

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15575 of 2018**

PRABHUDAS VELJIBHAI CHAUDHARI

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX 4

Appearance:

MR MANISH J SHAH(1320) for the Petitioner(s) No. 1

MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 18/01/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“A) this Hon'ble Court be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the order of Respondent at Annexure – H.

B) this Hon'ble Court be further pleased to hold that Rs.48,48,309/- is wrongly added u/s. 50C in the hands of the petitioner or in the alternative this Hon'ble Court be pleased to condone the delay in filing the application before the Respondent and set aside the proceedings to the Respondent to be decided afresh on the issue of Section 50C with a direction that the same

may be considered on merits.

- C) Pending the final hearing and final disposal of this application, this Hon'ble Court be pleased to ask the Respondent and his subordinate officers to maintain status quo in any follow-up action on the petitioner consequent upon the above order at Annexure – H.
- D) this Hon'ble Court be pleased to grant any further or other relief as this Hon'ble Court deems just and proper in the interest of justice, and
- E) this Hon'ble Court be pleased to allow this application with costs against the respondent.”

2. We need not delve much into the facts of this case as the order passed by a co-ordinate Bench of this Court dated 08.10.2018 while issuing notice is quite self explanatory. The order dated 08.10.2018 reads thus :

“1. The petitioner has challenged an order dated 19.03.2018 passed by the respondent Principal Commissioner of Income Tax rejecting the petitioner’s revision petition under section 264 of the Income Tax Act, 1961 (‘the Act’ for short). In such order, the Commissioner noted that the revision petition was filed beyond the period of limitation by 29 days. He was not convinced by the explanation rendered by the petitioner for such delay. Nevertheless, he proceeded to decide the revision petition on merits as well. The petitioner had raised two issues. One was the decision of the Assessing Officer not granting exemption under section 54B of the Act and the other being the applicability of section 50C of the Act in relation to sell of land by the petitioner.

2. Counsel for the petitioner submitted that he does not dispute the Commissioner’s order in connection with the claim of the petitioner under section 54 of the Act. However, with respect to revised capital gain under section 50C of the Act, counsel relied on the 1st proviso to subsection (1) of section 50C of the Act which was

inserted with effect from 01.04.2000, as per which, if the date of agreement fixing the amount of consideration and the date of registration for the transfer of 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. Counsel pointed out that the requirement of the further proviso for applicability of the said proviso viz. that the payment should have been made through account payee cheque or bank draft or through electronic clearance system was satisfied in the present case. According to the petitioner therefore the Jantri rates as revised on the date of registration of the sale deed could not have been taken into account. Counsel pointed out that the Commissioner in the impugned order though recorded this contention, did not decide the same.

3. NOTICE, returnable on 29.10.2018. Direct service is permitted.”

3. We have heard Mr. Manish J. Shah, the learned counsel appearing for the writ applicant and Mr. Manish Bhatt, the learned Senior counsel assisted by Mrs. Mauna M. Bhatt, the learned Senior Standing counsel appearing for the respondent.
4. A very unusual order came to be passed by the Principal Commissioner of Income Tax, Ahmedabad while disposing of the Revision Application filed by the Assessee under Section 264 of the Act, 1961. We may first quote the relevant observations with regard to the delay in filing the application under Section 264 of the Act. The observations are as under:

“As per provision contained in sub section (3) of section 264 application for revision under this section by the assessee, must be made within one

year from the date on which the order in question was communicated to him. In this case, the assessment order was served on 29.01.2016 upon the assessee. Thus, assessee was required to file application on or before 29.01.2017 but it has filed on 27.02.2017. Thus, there was a delay of 29 days in filing the application. Assessee himself admitted that the application was late and has not given any plausible/concrete reason except health ground with supporting evidence for this delay/lapse. Thus, for want of justifiable reasons, assessee application is barred by time limitation and not maintainable as such, the case of the assessee does not fall in proviso of sub section (3) of Section 264 of the I.T. Act, and hence, the same is rejected.”

5. Thus, although the Principal Commissioner recorded a finding that the revision application was time barred and the same was liable to be rejected on such ground and in fact came to be rejected, yet the Principal Commissioner, thereafter proceeded to consider the matter on merits.
6. As noted above, there were two issues before the Principal Commissioner, one with regard to the claim under Section 54 of the Act and another with respect to the revised capital gain under Section 50C of the Act.
7. Mr. Manish Shah, the learned counsel appearing for the writ applicant would submit that he is confining his case only to Section 50C of the Act. According to him, the Principal Commissioner has not recorded any finding, as regards Section 50C of the Act and for

this limited purpose, the matter may be remitted so that the issue of Section 50C can be considered.

8. Mr. Manish Bhatt, the learned Senior Counsel would submit that as the only issue that needs to be now to be decided is with regard to Section 50C of the Act, let the matter be sent back to the Principal Commissioner.
9. For the forgoing reasons, this writ application succeeds in part. The impugned order passed by the Principal Commissioner, Ahmedabad dated 19th March, 2018, Annexure – H to this writ application, page-99, is hereby quashed and set aside. The matter is remitted to the Principal Commissioner of Income Tax-4, Ahmedabad for the purpose of adjudicating the issue with regard to Section 50C of the Act.
10. At this stage, we may once clarify again so that there may not be any confusion in future that the issue with regard to limitation stands concluded. The issue with regard to limitation shall not be re-opened by the Principal Commissioner while adjudicating the claim of the writ applicant with respect to Section 50C of the Act. In this regard, we clarify that we have not expressed any opinion on merits. We leave it to the Principal Commissioner to decide the same in accordance with law.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

P.S. JOSHI