

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 280/JP/2020
निर्धारण वर्ष / Assessment Year :2015-16

Satish Kumar Agarwal, 406, Bilala Bhawan, Hanuman Ka Rasta, Johari Bazaar, Jaipur, Rajasthan.	बनाम Vs.	Principal Commissioner of Income Tax, PCIT-1, Jaipur, Rajasthan.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABSPS 0024 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal (FCA)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 17/08/2020
उदघोषणा की तारीख / Date of Pronouncement : 09/09/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id. Pr.CIT-1, Jaipur for the A.Y. 2015-16 passed U/s 263 of the Income Tax Act, 1961 (in short, the Act).

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. The assessee is basically aggrieved for the order passed by the Id. Pr.CIT-1, Jaipur U/s 263 of the Act. The assessee had taken additional ground in

terms of Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963, which is as under:

"On the facts and in the circumstances of the case and in law the Id. PCIT erred in applying the provisions of section 263 without appreciating that no addition under 50C of I.Tax Act can be made as the Registration Authorities have adopted 150% of the normal DLC rate and the sale consideration disclosed by the assessee is more than the normal DLC value."

3. It was contention of the Id AR of the assessee that additional ground being raised hereinabove is legal ground and the facts necessary to adjudicate on this ground are already on records. The assessee submits that the additional ground go to the very basis of assuming jurisdiction for passing the order u/s 263 of the Act. Consequently, as per the ratio laid down by the Hon'ble Apex Court and other courts in following cases the additional ground is admissible.

- a) National Thermal Power Co Ltd Vs CIT (1998) 229 ITR 0383.

Hon'ble Apex Court has held that Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having bearing on the tax liability of the assessee

- b) Zakir Hussain vs CIT & Anr. (2006) 202 CTR (Raj) 40

Held that Tribunal has wide powers to permit raising of additional ground at any stage of proceedings in deciding the appeal and, therefore, Tribunal was not justified in refusing to allow the assessee to raise the additional ground which had a bearing on correct determination of tax liability on the ground of limitation.

The additional ground is raised without prejudice to the original grounds raised in the memorandum of appeal.

4. The Id. CIT-DR has opposed the raising of additional ground.
5. We have considered the rival contentions and found that the additional ground so raised by the assessee is purely legal in nature and all the relevant material facts are available on record. Accordingly, we admit the addition ground so raised by the assessee.
6. Rival contentions have been heard and record perused. Facts in brief are that the assessee is an Individual and during the year under consideration, he derived income from House Property, income from business of Precious & semi-precious stones and capital gain. The return of the year under consideration was filed on 30.09.2015 declaring total income of Rs. 20,04,170/-. The case of the assessee was selected for limited scrutiny by issuing the notice u/s 143(2) of the Act dated

19.09.2016. In the scrutiny the following issues were identified for examination: -

- i) Sales Turnover Mismatch.
- ii) Increase in Capital
- iii) Deduction claimed under the Head Capital Gains.

7. The assessee was jointly owner of an agricultural land 2.09 Hectare wherein the assessee has 1/4 share. During the year under consideration the assessee and his co-owners sold 2.09 Hectare (8.26 Bigha) agriculture land on 02/12/2014. The DLC rate of the land was 44,35,410/- per bigha, accordingly the value of the land as per the normal DLC rate comes to Rs. 3,66,36,487/-. The sale value declared by the assessee was @ Rs. 59,56,416/- per bigha which comes to Rs. 4,92,00,000/-. The stamp duty authority levied the stamp duty by assessing the value @ 150% of sale value declared in the sale deed valued by stamp duty authority at Rs. 7,38,00,000/-.

8. For the year under consideration, the assessee filed return of income on 30/09/2017 declaring total income of Rs. 20,04,170/-. In the return, the assessee declared the full value consideration of the land of Rs. 1,23,00,000/- being 1/4th of Rs. 4,92,00,000/- and the assessee claimed deduction u/s 54B on account of sale of agricultural land. During course of assessment proceedings, the AO raised the query regarding

applicability of provisions of section 50C of the Act and the same is apparent from the para 3.2 of the assessment order. In response to such query the assessee filed the reply dated 26-12-2017. The AO after considering the assessee's reply took a judicial decision and since the sale consideration was much more than the normal DLC rates, she didn't apply the provisions of section 50C of the Act. In the assessment order the AO disallowed the deduction of Rs. 91,83,373/- claimed u/s 54B of the Act. The assessment of the assessee was completed by the AO vide her order dated 29.12.2017 wherein she assessed the income of assessee Rs. 1,11,87,540/- as against returned income of Rs. 20,04,170/-. The assessee filed appeal before Id. CIT(A)-1, Jaipur which is pending.

9. The Id. Principal Commissioner of Income Tax -1, Jaipur issued a notice u/s 263 of I.T. Act, the assessee filed detailed reply vide letter dated 05-02-2020 and 17-02-2020. However, the Id. Principal CIT held that the order dated 29-12-2017 for A.Y 2015-16 is erroneous and prejudicial to the interests of the revenue on the ground that the AO was required to invoke provisions of Section 50C of the Act as the land was sold for Rs. 4,92,00,000/- and the DLC rate was Rs. 7,38,00,000/- and since the assessee's share in the land was 1/4th, therefore the full

value of sale consideration should be taken at Rs. 1,84,50,000/- as against shown by assessee at Rs. 1,23,00,000/-.

10. Aggrieved by the order of Id.Principal CIT, the assessee is in further appeal before the ITAT.

11. It was argued by the Id AR that the case of the assessee was selected for Limited Scrutiny wherein apart from the other issue, which were not relevant to capital gain, the issue regarding **"deduction claimed under the head capital gain"** was to be examined by the AO. The copy of notice issued u/s 143(2) of the Act was placed on record. Since as per the power vested to the AO in the cases selected for Limited scrutiny, the AO could only examine the deduction claimed out of the capital gain earned by the assessee. The AO was not empowered to examine the computation of capital gain of the assessee. The applicability of provisions of section 50C of the Act is part of computation of capital gain thus the same was beyond the scope of limited scrutiny. Therefore, there is no error in the Assessment order of the AO.

12. The Id AR has further contended that the issue regarding applicability of provisions of Section 50C of the Act was examined by the A.O. during the assessment proceedings. Our attention was invited to

the query raised by the AO and reply filed by the assessee with regard to applicability of provisions of Section 50C of the Act and the AO had mentioned these facts at para 3.2 of the assessment. Our attention was also invited to the reply dated 26/12/2017 filed before the A.O.. As per the Id AR, only after considering the assessee's reply, the A.O. has taken a judicial decision and since the sale consideration was much more than the normal DLC rates, she didn't apply the provisions of section 50C of the Act. Therefore, the order of the AO cannot be held to be erroneous and prejudicial to the interest of revenue merely because the Id Principal CIT has a different view.

13. He further argued that the agricultural land is a rural agricultural land, hence, no capital assets, therefore, provisions of Section 50C of the Act is not attracted. Our attention was invited to the copy of Girdawari report, the land was situated in Village Chimanpura, Urf Dhab Ka Na, Tehsil Amber, District Jaipur population of which according to last censuses i.e. censuses 2011 is 1068 i.e. less than 10,000. Further the land was not situated in the municipality area.

14. Our attention was invited to the following documents submitted before the Id. Pr.CIT/AO to substantiate this claim:

- i) Copy of Sale deed

- ii) Copy of Jamabandi to prove that the land so sold was agriculture land.
- iii) Copy of Girdawari
- iv) Printout of Census 2011 abstract data from the web site <http://censusindia.gov.in/>
- v) Certificate of Patwari regarding outside municipal limit.

15. The Id AR has further contended that the assessee himself has offered the gain on sales of this land as long term capital gain because of mistake or misconception of the assessee and his AR. The assessee was under bona-fide belief that since the land was situated at the main Delhi highway, therefore the same is taxable land. In terms of CBDT Circular No. 14 of 1955 dated 11th April, 1955, it was argued that the departmental officials must not taken advantage of ignorance of an assessee as to his rights and it is one of their duties to assist a taxpayer in very reasonable way. For this purpose, reliance was placed on the following judicial pronouncements:

- a) Decision of Gujarat High Court S.R. Koshti V/s. CIT (2005) 276 ITR 165.
- b) Delhi High Court in the case of CIT Vs. Bharat General Reinsurance Co. Ltd. (1971) 081 ITR 0303, Delhi High Court

16. With regard to merit, reliance was placed on the decision of the Coordinate Bench of the ITAT Jaipur in the case of Shri Om Prakash

Agarwal in ITA No. 1393/JP/2019 order dated 03/08/2020, who is one of the co-owner of the same land, wherein it was held that the provisions of Section 50C of the Act cannot be applied on the ground of higher value assessed by the Stamp Duty Authority more than normal DLC rate.

17. The Id AR has further contended that against the order of the AO the assessee filed an appeal before CIT (A) on 26.01.2018 and the same is still pending for disposal. In the appeal the assessee has challenged the additions so made and will argue the case on same footings. As per the Id AR, the Id.CIT(A) has power of enhancement. Therefore, when the appeal is pending before the Id CIT(A), Id Pr CIT was not justified to initiate the multiple proceedings and the matter could have been referred to CIT (A) to consider the same while disposing off the appeal filed by the assessee.

18. On the other hand, the Id. CIT-DR has contended that the DLC rate of the land sold was Rs. 7,38,00,000/-, the AO was required to invoke Section 50C of the IT Act, in accordance with the existing provisions of law. Under the provisions of Section 48 the sum of Rs. 7,38,00,000/- was to be deemed to be the full value of the consideration received or accruing as a result of the transfer and the assessee's share was required to be taken at Rs. 1,84,50,000/- (1/4th) instead of the sale

consideration shown at Rs. 1,23,00,000/-. However, the A.O. failed to do so. He further contended that though some enquiry was made by the A.O., she failed to apply her mind to the material facts available on record and thereby failed to correctly determine the capital gain on the sale of land. Resultantly the order passed by the AO is both erroneous and prejudicial to the revenue, hence, the plea of the Id AR that Section 263 of the Act is not attracted in the case of the assessee, deserves to be rejected.

19. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the year under consideration, the assessee had sold agricultural land which was jointly owned by him with three other co-owners. The assessee has offered capital gain on its sale. During the course of scrutiny assessment, the A.O. examined capital gain earned by him. However, he declined the assessee's claim of deduction U/s 54B of the Act which was appealed by the assessee before the Id. CIT(A) and which is still pending before him. In the meanwhile, the Id. CIT, Administration invoked his power U/s 263 of the Act and held that the A.O. had not made any proper enquiry and had not applied provisions of Section 50C of the Act with regard to computation of capital gain earned on sale of agricultural land. From the record, we found that the assessee

had sold the agriculture land and at the time of sales of land, the statute of the same was agriculture. However, in the sale deed which was executed on 05/12/2014 it has been clearly mentioned that the nature of land is agriculture land. Further from the copy of Jamabandi of agriculture land as placed on record, this fact is also clear that the land use was got converted by the buyer of the land only after sale deed got registered by the assessee. Therefore, at the point of sale, the status of land was agriculture land. Now the question arises whether the sale of agriculture land attracts provisions of Section 50C of the Act. In this regard we observe that the land held by the assessee was agricultural land which is not capital asset as clearly defined U/s 2(14) of the Act, which excludes agricultural land out of definition of capital asset. It is also not in dispute that the assessee had sold the agricultural land at a consideration which was more than DLC. However, as per Rajasthan Government notification since the sale was to a firm or company, the DLC rate was to be taken at 1.5 times.

20. We found that in the case of joint owner of this agricultural land namely Shri O.P. Agarwal, the Tribunal have decided similar issue in ITA No. 1393/JP/2019 vide order dated 03/08/2020 wherein it was held that the assessee had declared sale consideration more than DLC,

accordingly, there is no justification for making any addition U/s 50C of the Act. The precise observation of the Tribunal was as under:

"2.9 We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements and the relevant provisions of law more precisely to the deeming provisions of Section 50C of the Act. From the record, we found that the assessee was joint owner of an agricultural land 2.09 Hectare situated in Village Chimanpura, Urf Dhab Ka Nala, Tehsil Amer, District Jaipur wherein the assessee has 1/4 share. During the year under consideration, the assessee and his co-owners sold 2.09 Hectare (8.26 Bigha) agriculture land on 05/12/2014 by executing the registered sale deed in favour of M/s Nanak Hotel Private Limited. In the registered sale deed the description of the land is agricultural land and at the point of the sale the land was not converted or developed land. The DLC rate of the land was 44,35,410/- per bigha. Accordingly the value of the land as per the DLC rate comes to Rs. 3,66,36,487/-. The sale value declared by the assessee was Rs. 4,92,00,000/- which comes to Rs. 59,56,416/- per bigha. The stamp duty authority levied the stamp duty by assessing the value @ 150% of value declared in the sale deed valued for stamp duty purpose at Rs. 7,38,00,000/- for stamp duty purpose. During the course of assessment proceedings as well as before Ist appellate authority, the assessee objected the value adopted by stamp duty authorities. The assessee sold the agriculture land without any conversion, change in land use or any short of commercial activities. It was explained to AO that since the agriculture land was sold to the company, therefore by virtue of letter No. F7(39) JAN/2013/Part-1/2845-3385 dated 14.07.2014 issued by Director General, Registrar & Stamps Deptt. Kar Bhawan,

Ajmer the duty was collected from buyer of land, by assessing the value of land 1.5 time to the normal rate. However, in the case of the assessee the value assessed by the stamp duty authority 1.5 times of the declared value in sale deed as against the normal rate i.e, DLC rate as mentioned in the circular. The copy of DLC chart applicable as on the date of transaction was submitted along with application submitted under rule 46A of the Act. The total area of land is 2.09 hectare i.e. 8.26 Bigha and highest rate per bigha prevailing at the time of sale was Rs. 44,35,410/- and accordingly the DLC rate of the land comes Rs. 3,66,36,487/-against which the land was sold for Rs. 4,92,00,000/-, therefore there remains no doubt that the land was not sold below to prevailing market rate. The higher rate applied by the stamp duty authority only because of the fact that the land was sold to company. The DLC rates are indicative of market rate of the property sold. The market rate depends on market condition and not depends whether the buyer is a company or individual. The 1.5 times of the normal rate of the property was assessed just to levy stamp duty but the deemed sale consideration for the purpose of section 50C can be taken as DLC rate and in the case of the assessee sale value declared in the sale deed is much more than DLC rates. As per our considered view, the deeming provision of Section 50C cannot be extended beyond the four corner of the law for which it is meant. Under Section 50C, the Fair Market Value which is in the form of DLC is to be adopted if the sale consideration is lower than DLC Rate. The letter issued by the Director General, Registration & Stamps for levying stamp duty at 1.5 time of DLC Rate in case the sale is affected to a company does not override the provisions of Section 50C. This letter is only meant for collecting higher stamp duty in case of sale to a company, firm or institution. In the instant case, the sale consideration declared by the assessee was more than DLC rate,

therefore, the AO was not justified in substituting the DLC rate by taking 1.5 of the sale consideration of the land so sold by the assessee. Section 50C was introduced in the Income-tax Act, 1961 by the Finance Act, 2002 with effect from 1-4-2003 for substituting valuation done for Stamp Valuation purposes as full value of consideration in place of apparent consideration shown by the transferor of capital asset, being land or building. Earlier there used to be a provision in Section 52 of the Income-tax Act, 1961 which enabled the Assessing Officer to refer the property under transfer to the Valuation. Officer for determining market value. However, in K.P. Varghese v. ITO (1981) 131 ITR 597 (Supreme Court), it was held that Section 52(2) cannot be applied to genuine transaction unless there are evidences to show that consideration declared in the sale deed is understated. In other words unless the Revenue was able to show that something over and above the sale consideration had passed hands between the transferee and the transferor, Section 52(2) could not be invoked. It became almost a herculean task for the Assessing Officer to collect evidence to show the exchange of additional money for consideration was other than apparent sale consideration. Accordingly, it was considered to insert a deeming provision by way of Section 50C for substituting apparent sale consideration by valuation done by SVA subject to certain conditions., calculating capital gains under Section 48. For the purpose of levy of stamp duty, local committee prescribes circle rate or DLC rate. The DLC rates are considered as indicative of fair market value of the property. The real spirit behind the insertion of deeming section 50C to apply a common value for all the property situated in that particular area. Sometimes the State Governments prescribes certain formula based on DLC rates to levy more stamp duty. In the case of the assessee the land was sold to a company

and according to the circular F7(39) JAN/2013/Part-1/2845-3385 dated 14.07.2014 the valuation of the agricultural land would be 1.5 time of normal value in case the purchaser is a company, firm or institution. The multiplication by 1.5 time of normal rate has been prescribed by State Govt. for the purpose of levy of more stamp duty from Company/Firms/or Institution who buys the land. This Circular is no way going to affect the fair market value of land i.e. DLC The DLC rate prescribed for the land was Rs. 44,35,410/- per bigha accordingly the normal value of the land as per the DLC rate comes to Rs. 3,66,36,487/-. The sale value declared by the assessee was Rs. 4,92,00,000/- which comes to Rs. 59,56,416/- per bigha. The sale value declared by the assessee was more than the DLC rate which is indicative of fair market value prevailing in that area. The fair market value cannot vary according to the status of the buyer person. If buyer is an individual then the fair market value would be Rs. 3,66,36,487/- and if the buyer is a company or firm or institution then the fair market value of the property would be 1.5 time of the normal value, this cannot be intention of Section 50C which require substitution of fair market value i.e. DLC in place of sale consideration mentioned in the sale deed, if it is found to be lower than DLC. Furthermore, the stamp duty authority levied the stamp duty arbitrary by assessing the value @ 1.5 time of value declared in the sale deed valued for stamp duty purpose at Rs. 7,38,00,000/- for stamp duty purpose as against 1.5 time of normal DLC. Furthermore as per provisions of Income Tax Act if the AO does not agree with the explanation of the assessee with regard to consideration disclosed by him then he should refer the matter to DVO for getting its market rate estimated as on date of the sale. In case AO is not satisfied with the explanation of the assessee, he 'should' refer the matter to the DVO for the valuation purpose. Thus as per provisions

of this section if the assessee raise any sort of objection regarding the value adopted by the registrar authority and if the AO is not satisfied on that then the AO should refer the matter to DVO. This is a legal requirement which must be complied with by the AO.

2.10 In view of above discussions, it is undisputed fact that assessee had declared sale consideration more than DLC, accordingly there is no justification for making any addition u/s 50C of the Act. We direct accordingly.

3.0 In the result, the appeal of the assessee is allowed in terms indicated hereinabove”

21. As the issue under consideration is same as has been decided by the Tribunal in favour of the assessee in the case of joint owner of the land, therefore, respectfully following the order of the Tribunal, we do not find any merit in the order passed by the Id. CIT(A) U/s 263 of the Act.

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

Order pronounced in the open court on 09th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 09/09/2020
*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Satish Kumar Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- The PrCIT-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 280/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar