

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 18/JP/2018
निर्धारण वर्ष / Assessment Years : 2009-10

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| Shri Surendra Singh Naruka, Plot No. 2/25, Nagar Nigam Colony, Ajmer Road, Jaipur | बनाम Vs. | Income-tax Officer, Ward-5(1), Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACXPN8534B | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri K. L. Moolchandani
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 28/06/2018
उदघोषणा की तारीख / Date of Pronouncement : 06/07/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 16.10.2017 for Assessment Year 2009-10 wherein the assessee has challenged the addition of Rs. 16,73,839/- u/s 50C by considering the sale consideration of the property at Rs. 32,80,689/- as against Rs. 15,85,000/- reported by the assessee in his return of income filed pursuant to issuance of notice u/s 148 of the Act.

2. Briefly stated, the facts of the case are that during the year under consideration, the assessee has sold a plot of land situated at 2/25, Golimar Garden, Nagar Nigam Colony, Amer Road, Jaipur for a sale

consideration of Rs. 15,85,000/-. The assessee, after considering the cost of acquisition, the cost of improvement and transfer expenses has determined long term capital loss at Rs. 22,030/- which has been duly reported in his return of income. As per information available with the Assessing Officer, value of the said property was enhanced by the Sub-Registrar from Rs. 15,85,000/- to Rs. 32,80,869/- and accordingly a show cause was issued to the assessee as to why the sale consideration should not be taken as computed by the stamp duty authority u/s 50C(1) of the Act. In his response dated 11.03.2015, the assessee submitted that neither the Sub-Registrar nor the purchaser has informed the assessee regarding the DLC rate adopted by the Sub-Registrar at Rs. 32,80,869/- as against value of Rs. 15,85,000/- at which the property was original registered and stamp duty was paid. It was submitted by the assessee that he does not agree with the said valuation and in support of his valuation so adopted and agreed in the sale deed, a copy of the valuation report was filed before the Assessing Officer. The Assessing Officer, however, referring to the provisions of section 48 and 50C, and stating that the purchaser has accepted the value adopted by the stamp duty authority and rate taken by the Registrar is itself fair market value of impugned property, computed the capital gains by considering the value of the property at Rs. 32,80,869/- as against 15,85,000/- and determined the short term capital gains of Rs. 16,73,839/- as against the capital loss of Rs. 22,030/- claimed by the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has sustained the said addition and relevant findings are contained at para 2.3 of her order which is reproduced as under:-

"2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The case was reopened as the assessee had sold an immovable property at Amer Road for a consideration of Rs. 15,85,000/- which had been subsequently enhanced to Rs. 32,80,689/- but no capital gain had been declared in the relevant return filed by the assessee.

In response to notice u/s 148, the assessee filed a return in which a short term capital loss of Rs. 22,030/- was claimed from this property. It was further claimed during assessment proceedings that the assessee was a driver by profession and did not know about the DLC rate and the Registered valuer's report showing the acquisition of property at Rs. 15,76,030/- was also filed. The Assessing Officer applied the provisions of section 50C and after deducting the transfer expenses and cost of acquisition as claimed by the assessee arrived at a short term capital gain of Rs. 16,73,839/-.

In the present proceedings, it is claimed that the market value of the property as enhanced by the Stamp valuation authority is not correct and the valuation as per approved valuer is also similar to the earlier valuation of the Registering Authorities. It was further submitted that the assessee has objected to such valuation and filed appeal before the Rajasthan Tax Board, Ajmer on 17.05.2016.

The assessee has objected to the enhancement made by the Stamp valuation authority and also taken objection to the fact that the Assessing Officer has not referred the property to the valuation cell. The assessee has already filed appeal before the Tax Board, Ajmer and section 50C(2) allows reference to valuation cell only if this remedy has not been availed by the assessee. Thus in view of the above, Assessing Officer could not have referred the property for valuation to the

valuation cell in view of section 50C(2)(b). Reliance is placed on Seksaria Industries (P.) Ltd. v. Income Tax Officer, Ward 2(3)(2), Mumbai [2016] 69 taxmann.com 342 (Mumbai-Trib.) wherein it has been held that since value adopted and assessed by Stamp valuation Authority under sub-section (1) of section 50C was disputed by the assessee in appeal, revision and even before High Court, the assessee could not obtain benefit as provided in sub section (2) of section 50C and therefore, the Assessing Officer could not adopt sale consideration of property any amount less than value adopted or the assessed by Stamp Valuation Authority as section 50C does not recognize such curtailment of sale consideration in any manner.

As regards the value adopted by the Assessing Officer, the approved valuer's report can not take precedence over the value determined by the Stamp Valuation authority and that is also the mandate of section of 50C. In view of the discussion as above the action of the Assessing Officer is upheld and the value of short term capital gain arrived at by the Assessing Officer is confirmed. The ground of appeal is dismissed."

4. During the course of hearing, the Id. AR reiterated the submissions made before the lower authorities and submitted that where during the course of assessment proceedings, the assessee has specifically objected to the revised valuation done by the Collector (Stamp), the AO should have referred the matter to the Valuation Officer u/s 50C(2) of the Act. It was further submitted that the Id. CIT(A) has wrongly dismissed the appeal of the assessee holding that where the assessee had already filed appeal before Tax Board Ajmer, section 50C(2) benefit of reference to the valuation officer can not be granted. In this regard, it was submitted by the Id. AR that at the relevant point in time, the appellant did not file any appeal before the

Tax Board as evident from the copy of the appeal filed which is placed in the paper book wherein the said appeal before the Tax Board, Ajmer was filed on 17.05.2016 well after the passing of the assessment order on 16.03.2015. It was submitted that during the course of assessment proceedings, no remedy was availed by the assessee in terms of disputing the valuation so adopted by the Collector (Stamp) by way of filing an appeal before the Tax Board, Ajmer. It was only after the rejection of the objections so made by the assessee during the course of assessment proceedings, the assessee had preferred such appeal before the Tax Board, Ajmer and it was accordingly submitted that the findings of the Id. CIT(A) is not correct as she has not taken into consideration the facts in the right respective.

5. The Id. DR is heard who has relied on the findings of the lower authorities. It was submitted that the provisions of section 50C are mandatory provisions and where the stamp duty authority has valued certain property at a value higher than the declared sale consideration, the AO is duty bound to adopt such valuation for the purposes of taxation. It was accordingly submitted that in the instant case the matter was not referred to the Valuation Officer as the assessee has already disputed the said valuation before the Tax Board, Ajmer and it was accordingly submitted that there is no infirmity in the order of lower authorities and the same may be kindly be confirmed.

6. We have heard the rival contentions and perused the material available on record. It is not in dispute that the during the course of assessment proceedings, the assessee has objected before the Assessing Officer the value which has been revised by the stamp duty authority stating that the same is on higher side and is not acceptable to the assessee and in support, he has also filed a copy of the valuation

report. It is also not in dispute that the assessee has subsequently objected to such valuation before the Tax Board, Ajmer by way of revision petition filed on 17.05.2016 u/s 65 of the Rajasthan Stamp Act, 1998 against the order dated 29.3.2011 passed by the Collector (Stamp), Jaipur. The said revision petition before the Tax Board, Ajmer has been filed after passing of the assessment order on 16.03.2015 u/s 147 read with 143(3) of the Act. In the above factual matrix, the question that arises for consideration is whether in terms of section 50C(2), the matter could be referred to the valuation officer or not.

7. The relevant provisions of section 50C reads as under:-

"(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)."

8. Under section 50C(2), for reference of a matter regarding valuation of the capital asset to a Valuation Officer by the Assessing Officer, it is provided that firstly, the assessee has to make a claim before the 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. The second requirement is that 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.

9. In the instant case, the assessee has objected to the valuation adopted by the stamp duty authority before the Assessing officer during the course of assessment proceedings and the same is not in dispute and even, the Id CIT(A) has returned a similar finding. Therefore, the first condition as envisaged under section 50C(2) is satisfied in the instant case.

10. Regarding the second condition as to whether the value so adopted stamp duty authority has been challenged in appeal, revision or reference before any other authority, Court or the High Court, it is again an admitted fact that the assessee has moved a revision petition u/s 65 of the Rajasthan Stamp Act, 1998 against the order dated 29.3.2011 passed by the Collector (Stamp), Jaipur.

11. Given that the timing of moving such petition challenging the valuation by the Collector (stamps) has not been specifically provided u/s 50C(2) of the Act, it is reasonably expected that such a revision petition should have been moved prior to or during the course of the assessment proceedings. At the same time, where such a petition has been moved subsequent to passing of the assessment order, as has happened in the instant case, in our view, there is no way, the AO would be ceased of such a development and in such a scenario, the second condition should be read as satisfied as on the date of passing of assessment order. In such a scenario, the assessee having objected to the valuation so adopted before the Assessing officer and no information available regarding any challenge of such valuation before the Tax Board, the AO should have ordinarily referred the matter to the valuation officer.

12. However, the question that arises is whether during the appellate proceedings, the Id CIT(A) is ceased of this development that the assessee has moved a revision petition challenging the valuation by the Collector (stamps) before the Tax Board, Ajmer, the second condition as envisaged under section 50C(2) is not satisfied in the instant case. There is no way, she would have ignored such a revision petition as brought to her knowledge by the assessee himself and referred the matter to the valuation officer u/s 50C(2) of the Act exercising her co-terminus powers as that of the Assessing officer.

13. At the same time, given that the value so adopted by the Collector (stamps) is subject to outcome of the revision petition filed before the Tax Board, Ajmer, the value finally assessed as so envisaged under section 50C shall therefore be subject to the outcome of the revision petition. In the result, we deem it appropriate to remand the matter

back to the file of the Assessing officer to take into consideration the decision of the Tax Board, Ajmer in respect of revision petition filed by the assessee and determine the valuation of the property for the purposes of calculating the capital gains, after providing reasonable opportunity to the assessee.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/07/2018.

Sd/-
(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 06/07/2018

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Surendra Singh Naruka, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(1), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 18/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar