



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1821 OF 2013

Commissioner of Income Tax-16 ... Appellant.
Vs.
Mr.Abdul Aziz Abdul Kadar. ... Respondent

Mr.A.R.Malhotra with N.A.Kazi, for the Appellant-Revenue.

Mr.Ajeet Mawani, for the Respondent.

CORAM : M.S.SANKLECHA &
G.S. KULKARNI, JJ.

DATE : 12th October, 2015.

P.C. :

1. This appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 15 February 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2007-08.

2. The Revenue urges the following questions of law for our consideration:-

“(i) Whether, on the facts and in the circumstances of the case and in law, the Tribunal has rightly decided that

Assessing Officer has wrongly substituted the value adopted or assessable stamp valuation authority only in respect of land or building or both cannot be extended or extrapolated to the transaction of transfer of the tenancy rights under the provisions of Section 50C of the Income Tax Act ?

(ii) Whether, on the facts and in the circumstances of the case and in law, the Tribunal has rightly interpreted the Section 50C of the Income Tax while dismissing the appeal of the Revenue ?

3. We find that the impugned order of the Tribunal dismissed the Revenue's appeal inter alia holding that the provisions of Section 50C of the Act would not be attracted in case of transfer of tenancy rights. The impugned order placed reliance upon its own decision in “Shri.Atul G.Puranik Vs. ITO 12(1)(1) vide ITA No.3051/M/2010 decided on 13 May 2011. The Tribunal in case of “Shri.Atul G.Puranik” (supra) had held that transfer of tenancy rights is neither 'a land or building or both' and thus would not be covered under Section 50C of the Act. Mr.Malhotra, learned Counsel for the Revenue very fairly states that the Revenue has accepted the decision in the case of “Shri.Atul G.Puranik”(supra) inasmuch as no appeal has been preferred against the said order.

4. In the above view of the matter, the questions as raised do not

raise any substantial question of law. Accordingly, the appeal is dismissed.

No order as to costs.

(G.S.KULKARNI, J.)

(M.S.SANKLECHA, J.)

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'A', MUMBAI**

**BEFORE SHRI DINESH KUMAR AGARWAL, JUDICIAL MEMBER AND
SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**

**I.T.A. NO.6934/M/2011
ASSESSMENT YEAR:2007-2008**

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| Income Tax Officer-16(2)(4), Matru Mandir, Tardeo Road, Mumbai – 400 007. | Vs | Mr. Abdul Aziz Abdul Kadar, 90, Mistry Bldg., Mahila Patel Agiary Lane, Grant Road, Mumbai-400 007. PAN: AAAPE0298E |
| (Appellant) | | (Respondent) |

| | | |
|---------------|---|---------------------------------|
| Appellant by | : | Shri Surinder Jit Singh, CIT-DR |
| Respondent by | : | Shri Ajeet Manwani |

Date of Hearing: 21.1.2013

Date of order: 15.2.2013

ORDER

Per D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 13.10.2011 is against the order of CIT (A)-27, Mumbai dated 7.7.2011 for the assessment year 2007-2008.

2. In this appeal, Revenue raised the following grounds which read as under:

"1. The Ld CIT (A) has erred in holding that the impugned transaction of **transfer of tenancy rights** is not attracted by the **provisions of section 50C of the IT Act, 1961**.

2. The Ld CIT (A) has erred in following the decision of the Hon'ble ITAT Mumbai in the case of Smt. Kishori Sharad Gaitonde vs. ITO-18(1)(1) vide ITA No.1561/M/09 and Shri Atul G. Puranik vs. ITO 12(1)(1) vide ITA No.3051/M/2010 wherein it is held that the **section 50C has no application and the capital gains have to be computed on the basis of the actual consideration and not the stamp duty value**.

3. The Ld CIT (A) has failed to appreciate the decision of the Hon'ble ITAT in the case of Arif Akhtar Hussain vs. ITO wherein the Hon'ble ITAT held that u/s 2(47)(v) the giving of possession in part performance of a contract as per section 53A of the Transfer of Property Act is deemed to be a transfer."

3. At the outset, Shri Ajeet Manwani, Ld Counsel for the assessee mentioned that the issue raised in the grounds by the Revenue essentially relates to if the provisions of section 50C of the Act apply to the capital rights earned on transfer of the tenancy rights. Ld Counsel brought our attention to the expressions used in the

said provisions of section 50C ie "land or building or both" and mentioned that the same is applicable to the capital assets being "land or building or both" only. Further, he mentioned that the tenancy rights being neither of them, the provisions of section 50C of the Act have no application. For this proposition, the Ld Counsel brought our attention to the contents of para 4 of the impugned order where the CIT (A) granted relief to the assessee, relying on the decision of the Division Bench of this Tribunal in the case of *Smt. Kishori Sharad Gaitonde vs. ITO-18(1)(1) vide ITA No.1561/M/09 and Shri Atul G. Puranik vs. ITO 12(1)(1) vide ITA No.3051/M/2010*. For the sake of completeness of this order, the said para is reproduced here under:

*"4. I have carefully considered the submissions made by the appellant in this regard. As on date, the issue under consideration is covered in favour of the appellant by the ITAT, Mumbai decisions in the cases of Smt. Kishori Sharad Gaitonde vs. ITO-18(1)(1) vide ITA No.1561/M/09 and Shri Atul g. Puranik vs. ITO 12(1)(1) vide ITA No.3051/M/2010 for the AY 2006-2007 dated 13th May, 2011. In view of the above decisions, I hold the issue in favour of the appellant that **the impugned transaction of transfer of tenancy rights is not attracted by the provisions of section 50C**. The appellant succeeds on this ground. Secondly, as pointed out by the appellant there was an error in the computation of the capital gains that the indexed cost of acquisition was adopted at Rs. 2.30 crores instead of 3.27 crores noted in the body of the assessment order. The AO is directed to correct the said mistake while giving effect to this order. Appellant succeeds on this ground."*

4. On perusal of the said orders which are placed before us as well as the said contents of the order of the CIT (A), we find the order of the Tribunal in the case of Shri Atul G. Puranik vs. ITO 12(1)(1) vide ITA No.3051/M/2010, dated 13.5.2011 which is subsequent in time *qua* the order of the another order of the Tribunal in the case of Arif Akhtar Hussain vs. ITO vide ITA No.541/Mum/2010 (AY 2006-2007), which was relied upon by the Revenue. In this regard, we have perused the relevant portion of this order in the case of Shri Atul G. Puranik vs. ITO (supra) and the same is extracted as under:

*"(iv) That under section 50C the **deeming fiction** of substituting adopted or assessed or assessable value by the stamp valuation authority as full value of consideration is applicable **only** in respect of land or building or both. **If the capital asset under transfer cannot be described as "land or building or both", section 50C will not apply.** The **lease** rights in a plot of land are neither "land or building or both" nor can they be included within the scope of "land or building or both."*

5. We have heard, both the parties, perused the record placed before us as well as the decisions referred by the both Representatives. The essential issue to be addressed by us in this appeal relates to if the impugned transaction ie transfer of tenancy rights, attracts the provisions of section 50C of the IT Act, 1961. In our opinion, the Tribunal's decision in the case of Shri Atul G. Puranik vs. ITO (supra), which of course deals with the case of 'transfer of lease rights' in principle shall apply to the impugned transfer of 'tenancy right', which is neither land nor building nor both. Like the 'lease rights', the 'tenancy rights' are also the capital rights attached to the 'land or building or both' and however, they are not covered by the definition of 'land or building or both' specified in the provisions of section 50C of the Act, which is marked as deemed provisions. The deemed provisions are not to be extended to items of capital assets which are not mentioned in section 50C of the Act and it is the settled legal position. Therefore, considering the above settled nature of the issue the provisions of section 50C of the Act, which is the deeming fiction of substituting the value adopted or assessed or assessable by the stamp valuation authority only in respect of land or building or both cannot be extended or extrapolated to the transaction of transfer of the tenancy rights. Accordingly, grounds raised by the Revenue are **dismissed** and decided in favour of the assessee.

6. In the result, appeal filed by the Revenue is **dismissed**.

Order pronounced in the open court on this 15th day of February, 2013.

Sd/-
(DINESH KUMAR AGARWAL)
JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Date : 15.2.2013
At : Mumbai
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Copy to :
1. *The Appellant.*
2. *The Respondent.*
3. *The CIT (A), Concerned.*

4. *The CIT concerned.*
5. *The DR "A", Bench, ITAT, Mumbai.*
6. *Guard File.*

// True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai