



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.974/Mum./2019
(Assessment Year : 2013-14)

Nafisa Abizar Banatwala
B1/5, EMCA House
289, shahid Bhagatsingh Road
Fort, Mumbai 400 001
PAN – AKVPB2016Q

..... Appellant

v/s

Income Tax Officer
Ward-17(2)(4), Mumbai

..... Respondent

Assessee by : Shri Ravindra Poojary
Revenue by : Shri Saurabh Deshpande

Date of Hearing – 06.02.2020

Date of Order – 04.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

This appeal by the assessee is against the order dated 11th January 2019, passed by the learned Commissioner of Income Tax (Appeals)-58, Mumbai, pertaining to the assessment year 2013-14.

2. In ground no.(i), the assessee has challenged the addition made of ₹ 10,59,863, under the head "*long term capital gain*" by invoking

the provisions of section 50C of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed her return of income on 18th March 2015, declaring total income of ₹ 2,23,554. In the course of assessment proceedings, the Assessing Officer noticing that the assessee has declared long term capital gain of ₹ 2,23,544, on sale of flat at Sumit Apartment, Goregaon, Mumbai, called upon the assessee to furnish the working of long term capital gain as well as the sale deed. On perusing the sale deed, he found that the stamp duty authority has valued the property for stamp duty purpose at ₹ 37,80,000, as against the declared sale consideration of ₹ 30 lakh. Noticing the above, the Assessing Officer called upon the assessee to explain why the value determined by the stamp duty authority should not be adopted as deemed sale consideration for computing long term capital gain. Though, the assessee objected to the proposed addition, however, the Assessing Officer rejecting the submissions of the assessee proceeded to treat the value determined for stamp duty purpose as the deemed sale consideration and computed long term capital gain accordingly. Further, he also disallowed deduction claimed by the assessee towards amenities and cost of repairs. Challenging the

aforesaid decision of the Assessing Officer, assessee preferred appeal before the first appellate authority.

4. The learned Authorised Representative submitted, the Assessing Officer without referring the valuation of the property to the District Valuation Officer (DVO) has straight away adopted stamp duty value for determining the long term capital gain. He submitted, as per section 50C(2) of the Act, the Assessing Officer has to refer valuation of the property to DVO irrespective of the fact whether the assessee objects or not to the stamp duty valuation. The learned Authorised Representative submitted, now the assessee has also got the property valued from registered valuer and in the said valuation report, the value of the property has been determined at ₹ 27,20,000. He submitted, the valuation report may be admitted as the additional evidence and matter may be restored to the Assessing Officer for examining the valuation report of the registered valuer and referring the valuation to the DVO in terms of section 50C(2) of the Act.

5. The learned Departmental Representative, though, justified determination of long term capital gain by adopting the valuation made by the stamp valuation authority. However, he submitted that the matter may be restored back to the Assessing Officer for referring the valuation to the DVO.

6. We have considered rival submissions and perused the material on record. Undisputedly, the Assessing Officer has invoked the provisions of section 50C(1) of the Act to determine the long term capital gain by adopting the value determined by the stamp valuation authority as the deemed sale consideration. However, before doing so, he has not made any reference to the DVO to determine the value of the property in terms of section 50C(2) of the Act. The Hon'ble Calcutta High Court in *Sunil Kumar Agarwal v/s CIT*, [2014] 225 taxman 211 (Cal.) has held that irrespective of the fact whether the assessee objects to the stamp duty valuation or not, the Assessing Officer has to get the valuation done through the DVO in terms of section 50C(2) of the Act. In fact, before us, the assessee has filed the valuation report obtained from a registered valuer valuing the property at ₹ 27,20,000. Admittedly, the aforesaid valuation was not before the Departmental Authorities. Therefore, though, we admit the valuation report as additional evidence, however, in our considered opinion, the valuation done by the registered valuer needs to be examined by the Assessing Officer and the DVO. Therefore, we restore the issue to the file of the Assessing Officer for fresh adjudication after complying to the provisions of section 50C(2) of the Act by referring the valuation of the property to the DVO. Before deciding the issue, the assessee must be afforded a reasonable opportunity of being heard. The ground no.(i) is allowed for statistical purposes.

7. In grounds no.(ii) and (iv), the assessee has challenged the disallowance of certain deduction claimed on account of amenities, repairs and renovation and brokerage fee while computing the long term capital gain.

8. We have considered rival submissions and perused the material on record. The disallowance of assessee's claim of deduction is primarily on the reasoning that it is not supported by proper evidence. Keeping in view the relevant facts, we restore the issue relating to assessee's claim of deduction on account of amenities, repairs, and renovation and brokerage fee to the Assessing Officer for fresh adjudication so that the assessee gets an opportunity to furnish the required evidences to prove her claim. The Assessing Officer is directed to decide the issue after due opportunity of being heard to the assessee. These grounds are allowed for statistical purposes.

9. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 04.03.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER
MUMBAI, DATED: 04.03.2020

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai