

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 394/CHD/2015
Assessment Year : 2009-10

Shri Ramesh Verma,
Prop. M/s Jagdambey Roadlines,
Industrial Area,
Yamuna Nagar.

Vs

The DCIT,
Circle,
Yamuna Nagar.

PAN: AAKPV8801C

(Appellant)

(Respondent)

Appellant by : Shri R.K.Jain
Respondent by : Shri S.K.Mittal

Date of Hearing : 28.12.2016
Date of Pronouncement : 05.01.2017

ORDER

PER BHAVNESH SAINI, JM

This appeal by assessee has been directed against the order of ld. CIT(Appeals) Panchkula dated 13.03.2015 for assessment year 2009-10 on the following grounds :

1. *The Learned CIT (Appeal) has erred in law & facts by ignoring the date of agreement of transaction, as the transaction pertains to AY 2008-09 instead of AY 2009-10.*
2. *The learned CIT (Appeals), erred in law and facts by confirming the addition of Rs. 55,03,319/- as income from capital gain.*

2. During the course of assessment proceedings, it was noticed that an amount of Rs. 31,721/- was declared and claimed by the assessee as long term capital loss during the year under consideration on account of sale of plot measuring 1016.88 sq.yd. situated in Industrial Area, Yamuna Nagar. The assessee was, therefore, required to furnish copy of the Sale Deed of the said property. The assessee, in response, submitted that Shri Lavit Verma and Shri Himanshu Verma are sons of late Shri Raj Kumar (real brother of the assessee). Shri Vinay Verma and Shri Mohit Verma are sons of Shri Ashok Verma, real brother of the assessee and in the verbal family mutual settlement, it has been decided that the total area of the plot mentioned above will be transferred in the names of abovesaid four nephews and they will pay Rs. 26 lacs to the assessee. Shri Ashok Verma and Smt. Raman Verma, widow of late Shri Raj Kumar have given Rs. 13 lacs each to the assessee. Copy of the account and Court order for transfer of the plot were before Assessing Officer. It was, therefore, submitted that sale price of the plot was taken @ Rs. 26 lacs. The Assessing Officer, therefore, noted that no Sale Deed had been registered by the assessee in respect of the abovesaid property and value of the sale of plot have been claimed at Rs. 26 lacs as per mutual family settlement. The Assessing Officer referred to provisions

of Section 50C of the Income Tax Act for the purpose of determining the long term capital gain. The Assessing Officer, in order to arrive at the sale price of the property sold, requested the Tehsildar/Registrar, Yamuna Nagar under section 133(6) to furnish copy of any sale deed and also the circle rate of the property got registered in the month of February,2009 around B-9/1, Industrial Area, Yamuna Nagar i.e. the same area in which the property of the assessee was situated. The Sub Registrar, Jagadhri vide his letter dated 31.12.2013 furnished a copy of the Sale Deed got registered on 30.03.2009 in Industrial Area, Yamuna Nagar in which it was clearly mentioned that collector rate of the property in Industrial Area, Yamuna Nagar in which the property of the assessee was situated during March,2009 was at Rs. 8,000/- per sq.yd. The Assessing Officer, therefore, was of the view that assessee has not reported long term capital gain amounting to Rs. 55,03,319/-. The explanation of the assessee was called for on these facts.

3. The Assessing Officer after considering explanation of the assessee rejected the explanation because the assessee himself has stated it as transfer of property, that is why long term capital loss has been claimed by him in the return of income. As per Court decree, only ownership of the plot has been settled. Nowhere the Court has ordered/settled the amount to be

paid to the nephews of the assessee in lieu of transfer of property. The Court has not directed not to register the Sale Deed of the property. The assessee has relinquished all his rights/interest in the property once he has received the payment of Rs. 26 lacs in lieu of the same. The Assessing Officer, therefore, held that there is transfer of property in a case and further report of the Tehsildar shows that similar property was sold @ Rs. 8000/- per sq.yd., therefore, explanation of the assessee that no capital gain arises, was rejected and long term capital gain was computed by applying the rate of Rs. 8,000/- per sq.yd. and long term capital gain was computed in a sum of Rs. 55,03,319/-.

4. The assessee challenged the findings of the Assessing Officer and addition before Id. CIT(Appeals). The assessee submitted that property was transferred as per oral mutual family settlement which was confirmed by the Civil Court. Section 50C of the Act is not applicable to the facts and circumstances of the case as the Registration Deed was not registered. The ownership of the property is not transferred, only the inter-se right of the parties involved were settled and Rs. 26 lacs was received only as a mutual understanding between the assessee and the family members. There is, thus, no transfer of property, as such no capital gain arises in the case of the assessee. The rates provided by the Sub Register are not correct. The assessee

further submitted that there is no estoppel against the law. The Assessing Officer was duty bound to adopt correct legal position. The nephew of the assessee was in possession of the property in financial year 2007-08 relevant to the assessment year 2008-09, therefore, without prejudice to the submissions of the assessee, it was further submitted that there was no transfer within the meaning of Section 2(47) of the Act in assessment year 2009-10 under appeal.

5. The ld. CIT(Appeals), however, did not accept contention of the assessee and referred to the decision of Hon'ble Supreme Court in the case of CIT Vs Rasik Lal Manik Lal (HUF) 177 ITR 198 in which it was held that a relinquishment takes place when the owner withdraws himself from the property and abundance his rights thereto. The ld. CIT(Appeals) also noted that transfer of ownership was decided by the Court decree dated 07.03.2009 and suite was instituted in July,2008 and long term capital gain have been declared in assessment year 2009-10 under appeal, therefore, capital gain arises in assessment year under appeal. The ld. CIT(Appeals) held that conditions of Section 50C of the Act are applicable in this case and accordingly, dismissed the appeal of the assessee.

6. We have heard ld. Representatives of both the parties and perused the findings of authorities below.

The ld. counsel for the assessee reiterated the submissions made before authorities below and referred to Board's circular and certain decisions in support of his contention that Section 50C of the Act would not apply in the case of the assessee because no Sale Deed is registered and that Section 50C of the Act was amended w.e.f. 01.10.2009 adding the word 'assessable' therefore, the existing provisions under section 50C of the Act would not apply in the case of the assessee. He has also submitted that since possession was handed over to the nephews of the assessee in January, 2008 therefore, no capital gain would arise in assessment year 2009-10. He has submitted that even if assessee has declared long term capital loss in the return of income but provisions of Section 50C will not apply in the case of the assessee, therefore, it is duty of the Assessing Officer to apply correct provisions of law and should not have made the addition. On the other hand, ld. DR relied upon orders of authorities below.

7. We have considered rival submissions. It is not in dispute that assessee declared long term capital loss in the return of income. The authorities below have made the addition and computed the long term capital gain by applying provisions of Section 50C of the Income Tax Act. The assessment year under appeal is 2009-10 and the relevant provisions contained under section 50C of

the Act applicable to assessment year under appeal are reproduced 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 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 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.

(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 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 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 —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).

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value

so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

8. The above provisions under section 50C of the Act were later on amended by inserting the word 'assessable' after the word "assessed" w.e.f. 01.10.2009. The Board's circular dated 01.10.2009 explaining the reasons for inserting the word 'assessable' have been explained in explanatory circular for Finance Act, 2009 and para 23 of the circular reads as under :

23. Provisions for deemed valuation in certain cases of transfer

23.1 The existing provisions of section 50C provide that where the consideration received or accruing as a result of the transfer of a capital asset, being land or building or both, is less than the value adopted or assessed by an authority of a State Government (stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer , the value so adopted or assessed shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gain. However, the present scope of the provisions does not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney.

23.2 With a view to preventing the leakage of revenue, section 50C is amended , so as to provide that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both is less than the value adopted or assessed or assessable by an authority of state Government for the purpose of payment of stamp duty in respect of such transfer, the value so

adopted or assessed or assessable shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gain.

23.3 Further, Explanation 2 has been inserted in the subsection (2) of the section 50C, so as to clarify the meaning of the term "assessable".

23.4 Applicability- These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to transactions undertaken on or after such date."

9. Hon'ble Madras High Court in the case of CIT V R.Sugantha Ravindran 352 ITR 488 has considered the identical question with reference to the amendment in Section 50C of the Income Tax Act in which the assessee alongwith two co-owners transferred the property through agreement to sell for a consideration to third party. The agreement was not registered and possession of the property was handed over to the buyer and the assessee also received sale consideration. The assessee worked out long term capital gain and admitted 1/3rd share therein for taxation. The Assessing Officer referred the matter to Stamp Valuation Authority in order to find out value of the property for payment of stamp duty. The Assessing Officer, by invoking provisions of Section 50C of the Act computed the long term capital gain adopting the guideline value as the sale consideration instead of consideration admitted by the assessee. The ld. CIT(Appeals) allowed the appeal

of the assessee holding that Section 50C of the Act can be invoked only when property was transferred by way of registered Sale Deed and assessed for stamp valuation purposes. The Tribunal also dismissed the appeal of the department on the same reasoning. Hon'ble High Court held as under :

5. Heard the learned counsel on either side.

6. The issue involved in this case is as to whether the assessing officer is entitled to take the value of the property assessable by the authority of the State Government for the purpose of payment of stamp duty in respect of said transfer or not. Admittedly, in this case, no registration of sale deed had taken place. It is the case of the Revenue that only in pursuance of the agreement of sale, the assessee had transferred the property and received the sale consideration. In such circumstances, whether Section 50C of the Act would be made applicable even in respect of cases where the registration had not taken place, is the only issue to be decided in this case.

7. Learned counsel for the assessee placed a circular in Circular No.5/2010/(F.No.142/13/2010- SO(TPL)) dated 03.06.2010 issued by the Board and submitted that as per the circular, it is made clear that the amendment made by the Finance (No.2) Act, 2009 is only prospective in nature and cannot be applied retrospectively.

8. We have perused the above circular. It is stated therein that the scope of the provisions does not include transaction which are not registered with stamp duty valuation authority and executed through agreement to sell or power of attorney. Consequently, it is made clear therein that the amendments have been made applicable with effect from 01.10.2009 and therefore, they will apply only in relation to transaction undertaken on or after such date. The relevant portion of the circular is extracted hereunder:

"23.4. Applicability:- These amendments have been made applicable with effect from 1st October, 2009 and will accordingly, apply in relation to transactions undertaken on or after such date."

9. Learned counsel for the Revenue is not disputing about the existence of such circular issued by the Board. If the Board has issued a circular

clarifying the applicability of Section 50C in pursuance of the amendment made by Amendment Act 2 of 2009, we fail to understand as to how the Revenue can canvass the same issue in this case which in effect is against the circular issued by the Board. Certainly, the Revenue is bound by the circular issued by the Board. At this juncture, it is pertinent to note that in a decision made in the case of State of Tamil Nadu and another Vs. India Cements Ltd. and another reported in (2011) 40 VST 225 (SC), the Honourable Supreme Court has held that the circulars issued by the Revenue are binding on the Department and therefore, they cannot repudiate that they are inconsistent with the statutory provisions. Relevant paragraphs 21 and 22 are extracted hereunder:

"21. It is manifest from the highlighted portion of the circular that as per the clarification issued by the Commissioner of Commercial Taxes, in exercise of the power conferred on him under Section 28A of the TNGST Act, the benefit of the sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier, as is pleaded on behalf of the first respondent. It is trite law that circulars issued by the Revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law.

22. In Paper Products Ltd. Vs. Commissioner of Central Excise ((2001) 247 ITR 128 SC: (1999) 7 SCC 84), while interpreting Section 37B of the Central Excise Act, 1944, which is in pari materia with Section 28A of the TNGST Act, this Court had held that the circulars issued by the Central Board of Excise and Customs are binding on the Department and the Department is precluded from challenging the correctness of the said circulars, even on the ground of the same being inconsistent with the statutory provision. It was further held that the Department is precluded from the right to file an appeal against the correctness of the binding nature of the circulars and the Department's action has to be consistent with the circular which is in force at the relevant point of time."

10. Even otherwise, we are of the firm view that the insertion of words "or assessable" by amending Section 50C with effect from 1.10.2009 is neither a clarification nor an explanation to the already existing provision and it is only an inclusion of new class of transactions namely the transfers of properties without or before registration. Before introducing the said amendment, only the transfers of properties where the value adopted or

assessed by the stamp valuation authority were subjected to Section 50C application. However after introduction of the words "or assessable" after the words "adopted or assessed", such transfers where the value assessable by the stamp valuation authority are also brought into the ambit of Section 50C. Thus such introduction of new set of class of transfer would certainly have the prospective application only and not otherwise. Hence the assessee's transfer admittedly made earlier to such amendment cannot be brought under Section 50C.

Applying the above said decision of the Honourable Apex Court to the facts and circumstances of the case as well as by considering the scope of Section 50C, we hold that the Revenue is not entitled to canvass the correctness of the order passed by the Tribunal, more particularly in the light of the circular issued by the Board. Accordingly, the Tax Case Appeal is dismissed and the substantial question of law is answered against the Revenue. No costs."

10. The ITAT Jodhpur in the case of Navneet Kumar Thakkar Vs ITO 110 ITD 525 held as under :

"Sec. 50C does not apply to the cases in which the transferred property is not the subject-matter of registration and the question of valuation for stamp duty purposes has not arisen; assessee having transferred a property by executing an agreement which was not registered with the registering authority, s. 50C did not apply; reference made to DVO under s. 55A and addition, made solely on the basis of the report of the DVO is wholly invalid".

11. Considering the facts of the case in the light of the provisions contained under section 50C of the Act, amendment in Section 50C as explained vide Board's circular and decisions referred to above, it is clear that in the case of the assessee, no sale deed has been registered and the property was taken by the nephews of the assessee through verbal family settlement in the month of January, 2008 which was confirmed by the judgement of the Civil Court dated 07.03.2009.

Therefore, in the case of the assessee, no consideration has been assessed by the Stamp Valuation Authority. Since no sale deed or agreement have been registered in the case of the assessee, therefore, provisions of Section 50C of the Act would not apply in the case of the assessee. The word 'assessable' has been inserted in Section 50C of the Income Tax Act w.e.f. 01.10.2009 therefore, the amended provisions would not apply to assessment year under appeal i.e. 2009-10. The authorities below have rejected the explanation of the assessee, because assessee has shown long term capital loss in the return of income in assessment year under appeal. Hon'ble Supreme Court in the case of CIT Vs Mahalakshmi Mills 160 ITR 920 held that, "*Duty cast on Assessing Officer to apply relevant provisions of law for the purpose of determining the true figure of assessee's taxable income*". Therefore, merely the assessee has shown capital loss in the return of income would be of no consequence when Section 50C of the Act is not applicable in the case of the assessee. In this view of the matter, it is clear that provisions of Section 50C of the Act would not apply in the case of the assessee, therefore, no long term capital gain could be computed as is done by the authorities below in the case of the assessee.

11(i) It may also be noted here that the authorities below have taken into consideration the long term

capital gain declared by the assessee in the return of income for assessment year 2009-10 and that ownership have been decided by decree of the Court vide judgement and decree dated 07.03.2009, therefore, it was held that long term capital gain arises in assessment year 2009-10 under appeal. The authorities below have failed to take note of the fact that the plaintiffs Vinay Verma etc. have mentioned in the plaint that the family settlement take place between the parties i.e. the nephews of the assessee and the assessee in the month of January,2008 and since then, the plaintiffs are in ownership and in possession of the property. The claim of the plaintiffs have been admitted by the assessee as defendant in that suit by admitting the claim of the plaintiffs and prayed that decree may be passed accordingly. The Civil Court, on the basis of these facts, admitted the claims of the plaintiffs and decreed the suit for declaration vide judgement dated 07.03.2009 therefore, it is clear that the property was transferred in the month of January,2008 through oral family settlement, therefore, assessee rightly contended that no long term capital gain arise in assessment year 2009-10 because this may pertain to preceding assessment year 2008-09. Therefore, on this point also, the addition against the assessee is wholly unjustified.

12. Considering the above discussion and in the light of the relevant provisions and case law referred to

above, we are of the view no capital gain arise in the case of the assessee in assessment year under appeal. We, accordingly, set aside the orders of authorities below and delete the entire addition.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 5th January, 2017.
'Poonam'

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT,DR

Assistant Registrar,
ITAT/CHD