

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 53/2018

Sh. Ram Ji Lal Meena S/o Sh. Bachu Ram Meena, R/o Fa-20,
Sidharth Nagar, Malviya Nagar, Jaipur -302017 (Rajasthan)

----Appellant

Versus

Income Tax Officer, Ward No. 6(1), Jaipur (Rajasthan)

----Respondent

For Appellant(s) : Mr. Tanuj Agrawal & Mr. Udai Singh
Sidhu

For Respondent(s) :

**HON'BLE MR. JUSTICE M.N. BHANDARI
HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI**

Order

01/05/2018

By this appeal, a challenge is made to the order dated 4th October, 2017, passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (in short "**the Tribunal**"), dismissing the appeal preferred by the assessee.

The facts of the case are narrated in brief. It is a case where a land was sold by the assessee-appellant under a registered sale deed on consideration. The Assessing Authority made addition of Rs.41,80,805/- under the head of capital gain. The aforesaid was questioned by the assessee in reference to Section 50C of the Income Tax Act, 1961 (in short "**the Act of 1961**").

It was submitted that Section 50C of the Act of 1961 was not applicable to the facts of this case. It was not a transfer of capital asset but the rights. It was for the reason that land in question

was under acquisition for RIICO. The land was sold by the khatedar to a Co-operative Society. A writ petition for regularisation of land was filed by the Co-operative Society. It was allowed by this court. The Apex Court reversed the judgment on an appeal preferred by the RIICO. In view of the above and due to acquisition, land vested in the State Government. The possession of it remained with the RIICO and not with the assessee. The sale deed was wrongly taken to be a transfer of capital asset, rather, it was only of rights. In view of the above, Section 50C of the Act of 1961 was not applicable yet covering the case by the aforesaid provision, additions were made.

Learned counsel for petitioner has made reference of various orders passed by the Tribunal and also of the High Court. It is also submitted that Section 50C of the Act of 1961 cannot be invoked if property is lease hold and not free hold and also when there exist khatedari rights, if it is a revenue land. The ownership vest in the State Government in both the cases. The Bombay High Court in the case of **Commissioner of Income Tax Central II, Mumbai Vs. M/s. Greenfield Hotels & Estates Pvt. Ltd., reported in (2016) 389 ITR 68 (Bom)** held that Section 50C of the Act of 1961 would not be applicable when there is a transfer of lease hold rights of the land.

In the instant case, the agriculture land was sold by the khatedar having rights like possessed by a lease holder. Taking into consideration the aforesaid, the order passed by the Tribunal may be interfered.

We have heard learned counsel for the appellant and perused the record.

The appeal has been filed against the order passed by the Tribunal where addition made by the assessing authority by invoking Section 50C of the Act of 1961, has not been interfered. The CIT (Appeals) held addition to be justified. The appeal filed by the assessee before the Tribunal was thus dismissed.

The appellant has raised manifold issues for our consideration and, out of it, first is about nature of transfer of land. It is submitted that possession of land was lying with the RIICO thus right in the property was transferred and not the capital asset, thereby, Section 50C of the Act of 1961 would not be applicable. For ready reference, aforesaid provision is quoted hereunder:

"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 [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 purpose 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 purpose 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 of 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.*

(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-section (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."

The provision aforesaid applies in the circumstances explained therein. If facts of this case are taken into consideration, a sale deed was executed for sale of the land. The appellant has received consideration. The sale deed was registered by the Sub-Registrar-IV, Jaipur.

The transfer of capital asset exists, that too, on consideration. The dispute has been raised about possession of the property. According to the revenue, the possession of property

lies with the assessee, whereas, according to the assessee, it lies with the RIICO. The material available on record does not show possession of RIICO as copy of award for acquisition of land and the "fard" possession are not on record. The documents show issuance of Notification under Sections 4 and 6 of the Land Acquisition Act, 1894 and not the award. The judgment of the Apex Court was also on challenge to the Notification under Sections 4 and 6 of the Act of 1894.

Section 50C of the Act of 1961 has been invoked for the reasons explained by the Tribunal inasmuch as sale deed was made on consideration of Rs.11,70,000/-, whereas, value of the property taken by the Sub-Registrar IV, Jaipur for registration of sale deed was at Rs.53,11,367/- and, accordingly, it was stamped. In those circumstances, the question was whether Section 50C of the Act of 1961 would apply or not. According to CIT (Appeals) and the Tribunal, addition was rightly made by the Assessing Officer by applying Section 50C of the Act of 1961.

In view of the above, we do not find that a question of law is involved in this case. The dispute has been raised on facts. That cannot be a ground for maintaining an appeal as it can be admitted only if question of law is involved. Taking into consideration the aforesaid, we do not find that appeal preferred by the assessee against the order passed by the Tribunal can be admitted.

Learned counsel for appellant has made reference of certain orders passed by the Income Tax Appellant Tribunal, Jaipur Bench, Jaipur in the case of **Income Tax Officer, Ward 6(1), Jaipur Vs. Tara Chand Jain, 2/1, Malviya Nagar, Jaipur,**

reported in (2015) 155 ITO 956 (JP), SCC ITAT and of the Income Tax Appellant Tribunal, Ahmedabad in the case of **Smt. Devindraben I. Barot Vs. Income Tax Officer, reported in (2016) 159 ITD 162 (Ahm)** apart from judgment of the Bombay High Court in the case of M/s. Greenfield Hotels & Estates Pvt. Ltd. (supra).

The perusal of order passed by the ITAT, Ahmedabad reveals change of tenor of transaction for sale of land. The sale therein was through a registered sale deed for consideration but it was taken to be relinquishment of right. Without there being relinquishment deed and without examining what is the difference between sale of the land and relinquishment of right in the property, case was decided. In view of the above, order passed by the ITAT, Ahmedabad cannot be accepted. It failed to appreciate even legal provisions in reference to relinquishment of right vis a vis sale of the property.

The another order has been passed by the ITAT, Jaipur Bench, Jaipur. In the aforesaid case, the Tribunal drawn its conclusion in Paras 6.9 and 6.11. Both the paras are quoted hereunder for ready reference:

“6.9 Section 50C is a deeming provision and it is only applicable in respect of capital assets which are land of building or both. It is thus clear that this deeming provision of section 50C will come into play only if the capital asset transferred by the assessee is a land or building or both. If, in the absence of capital asset transferred is neither the land nor building nor both,

this deeming provision shall not be applicable to such transfer.

6.11 In the opinion of the Bench, the rights in land cannot be equated with the land or building. Therefore, it is concluded that section 50C is applicable to transfer of capital asset only in respect of land or building or both and is not applicable to right in land. In the present case, the assessee has only transferred the right in land for a valuable consideration, therefore, in the opinion of the Bench, the long term capital gain cannot be calculated by invoking the deeming provisions provided under section 50C. Therefore we hold that section 50C is not applicable to present case. This is also of view of Mumbai Tribunal in the case of *Atul G. Puranik v. ITO* (2011) 11 ITR 120 (Trib.).”

Learned Tribunal came to the conclusion that Section 50C of the Act of 1961 would apply if there is a transfer of land or building or both. It would not apply in absence of transfer of capital asset. In Para 6.11, the Tribunal found that assessee has transferred only right in the land for valuable consideration, thereby, did not transfer capital asset. The finding aforesaid has been recorded without proper scrutiny of facts. How the land and building or both were disclosed by the assessee in the balance-sheet has not been taken note of. It is also as to how it is not transfer of capital asset. If it is reflected as capital asset, transfer thereupon for consideration would attract Section 50C of the Act

of 1961 but the aforesaid aspect has not been considered by the ITAT Tribunal, Jaipur Bench, Jaipur. It is nothing but an order without elaborate finding on the issue, that too, after taking into consideration the requisite facts for its adjudication.

The appellant has referred judgment of Bombay High Court where it was held that Section 50C of the Act of 1961 would not be applicable on transfer of lease hold rights of the land. Bare perusal of Section 50C of the Act of 1961 does not show that transfer of capital asset for consideration should be other than of lease hold property or khatedari land. The court cannot re-write the provision. If analogy taken by the Bombay High Court in the case (supra) is applied in general then Section 50C of the Act of 1961 would not be applicable in majority of the cases as not it is allowed as lease hold property. Section 50C of the Act of 1961 is applicable on transfer of capital assets for consideration. The Bombay High Court has not referred as how the land was in the balance-sheet. It is as a capital asset or not thus we are unable to apply the judgment of Bombay High Court in the case of M/s. Greenfield Hotels & Estates Pvt. Ltd. (supra).

In view of the discussion made above, we do not find that any question of law is involved herein.

The appeal is, accordingly, dismissed.

(DINESH CHANDRA SOMANI),J

(M.N. BHANDARI),J