

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE

BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND

SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

ITA No.23(Bang)/2020

(Assessment Year : 2016-17)

Ms. Benedicta Mary Mendonce,
Flat No.S1(2A), Skav Akasa, No.43, Davis Road,
Richards Town,
Bangalore-560 084
PAN No.AATPM9442M

Appellant

Vs

The Income Tax Officer,
Ward-3(3)(3),
Bangalore

Respondent

Appellant by : Shri Siddesh Gaddi, CA
Revenue by : Shri Priyadarshi Misra, JCIT

Date of hearing : 23-06-2020

Date of pronouncement : 26 -06-2020

ORDER

PER N.V.VASUDEVAN, VICE PRESIDENT

This is an appeal by the Assessee against the order dated 14-11-2019 of the Id.CIT(A)-3, Bangalore relating to assessment year: 2016-17.

2. The Assessee is an individual. She is a retired employee in the Accountant General Office, Karnataka. During the previous year the Assessee sold property bearing door no.9(old site no.20) Thimma Reddy Colony, Kodihalli Village, Varthur Hobli, Bangalore South Taluk, (hereinafter referred to as 'the property') under a sale deed dated 08-04-2015. The sale consideration as per sale deed that was received by the Assessee was a sum of Rs.1.30 Crores. The value of the property for the purpose of stamp duty was a sum of Rs.2,09,10,000/-. The AO was of the view that the capital gain had to be

computed by substituting the full value of consideration received on transfer by the value adopted by the state government for the purpose of stamp duty because the value so adopted by state government was higher than the full value of consideration received by the Assessee on sale of the property. The AO accordingly, brought a sum of Rs.79,10,000/- (Rs.2,09,10,000 = 1,30,000.00/-) as long term capital gains (LTCG).

3. The action of the AO was based on the provisions of sec.50C of the Income Tax Act, 1961(Act). The provisions of sec.50C of the Act, reads as under;

“Special provision for full value of consideration in certain cases.

50C. (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 :

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer:

^{75a}**Provided also** that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of [section 48](#), be deemed to be the full value of the consideration.]

(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.

4. In the order of assessment dated 28.12.2018, the AO also made observation in the form of a note to the Assessment order that his order of Assessment will be subject to review or rectification on receipt of valuation report from the District Valuation Officer (DVO), Bangalore.

5. Aggrieved by the order of the AO dated 28-12-2018, the Assessee filed appeal before the Id. CIT(A) on 24-01-2019. Pending disposal of the Appeal, the DVO to whom the AO had made a reference u/s 50C(2) of the Act for valuation of the property gave a report dated 09-05-2019 in which the property was valued at a sum of Rs.1,59,31,000/-. Based on the aforesaid report of the DVO, the Assessee contended before the CIT(A), that the valuation done by the DVO was excessive as he has not taken note of the exact location of the property and other factors that would affect the valuation of the property. The Assessee also filed a registered valuer's report dated 09-04-2019 mentioning the value of property at Rs.1,33,95,800/- and submitted that the registered valuer's report should be accepted. Without prejudice to the above submission Assessee submitted the value adopted by the DVO should be adopted in place of value adopted by the registering authorities for the purpose of stamp duty. The Assessee also brought to the notice of the CIT(A) that the purchaser of the property had disputed the valuation of the property by the state government authorities for the purpose of levy of stamp duty by submitting a letter dated 26-02-2019 to the Inspector General of Registration and Controller of Stamps.

6. The Id. CIT(A) after noticing several objections of the Assessee noted that the DVO's report was not available at the time of assessment proceedings. He also noticed that the purchaser of the property from the Assessee had disputed the valuation adopted by the registering authorities for the purpose of levy of stamp duty. The Id. CIT(A) was of the view that as per the provisions of sec.50C(2)(b) of the Act, reference to the valuation by the AO to the DVO can be made only when the stamp duty valuation had not been disputed in appeal before the concerned authorities. Since the buyer of the property from the Assessee had disputed the valuation therer could not have been a valid reference to the DVO by the AO u/s 50C(2) of the Act and therefore, the report of the DVO should also be ignored. The CIT(A) found no merit regarding the other contentions of the AO and no other grounds to interfere with the order of the AO and accordingly confirmed the order of AO.

7. Aggrieved by the order of the Id.CIT(A) the Assessee had preferred the present appeal before the Tribunal. The only ground that was pressed for adjudication before us was with regard to the action of the AO in not adopting the value as determined by the DVO namely, a sum of Rs.1,59,31,000/- as a full value of consideration received on transfer of property for the purpose of computing the long term capital gains.

8. We have heard the rival submissions. We notice that the only reason assigned by the Id.CIT(A) in para-4.10 of his order is that the purchaser of the property had disputed the valuation of the property by the state government authorities for the purpose of levy of stamp duty by submitting a letter dated 26-02-2019 to the Inspector General of Registration and Controller of Stamps. Section 50C(2) of the IT Act, 1961 empowers the AO to make a reference to the DVO for valuation of the property where the provisions of sec.50C(1) of the Act are attracted. It is no doubt true that u/s 50C(2) of the Act, under clause-(a) and clause (b) the condition precedent for making a reference to the DVO by the AO is that the Assessee should claim the value adopted by the stamp valuation authorities was more than the fair market value of the property and the value adopted by the registering authorities for the purpose of levy of stamp duty should not have been disputed in appeal before any authorities, court etc. The fact that the purchaser of the property filed a letter before the Inspector General of Registration and Controller of Stamps, would not be sufficient to conclude that the value adopted for the purpose of stamp duty by the registering authorities had been disputed in an appeal revision before an authority as contemplated under Sec.50C(2)(b) of the Act. Apart from the above the AO made reference to the DVO before conclusion of the Assessment proceedings i.e., before 28.12.2018 on which date he passed the order of assessment. The letter of the purchaser of the property to the Inspector General of Registration and Controller of Stamps is dated 26.2.2019 which is after the date of reference to DVO by the AO. Thus as on the date on which the AO referred the question of valuation of the property to the DVO,

there was no bar in terms of Sec.50C(2)(b) of the Act. Therefore, we are of the view that the valuation report given by the DVO cannot be ignored. Since the DVO himself valued the property at a sum of Rs.1,59,31,000/- which is less than the value adopted for the purpose of stamp duty and registration, the same should be adopted for the purpose of determining the full value of consideration received on transfer of capital asset for computing LTCG as laid down in Sec.50C(3) of the Act. We hold and direct accordingly.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 26-06-2020

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER
Dated: 26-06-2020
*am

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
- 6.Guard File

By Order
Asst. Registrar