

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2374/Mum/2019
(A.Y: 2014-15)

ITO – 34(1)(3) RmNo. 805, 8 th Floor, Kautilya Bhavan BKC, Mumbai – 400051.	Vs.	Dipika Dinesh Kocharekar 22/1611 Dattadham, CHS Veer Shrikant Keshaw Hadkar Marg, Kalachowki, Mumbai – 400033.
PAN/GIR No. : AIFPK4309P		
Appellant	..	Respondent

Appellant by :	Ms. Ridhi Mishra, DR
Respondent by :	Ms. Dinkle Hariya, AR

Date of Hearing	01.04.2021
Date of Pronouncement	20.04.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 46, Mumbai, passed u/s. 143(3) and 250 of the Income Tax Act, 1961. The Revenue has raised the following grounds of appeal:

“1. Whether on facts and in circumstances of the case and in law, the ld. CIT(A) has erred in directing to adopt the value determined by the DVO of Rs. 1,61,13,000/- as against the value determined by the Stamp Duty Authority of Rs. 5,99,76,000/- without any discussion on the merits of the basis of valuation made by the DVO considering substantial difference of Rs. 4,35,44,100/- which was not justified considering that both the values have been determined by competent authorities for purpose of valuation of property.

2. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in giving relief to the assessee without providing an opportunity to the AO for commenting upon the basis of the valuation of the DVO and acceptability thereof especially taking into consideration the huge difference in value determined by two competent authorities namely the stamp duty authority and the DVO and also that such valuation report of the DVO was never before the AO when he made the impugned assessment.*

3. *The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.*

4. *The appellant craves leave, to add, amend or alter all or any of the grounds of appeal.*

2. The Brief facts of the case are that the assessee is an individual, and has income from salary and income from other sources. The assessee has filed the return of income for the A.Y 2014-15 on 16.06.2015 with a total income of Rs. 5,46,170/-. Subsequently, the case was selected for scrutiny under the CASS to verify and examine the capital gains on sale of property and further the sale consideration is less than the value as per stamp duty valuation authorities. The A.O. has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details. During the financial year 2013-14, the assessee has sold her ancestral property on 28.03.2014 for a sale consideration of Rs. 99,50,000/-, whereas the market value as per the Government value is Rs. 5,99,76,000/-. Subsequent to the sale, the assessee was intending to invest in a residential flat value of Rs. 92,03,652/- and therefore has deposited entire sale

consideration in the capital gains account scheme before due date of filing return of income and claimed exemptions u/s 54F of the Act. Since the government value is Rs.5,99,76,000/- therefore, the A.O found that there is difference in consideration reported in the sale deed and market value and applied the provisions of section 50C of the Act and recomputed the long term capital gains of Rs.4,61,12,450/-and assessed the total income of Rs4,66,58,620/- and passed order u/s 143(3) of the Act on 27.12.2016.

3. Aggrieved by the order, the assessee has filed the appeal with the CIT(A). The Ld.CIT(A) considered the facts, grounds of appeal, findings of the A.O and DVO report and relied on the judicial decisions and allowed relief on the disputed issue by directing the A.O. to adopt value of sale as determined by the DVO and party allowed the appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal with the Hon'ble Tribunal.

4.At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in directing the AO to adopt the value determined by the DVO as against the value determined by the registering authority and further, no opportunity was provided to the A.O.

5. Contra, the Ld. AR supported the order of the Ld.CIT(A) and submitted that the sale value as per DVO report has

to be adopted by the AO. The Ld.CIT(A) has considered the facts and provisions of law and directed the A.O to adopt the DVO value and prayed for dismissal of the revenue appeal.

6. We heard the rival submissions and perused the material on record. The sole disputed issue envisaged by the Ld.DR that the CIT(A) erred in directing the A.O to adopt DVO report value which is lower than the registering authority. The Ld. AR submitted that the value as per DVO report is binding on the AO and required to be mandatorily applied. We find on perusal of the CIT(A) order, at the time of assessment the assessee has agitated the applicability of provisions of Sec. 50C of the Act for adopting the value determined by the registering authority, therefore the matter was referred to the departmental valuation officer (DVO) as per Sec. 55A(a) of the Act. Whereas, the DVO report was not received in the assessment proceedings and the assessment order was passed u/s 143(3) of the Act on 27.12.2016. Subsequent to the assessment order, the assessee has filed an appeal on 24.01.2017 with the CIT(A). As per the observations of the CIT(A) the DVO report dated 10.03.2017 was sent to the A.O only after completion of assessment. The value determined by the DVO is Rs.1,61,13,000/-. We find that the powers u/s 251 of the Act of the CIT(A) are co terminus with the A.O. therefore, the CIT(A) considered the provisions of law, DVO report

and relied on the Hon'ble Tribunal decisions and granted relief to the assessee. We considered it appropriate to refer to the observations of CIT(A) at page 6 para 6.1 to 6.1.8 of the order.

6.1 Ground No. 1

6.1.1. The only effective ground raised by the appellant is regarding sale of the property situated at Pen, Maharashtra for an amount of Rs.99,50,000/ and adoption of value of property u/s 50C as determined- by the registering authority. The Registering authority determined the fair value of the property for an amount of Rs.5,99,76,000/-. Under Section 50 of the Income Tax Act, 1961, while determining long term capital gain the Assessing Officer adopted the value determined by the registering authority.

6.1.2. At the time of assessment the appellant agitated against the value determined by the registering authority. Therefore, the matter was referred to Departmental Valuation Officer (DVO) as per Section 55A (a) of the Income Tax Act, 1961. The report of DVO was not received during the course of assessment proceedings. The DVO sent its report dated 10.03.2017 to AO only after completion of assessment. Appellant also filed the report prepared by DVO during appellant proceedings. The value determined by DVO is Rs.1,61,13,000/-. The appellant contended that value determined by DVO should be taken for determining the Long Term Capital Gain and not the value determined by the Registering Authority.

6.1.3. In support of this claim, the appellant placed reliance on the judgment of the hon'ble Kolkatta IT AT, in the case of [2012] 19 taxmann.com 121 (Kol.) in the IT AT Kolkata Bench 'C' where in the hon'ble IT AT held as under:

Section 50C, read with section 48, of the Income Tax Act, 1961 - Capital gains - Special provision for full value of consideration in certain cases- Assessment Year 2005-06 - Assessee sold a property and disclosed sale consideration for her half share at Rs.20 Lakhs and computed long term capital gains at nil by taking indexed cost of acquisition at Rs.30.81 Lakhs - Assessing Officer noticed that stamp valuation of property was at Rs.1.3 Crores - Accordingly, adopting stamp duty valuation, | Assessing Officer computed long term capital gain at Rs.50.70 Lakhs towards share of assessee = On appeal, Commissioner (Appeals) referred matter to DVO for ascertaining fair market value of said property and directed Assessing Officer to adopt value of property as per valuation by DVO - Fair market value as assessed by DVO was lower than value adopted by Stamp Duty Authorities - Whether value adopted by DVO had to be adopted by Assessing Officer for the purpose of Computation of LTCG - Held, Yes [In favour of assessee]

6.1 4. Reliance is also placed on the judgment of hon'ble of High Court of Allahabad in the case of [2013] 30 taxmann.com 293 (Allahabad) where in the hon'ble High Court held as under:

Section 50C of the Income-Tax Act, 1961 - Capital gains - Full value of consideration in certain cases, special provision for - DVO's report - Assessment year 2003-04 - Assessee sold a property for certain consideration - Assessing officer rejected valuation of property done by assessee's registered valuer and referred matter to DVO to obtain fair market value - He also rejected full valuation done by DVO and adopted valuation done by Stamp valuation authorities as full value of consideration received and accordingly calculated Capital gains - Whether when Assessing Officer had obtained DVO's report, same was binding on him - Held, Yes
- Whether, therefore, valuation done by DVO was to be adopted as sale consideration - Held, Yes [Para 11] [In Favour of Assessee].

6.1.5. Further reliance is placed on the judgment of hon'ble of IT AT Kolkata in the case of [2014] 43 taxmann.com 29 (Kolkata - Trib.) where in the hon'ble IT AT held as under:

Section 50C of the Income-Tax Act, 1961 - Capital gains - Special provision for full value of consideration in certain cases (Valuation of Asset) - Assessment year 2009-10 - Whether where DVO, on reference being made to him under section 50C(2) had value property lower than that of Registration Authority, Assessing Officer had to proceed with assessment in conformity with estimate given by Valuation Officer –Held, Yes [Para 7] [In Favour of Assessee]

6.1.6. Further reliance is placed on the judgment of hon'ble of IT AT Vishakhapatnam in the case of [2014] 45 taxmann.com 141 (Vishakhapatnam-Trib.) where in the hon'ble IT AT held as under:

Section 50C of the Income-Tax Act, 1961 -Capital gains - Special provision for full value of consideration in certain cases (Valuation made by DVO) - Assessment year 2006-07 - Whether where fair market value determined by DVO on a reference made by Assessing Officer in terms of sub-section (2) of Section 50C is less than value adopted or assessed by Stamp Valuation Authority then such fair market value determined by DVO has to be treated as full value of consideration received by assessee for purpose of computing capital gain - Held, yes [Para 10] [In Favour of Revenue]

6.1.7. Reliance is also placed on the judgment Hon'ble of IT AT - Pune Bench "SMC" in the case of Shri Anil MurlidharDeshmukh v/s. The Income Tax Officer Ward 3 (2), Nashik [ITA No.1821/Pun/2017 - A.Y.-2013-14] where in the hon'ble IT AT held as under:

It is crystal clear that generally, when the A.O has obtained the DVO report then the same is binding. It is thus clear that the report of the DVO is binding on the AO, unless the assessee shows some glaring mistakes in such valuation.

6.1.8. The facts of the appellant are similar to the facts of the cases decided by Hon'ble ITATs and High Courts as discussed in the foregoing paras. Therefore respectfully following the above discussed judgments of Hon'ble ITATs and High Court, AO is directed to take the value of sale as determined by the DVO and not the value determined by the Registering Authority. AO is also directed to allow any exemption claimed by the appellant, if allowable as per the provisions of the Income Tax Act, 1961. In view of the above discussion, AO is further directed to re-compute the Long Term Capital Gain and consequently interest liability u/s234A,234B'& 234C of the Income Tax Act, 1961. :

7. In the result , the appeal is **Partly Allowed.**

7. The Ld.DR could not controvert the observations of the CIT(A) with any new cogent material or evidences. We find that the CIT(A) has considered the judicial decisions and passed reasoned order, which cannot be interfered and accordingly we uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 20.04.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.04.2021

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai