TDR value could not be taken at 100% and if the same is taken at 60% then the value would be not to the extent of Rs.57,74,51,000/- but it would be only a sum of Rs.48,35,45,000/- and such difference was brought out as per following two tables:

“6. Valuation as on Date of Sale:

1. Collector of Stamps adjudicated sale value at Rs.57,74,51,000/- based on Ready Reckoner Value as under.

	AREA	RATE	TOTAL VALUE	ASSESSEE'S SHARE	
LAND	7784.8	75600	571142880	60	34,26,85,728
TDR	517560	45360(75600*60%	234765220	60	23,47,65,220
			805908100		57,74,50,948
SAY					57,74,51,000

2. The above calculation provided by the Superintendent of Stamps clearly show that ratio of apportionment (60:40) has not been applied to Value of TDR i.e. Rs.234765220/-. Thus, Correct calculation of value as per Stamp Duty formula should be Rs.48,35,44,860/- (sharing of utilized FSI and TDR) instead of Rs.57,74,51,00/- on a sharing in the ratio of 60:40 as under:

	AREA	RATE	TOTAL VALUE	ASSEESSEE'S SHARE	
LAND	7784.8	75600	571142880	60	34,26,85,728
TDR	517560	45360(75600*60%)	234765220	60	14,08,59,132
			805908100		48,35,44,860
SAY					48,35,45,000

3.5 It was further submitted that Joint Director Town Planning (Valuation), Maharashtra State, Pune has valued the property at Rs.41.51 crores being value as per documents and following submission was made:

“The Joint Director, Town Planning (Valuation), Maharashtra State, Pune has valued the property at Rs.41,51,00,000/- being value as per document. However, the correct calculation of discounted value as per Town Planning Department should be Rs.1,55,62,501/- instead of Rs.1,59,74,490/-. This does not affect since document value is Rs.41,51,00,000/- sharing in the ratio of 40:60.”

3.6 It was further brought to the notice of Ld. CIT(A) that the assessee had filed an appeal as well as petition before Higher Authorities regarding stamp valuation and the outcome thereof and reference can be made to the following submissions:

“4. The assessee filed appeals and petitions before higher authorities under the Bombay Stamp Act to correct discrepancies in valuation and determine fair value. The same were rejected by all the Authorities and forums on technical ground that Stamp Duty Value cannot be revised after Registration of Document under Bombay Stamp Act and not on merit. However, Bombay High Court observed that their order shall not be impediment to Income Tax Authorities to adopt fair value. Thus, Income tax Authorities should adopt fair value and not bound by apparent mistakes committed by Stamp Duty Authorities.”

3.7 In view of aforementioned submissions it was claimed by the assessee that it will be judicious view if sale consideration is adopted as per value determined by the Joint Director Town Planning (Valuation), Maharashtra Pune at Rs. 41.51 crores.

3.8 Ld. CIT(A) has rejected the contention of the assessee that stamp value should be adopted at Rs.48,35,45,000/-, as according to Ld. CIT(A) the provisions of section 50C(i) is clearly applicable. Ld. CIT(A) further mentioned that Chief Controlling Revenue Authority, Maharashtra vide his order dated 6/2/2012 did not accept the

application filed by the assessee against stamp valuation by observing that the assessee does not have locus standi against the said order. He also rejected the submission of the assessee for adoption of rate as determined by the office of Chief Controller Revenue Authorities, Maharashtra, Pune on the ground that the same is not an order.

3.9 Ld. CIT(A) also rejected the contention of the assessee that 100% TDR value should not be attributed to the assessee on the ground that Ld. CIT(A) is not competent to go into the valuation of the property. It is also mentioned by Ld. CIT(A) that though he is not competent to consider this question but from the facts as mentioned in the relevant documents even for the purpose of stamp valuation the TDR value was taken only at 60%. In para 1.3.4.1 Ld. CIT(A) has mentioned this fact wherein while valuing the balance unutilized TDR only 60% of total value has been taken into consideration for arriving at the figure of Rs.23,47,65,220/-. Reference can be made to the following observations of Ld. CIT(A).

“1.3.4.1 The appellant’s submission that the value of TDR has been taken @ 100% is found to be not correct.. The Collector of Stamps, Andheri’s order 3 JUN, 2009 (paper book page-16 in the middle gives the calculation of TDR FSI as under:

<i>“TDR FSI</i>	<i>755480 Sq.meter.</i>
<i>Utilized area</i>	<i>2379.20 Sq.meter</i>
<i>Balance</i>	<i>5175560 Sq.meter.</i>

5175.60 X 75600 X 0.60 = 234765220”

(In the aforesaid quotation the numerical written Devanagari script are written in Roman script)

The figure of 5175.60 is the value of land per sq. meter as indicated in the order itself just above the computation part.

The TDR value has been taken @ 60% and not 100% as stated by the appellant.

In the calculation of Collector of Stamp, Andheri (Paper Book Page – 61) the :
5175.60 X 75600 X 0.60 = 234765220”

The area of land for TDR is considered at 51,75.60 (after deducting already utilized area from the total area) Even if the area of land is taken to be 60% and the value of land is taken at full i.e. 75600 per sq.meter, we arrived at the same figure of value of TDR which is obvious from the calculation given below:

$$5175.60 \times 0.60 \times 75600 = 234765220$$

1.3.4.2 Thus, it is clear that the appellant basically wants double deduction value i.e. reduction in the area as well as reduction in rate by 60% as per its calculation quoted Page6-6 of this order in Table-2 where it has computed the assessee's share of TDR at Rs.14,08,59,132/-. Considering 60% of land area and 60% of value the amount comes to $5175.60 \times 0.60 \times 75600 \times 0.60$.

1.3.4.3. The Collector Stamps, Andheri has thus-not made any mistake and has already given 60% deduction for valuation of TDR and the appellant's submission that there is a mistake found to be not valid and even mischievous. It is pertinent to note that i.e. Hotel Horizon Pvt.Ltd. the purchaser who paid stamp duty has not objected to the value of the property and even the value of TDR and it is the appellant who without locus standi has been filing appeal to the appellant forums of the Stamp Act and in the High Court did not object to the value before AO u/s 50C(2) of the Income-tax Act.

1.3.5. As the valuation done by Stamp Valuation Authorities more than the consideration received, and appellant's objection to the correctness of valuation by Stamp Valuation Authorities has been found to be not valid, it is held that the value of sale consideration of land at Juhu should be taken at Rs. 57,74,51,000/-. Ground 1 is therefore, dismissed.

Thus, on facts also Ld. CIT(A) has arrived at a finding that there was no force in the contention of the assessee that value of TDR for the purpose of computing stamp value was taken at 100%.

3.10. Further Ld. CIT(A) has rejected the contention of the assessee that for the purpose of computing indexation no reliance should be placed on the valuation done by DVO and the valuation submitted by the assessee of Registered Valuer should be considered for indexation benefit. In this manner Ld. CIT(A) has dismissed the appeal filed by the assessee. The assessee is aggrieved and has filed aforementioned grounds of appeal.

4. Ld. AR after narrating the facts referring to grounds of appeal submitted that firstly, Ld. CIT(A) has erred in confirming the sale consideration at a sum of Rs.57,74,51,000/- in place of sale consideration received by the assessee at Rs.41,51,00,000/-. He submitted that the sale consideration shown by the assessee is supported by the valuation report of Joint Director Town Planning (valuation),

Maharashtra, Pune. He submitted that Ld. CIT(A) has erred in holding that assessee did not dispute valuation by Stamp Duty Authorities ignoring the fact that assessee's appeal under section 53A of Bombay Stamp Act was pending before Appropriate Authorities for finalizing value of stamp duty based on valuation report of Joint Director Town Planning (Valuation), Maharashtra, Pune. Ld. CIT(A) has also failed to appreciate that valuation done by Stamp Office is excessive and unreasonable. Ld. AR further submitted that Ld. CIT(A) has committed an error in excluding the value of TDR from the total valuation made by Stamp Duty Officer and computation of capital gain being capital asset without any cost and for doing so Ld. CIT(A) has also failed to appreciate the peculiar nature and status of the property and transaction. Lastly, Ld. AR submitted that Ld. CIT(A) has also committed an error in not accepting the valuation submitted by the assessee as on 1/4/1981 at a sum of Rs.5,62,50,775/- and has committed an error in relying upon the valuation done by District Valuation Officer as on 01/04/1981 at Rs.3,10,14,000/- . It was submitted that Ld. CIT(A) has failed to appreciate that provisions of section 50C could not be applied in a case where there is no proof, even a suggestion that something more is paid over and above agreement price. For the purpose of valuation as on 1/4/1981 Ld. AR placed reliance upon the decision of Hon'ble Bombay High Court in the case of CIT vs. Puja Prints, 360 ITR 697 to contend that for the purpose of ascertaining the fair market value as on 1/4/1981 reference to District Valuation Officer can be made only in a case where value adopted by the assessee is less than the fair market value. If value adopted by the assessee is much more than the fair market value then reference to Valuation Officer could not be made as per provisions of section 55A(a) of the Income Tax Act, 1961 as it existed at the relevant time.

4.1 Elaborating his arguments it was submitted by Ld. AR that in view of valuation done by Joint Director Town Planning (Valuation) ,Maharashtra Pune, copy of which is placed at pages 106 to 108 of the paper book, the value should be taken at Rs.41,51,00,000/- which is sale consideration received by the assessee as per title deed. It was further submitted by Ld. AR that Stamp Authorities have taken 100%

value of the TDR against 60% taken as value of the land. Thus, it was submitted by Ld. AR that relief to that extent should be granted.

5. On the other hand, Ld. DR relying upon the order passed by Ld. CIT(A) submitted that on every issue Ld. CIT(A) has recorded his finding after detailed discussion. Therefore, assessee does not deserve any relief. Ld. DR submitted that as per provisions of section 50C there is no alternative with the AO to assess any value less than assessed by the Stamp Valuation Authority and such decision has been given by Ld. CIT(A) after considering the provision of section 50C. It was further submitted by Ld. DR that Ld. CIT(A) has recorded a finding of fact that assessee did not make any objection before AO regarding application of section 50C possibly to avoid valuation by District Valuation Officer of the Income Tax Department. Ld. DR in this regard referred to the finding recorded by Ld. CIT(A) in para 1.3.3.12 of the impugned order.

5.1 So far as it relates to the contention of Ld. AR regarding so called mistake in calculating the value of TDR for the purpose of Stamp Valuation it was submitted by Ld. DR that in para 1.3.4 Ld. CIT(A) has held that there is actually no mistake in the order of Collector of Stamp as the value of TDR has also been taken at 60% of the value. It was further submitted by Ld. DR that Ld. CIT(A) is also right in rejecting the claim of the assessee regarding adoption of fair market value as on 01/04/1981 as per valuation submitted by the assessee in preference to report of the District Valuation Officer. Thus, it was submitted by Ld. DR that the appeal filed by the assessee should be dismissed.

6. Before proceeding to decide the present appeal, we may mention here that during the course of hearing of the appeal, certain figures were submitted by the assessee in the shape of chart and the said chart was also given to Ld. DR and during the course of such discussion some observations may have been made. However, when the hearing was concluded it was made clear that those observations may not be taken as pronouncement on any of the issue raised or discussed in the

present appeal and the decision will be taken by the Bench only after due consideration of all the arguments and submissions made by the parties and after considering all the documents referred in support of the arguments by both the parties and both the parties had taken note of such observations of the Tribunal that no part of the observations of the Tribunal during the course of the hearing of the appeal could be taken as pronouncement of the decision by the Tribunal on any of the issue raised in the present appeal.

7. In the light of above discussion, we have carefully considered the submissions made by both the parties and we have also carefully perused the order passed by AO as well as Ld. CIT(A) with reference to documents submitted by the assessee in paper book and referred to during the course of hearing.

7.1 The first and foremost contention of the assessee is regarding the adoption of the sale consideration for the purpose of computation of capital gain. To decide this issue, first contention of the assessee is that the sale consideration cannot be taken more than the actual sale consideration shown in the transfer deed i.e. a sum of Rs.41.51 crores. The alternative contention is that if the sale consideration is taken as valuation done by the Stamp Valuation Authorities then there is a mistake in calculation of sale consideration as TDR value has been taken at 100%.

7.2 The sale consideration taken at Rs.57,74,51,000/- has been agitated firstly, on the ground that as per valuation done by Joint Director Town Planning (Valuation) Maharashtra, Pune on 18/06/2010 the value has been ascertained at Rs.41.51 crores, therefore, any value more than that cannot be taken as sale consideration. The AO has taken sale consideration as per provisions of section 50C which is a special provision regulating full valuation of consideration in certain cases. It clearly describe that in a case where consideration received or accruing as a result of transfer by an assessee of capital asset, which inter-alia include land or building or both is less than the value adopted or assessed or assessable by any 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 or assessable, shall for the purposes of section 48, be deemed to be full value of the consideration received or accruing as a result of such transfer. Exception is provided in sub-section (2) which prescribes that in a case where assessee claims before the AO that the value adopted or assessed or assessable by the Stamp Valuation Authority exceeds the fair market value of the property as on the date of the transfer and the value so adopted or assessed by the Stamp Valuation Authority under sub-section (1) of section 50C has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court, then the AO may refer the valuation of the capital asset to Valuation Officer of the Department. Thus, according to sub-section (2) in a case where assessee claims before the AO that the value adopted or assessed by Stamp Valuation Authority is exceeds the fair market value on the date of transfer and assessee does not dispute the valuation done by the Stamp Valuation Authority in any appeal or revision or reference then AO may refer the valuation of the said property to Valuation Officer and as per sub-section (3) in case where valuation done by the Valuation Officer is less than the value adopted by Stamp Valuation Authority then the valuation done by District Valuation Officer shall be taken as full value of the consideration received or accruing as a result of this transfer. In the light of provisions of section 50C it has to be decided that whether Ld. CIT(A) has committed any error in taking the value determined by Stamp Valuation Authority. The mandate of section 50C is clear. At the first place the sale consideration shall be deemed to be the value adopted or assessed by the Stamp Valuation Authority. The only exception provided is that firstly the assessee should claim before AO that such value adopted or assessed by the Stamp Valuation Authority exceed fair market value and secondly the assessee should not have disputed such valuation adopted in any appeal or revision and no reference is made before any other authority, court or High Court challenging the value adopted by the Stamp Valuation Authority.

7.3 According to the facts of the present case assessee being aggrieved by the valuation done by Stamp Valuation Authority had filed an appeal before the

Additional Controller of Stamps, Mumbai which was registered as GSO/32-B/05/2009 under section 32B of the Bombay Stamp Act, 1958, which was decided vide order dated 4/8/2009 and copy of this order is filed at page 105 of the paper book. Additional Controller of Stamps Mumbai has dismissed this appeal of the assessee on the ground that the Appropriate Authority for deciding correctness of valuation done by Stamp Valuation Authority lies with the Chief Controlling Revenue Authority and he has given the liberty to the assessee to file revision application before the Chief Controlling Revenue Authorities under section 53A of the Bombay Stamp Act 1958 and disposed of the appeal filed by the assessee. Subsequently the assessee filed a Petition for revaluation before the Chief Controlling Revenue Authority, Maharashtra State, Pune against aforementioned order dated 4/8/2009 and this was registered and Miscellaneous Application of the assessee was disposed of vide order dated 6/2/2012 and the copy of this order has filed at pages 110 to 114 of the paper book. The sum and substance of the order passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune is that stamp duty has been paid by other party without protest and the duty payer has not appealed to this authority at any point of time. Moreover, assessee did not file application within time limit stipulated under the law i.e. 60 days from the receipt of impugned order. Therefore, assessee does not have locus to approach the authority. The authority is not legally empowered to take any decision or give opinion when no cause of action exists under the Stamp Act for the implementation of which this authority has been created. As per provision of section 50C(2) of Income Tax Act, 1961 a mechanism for redressal of grievances has been provided in a case where assessee disagrees with the valuation done by the Stamp Authorities and in this manner application filed by the assessee was considered to be non-maintainable. Not satisfied with the said order of Chief Controlling Revenue Authority, Maharashtra State, Pune assessee file a Writ Petition before Hon'ble Bombay High Court, which has been decided vide order dated 3/5/2012 in Writ Petition LODG NO. 776 OF 2012 and copy of this order is filed at pages 115 to 118 of the paper book. It will be relevant to reproduce relevant portion of the order passed by Hon'ble High Court:

“4. It is an admitted position that the Purchaser-Hotel Horizon Pvt. Ltd. paid the stamp duty of Rs.2,88,72,550/- on 4.8.2010 without protest and an endorsement was made on the said Indenture under Section 32(1)(b) by the Collector of Stamps. Thereupon Hotel Horizon .Pvt. Ltd. as Purchaser and the Petitioner as Vendor executed the document on 5.8.2008 and presented the same in the concerned Sub-Registrar’s office and the said document was duly registered on the same day.

5. It was Purchasers’ obligation to pay the stamp duty under the said Indenture and accordingly, the stamp duty was paid by the Purchasers without protest on 4.8.2008 as indicated above. It is after about 11 months that the adjudication of stamp duty was called in question by filing an Application on 3.7.2009 not by the Purchaser who paid the stamp duty, but by the Petitioners.

6. It appears that the Petitioners had filed a Return of Income with Income Tax Authorities on 22.9.2009. Thereafter the Petitioners filed a revised Return of income on 26-08-2010 and a revised long term capital gain in respect of the transfer of the subject property declaring a revised income of lesser amount.

7. From the aforesaid facts, it is evident that the Petitioners approached the Authorities in respect of challenge to the fixation of market value and stamp duty payable on the Indenture in respect of the subject property after considerable delay and only as an afterthought having realized that the valuation by the Stamp Authorities may come in its way in determining the capital gains tax payable by the Petitioners. The obligation to pay the stamp duty was on the Purchaser-Hotel Horizon Pvt. Ltd. who had paid the stamp duty without any protest. The Petitioners, if at all aggrieved ought to have approached the Authorities in the first instance. Prima facie, it does appear that it is only at the time of filing of the Revised Return of Income that the Petitioners have sought to challenge the order of adjudication and valuation by the Collector of Stamps so as to claim some tax relief in the incidence of Long Term Capital Gain Tax.

8. In light of the above, I am not inclined to exercise writ jurisdiction of this Court to interfere with the impugned order. The Petition is, therefore, dismissed.

9. The Court is informed that the Assessment Order has been passed by the Assessing Officer of the Income Tax Department and the matter is now pending before the C.I.T. It is clarified that it will be open for the C.I.T. to pass such orders as he deems appropriate with regard to the valuation of the subject property in accordance with law and the orders passed by the Stamp and this order shall not be an impediment in that regard.”

7.4 Subsequently, vide order dated 15/3/2013 certain mistakes in mentioning the dates was rectified and in Para-4 reproduced above and the date correctly to be read as 04-08-2008.

7.5 In the light of aforementioned facts it can be said that the value adopted and assessed by the Stamp Valuation Authority under sub-section (1) was disputed by the assessee in the appeal, revision and even before Hon’ble High Court. If it is so,

then according to the provisions of section 50C the assessee cannot obtain the benefit as provided in sub-section(2) of section 50C as neither of the conditions described in sub-section(2) has been fulfilled by the assessee. In this view of the situation, neither the AO nor Ld. CIT(A) could adopt sale consideration of the property any amount less than the value adopted or assessed by the Stamp Valuation Authority as section 50C does not recognize such curtailment of the sale consideration in any manner. Therefore, we confirm the findings of Ld. CIT(A) that the sale value of the consideration taken by the Stamp Valuation Authority was the right amount for the purpose of calculation of long term capital gain.

7.6 There is no force in the contention of Ld. AR regarding mistake having been committed by the Stamp Valuation Authority in taking the value of TDR and it has been clearly described in the order of Ld. CIT(A) that the value of TDR also has been taken at 60% and it has not been taken at 100%. The relevant portion of order of Ld. CIT(A) has already been reproduced in para -3.9 of this order. We, therefore, decline to interfere in such findings of facts recorded by Ld. CIT(A) and this contention of Ld. AR is rejected.

8. Now coming to the issue raised in Ground No.2, this issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of CIT vs. Puja Prints (supra). Respectfully following the same we decide this issue in favour of the assessee and direct the AO to adopt fair market value of the impugned property as on 1/4/1981 at Rs.5,62,50,775/- as per valuation submitted by the assessee of the Registered Valuer, copy of which is filed at pages 1 to 25 of the paper book and at page15 the value has been arrived at Rs.5,62,50,775/-.

8. Before parting with this ground we may mention here that in the second return of income filed by the assessee, the capital gain has been computed on the basis of valuation done by Shri S.S. Rahalkar as on 1-4-81 who has assessed the value at Rs.7,08,94,016/-. During the course of hearing of the appeal neither Ld. AR referred to this valuation report nor any reliance was placed on the same. The said report

was also not relied upon before Ld. CIT(A). Copy of the said valuation report is also not filed in the paper book. In ground No.2 of the appeal no reference is made to the said valuation and reference is made only to the valuation done by M/s. Shah & Shah who valued the impugned property as on 1-4-81 at Rs.5,62,50,775/-. In view of these facts no cognizance is taken of the valuation report of Shri S.S.Rahalkar and cognizance is taken only of the valuation report of M/s. Shah & Shah, who has valued the property as on 1-4-81 at Rs.5,62,50,775/-.

8.2 In view of the above discussion Ground No.2 is allowed in the manner aforesaid.

9. Apropos Ground No.3 no particular arguments were submitted by Ld. AR and moreover for application of section 50C there is no requirement according to which Department has to submit some proof or there should be some suggestions that something more is paid over and above the agreement price. Section 50C is a deeming provision and is applicable if the condition laid down therein are fulfilled. It has already been held that section 50C(1) is applicable and assessee has not made out any case for applicability of sub-section (2) of section 50C. Therefore, Ground No.3 is also dismissed.

10. To sum up Grounds No.1 & 3 of the assessee's appeal are dismissed and Ground No.2 is allowed.

11. In the result, appeal filed by the assessee is partly allowed in the manner aforesaid.

Order pronounced in the open court on 31/10/2014

आदेश की घोषणा खुले न्यायालय में दिनांक: 31/10/2014 को की गई।

Sd/-

(आर.सी. शर्मा /R.C.SHARMA)

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 31./10/2014

Sd/-

(आय.पी. बंसल / **I.P. BANSAL**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

व.नि.स./Vm, Sr. PS