

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No.2817/Mum/2023 for Assessment Year : 2016-17

Rajpal Mehra (HUF), 528 Jambulwadi Corner, Kalbadevi Road, Kalbadevi, Mumbai 400 002. PAN : AAJHR2907J	Vs.	ACIT Circle 25(3), Mumbai.
(Appellant)		(Respondent)

Appellant By : Shri Hitesh Shah, CA
Respondent By : Shri Suni Mathews (Sr. AR)

Date of Hearing : 06.12.2023	Date of Pronouncement: 17.01.2024
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ORDER

Per Justice (Retd.) C V Bhadang :

Whether "safe harbour limit of 5%" as introduced by 3rd proviso to sub section (1) of section 50C of the Income Tax Act, 1961 (Act, for short) is retrospective in operation, being curative of the 'unintended consequence', is the question, which falls for determination in this appeal.

2. This is an appeal by the assessee challenging the order dated 01.08.2023 passed by the learned CIT(A), which in turn arises out of the order dated 05.11.2018, passed by the Assessing Officer in respect of A.Y. 2016-17.

3. The appellant – assessee is engaged in the business of property management. The appellant e-filed his Return of Income (RoI) on 05.08.2016 declaring a total income of Rs 7,61,85,600/- The case was selected for scrutiny under CASS. On the basis of the information available it was found that the appellant had sold immovable property located at Vikhroli, Mumbai, for a consideration of Rs 90 crores of which the valuation as per ready reckoner rates was Rs.91,05,55,000/-. In such circumstances the learned Assessing Officer by invoking the provisions of section 50C of the Income Tax Act, ('Act' for short) added back the difference of the sale consideration and the market value [as per the ready reckoner rates] to the tune of Rs 1,05,55,000/- and same was brought to tax as per the order passed u/s. 143(3) of the said Act on 05.11.2018.

4. The appellant feeling aggrieved carried the matter in appeal before the learned CIT(A). The learned CIT(A) although has noticed the proviso to section 50C [as introduced w.e.f. 01.04.2019] has refused to give benefit of the same on the ground that the said proviso introduced by Finance Act, 2018 applied from A.Y. 2019-20 onwards. In short, the learned CIT(A) has found that the benefit of the proviso allowing variance to the extent of 5% cannot be applied to A.Y. 2016-17. In that view of the matter, the appeal came to be dismissed which order is subject matter of challenge before us.

5. We have heard the learned counsel for the appellant and the learned CIT-DR. With their assistance we have gone through the record.

6. The learned counsel for the appellant has urged that the benefit of the proviso as introduced from the year 2019 needs to be extended to A.Y. 2016-17 also in as much as the operation of the proviso would be

retrospective in nature. Reliance in this regard is placed on the decision of a co-ordinate Bench of this Tribunal at Mumbai in Maria Fernandes Cheryl, ITA No. 4850/Mum/2019 for A.Y. 2011-12, decided on 15.01.2021. It is submitted that the variance in this case is less than 5% and the benefit of the proviso needs to be extended to the appellant.

7. The learned CIT-DR has submitted that the proviso has been introduced subsequent to the assessment year to which the present appeal pertains to and the CIT(A) has rightly found that the benefit of the proviso cannot be given in respect of A.Y. 2016-17.

8. We have considered the rival circumstances and the submissions made. As noticed earlier the subject property has been said to be sold for a consideration of Rs.90 crores , wherein the ready reckoner price is shown to be Rs. 91,05,55,000/-. Thus, the difference is to the tune of Rs. 1,05,55,000 which is less than 5% of the consideration received.

9. Section 50C which is relevant for the purpose and which has been introduced w.e.f. 01.04.2003 reads thus:

"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 (herein after 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 purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer

Proviso inserted w.e.f. 2019 reads as under:-

"Provided also that where the value adopted or assessed or assessable by stamp valuation authority does not exceed one hundred and five percent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the

purpose of section 48, be deemed to be the full value of the consideration."

10. It may be mentioned that from 1st April 2021, the words "one hundred and five percent of the consideration" have been substituted by "*one hundred and ten percent of the consideration*".

11. Be that as it may, the question is whether the benefit of the proviso as aforesaid can be extended in this case. As noticed earlier the issue is no longer *res integra* as it is covered by the decision of a co-ordinate Bench, at Mumbai in Maria Fernandes Cheryl (supra). That was a case pertaining to A.Y. 2011-12 and the difference between the sale consideration and the value adopted for the purpose of stamp duty therein was 6.55% which prompted the Assessing Office to make an addition. In that case reliance was placed on the further amendment of the proviso by Finance Act, 2020 enhancing "safe harbour limit" from 5% to 10%. It was contended on behalf of the assessee that the amendment would be retrospective in nature, which submission was controverted on behalf of the Revenue, placing reliance on the explanatory note to Finance Act, 2020 stating that the amendment will take effect from 01.04.2021 and shall accordingly apply in relation to A.Y. 2021-22 and subsequent assessment years.

12. A co-ordinate Bench of this Tribunal while negating the contention on behalf of the Revenue, found that the amendment was essentially brought about to cure "unintended consequences" of section 50(1) even in a bonafide situation, as sub section (1) of section 50 was essentially an anti-avoidance provision. While holding so the Bench had noted Circular 8 of 2018 by the Central Board of Direct Taxes (CBDT) viz. explanatory notes to the Finance Act 2018, which intended the rationalization of

section 43CA, section 50C and section 56 of the said Act. The relevant portion of Circular 8 of 2018 reads thus:

"16.1 Before amendment by the Act, for computing income from business profits (section 43CA), capital gains (section 50C) and other sources (section 56) arising out of transactions in immovable property, the higher of sale consideration or stamp duty value was adopted. The difference was taxed as income both in the hands of the purchaser and the seller.

16.2 It has been pointed out that the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location.

16.3 In order to minimize hardship in case of genuine transactions in the real estate sector, section 43CA, section 50C and section 56 of the Income-tax Act have been amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five per cent of the sale consideration."

13. It can thus be seen that the CBDT had acknowledged that there can be genuine cases, where there would be a variance between the "stamp duty value" and the "actual consideration received" in respect of similar properties depending upon variety of factors". It can be seen that such variance indeed occurs on the basis of location, dimension, access and other facilities which a particular property may enjoy. It is necessary to note that the stamp duty value or the ready reckoner value is essentially an estimate. Section 50C(1) is an anti-avoidance provision to prevent evasion of tax by showing lesser consideration in the transactions. However, after acknowledging the fact of variance between the stamp duty value and the actual consideration, the proviso was initially introduced by Finance Act 2018 from A.Y. 2019-20, introducing the "safe harbour limit" of 5%, which has been enhanced to 10% by Finance Act

2020. A co-ordinate Bench of the Tribunal has held that the subsequent amendment by Finance Act, 2020 would apply retrospectively. It is trite that the same principle would apply even in respect of the initial introduction of the proviso by Finance Act, 2018.

14. It is necessary to emphasize that this Tribunal after holding that it was a curative amendment has held that it was retrospective in operation. While doing so this Tribunal has placed reliance on its earlier decision of Agra Bench in Rajeev Kumar Agarwal vs. ACIT (2014) 45 taxmann.com 555 (Agra), wherein it was held as under:

"Now that the legislature has been compassionate enough to care these shortcomings of provision, and thus obviate the unintended hardships, such as amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was intended."

The co-ordinate Bench in the case of Maria Fernandes Cheryl has noticed that the aforesaid observations have been noted with approval by the Hon'ble Delhi High Court in CIT vs. Ansal Landmark Township Pvt Ltd. (2015) 61 taxmann.com 45 (Del). The Bench has also referred to yet another decision of this Tribunal in Dharmashibhai Sonani Vs. ACIT (2016) 161 ITD 627 (Ahd), which has been approved by the Hon'ble Madras High Court in CIT vs. Vummudi Amarendran 92020) 429 ITR 97 (Mad). We have no reason to take a different view and we respectfully concur with the view expressed by the co-ordinate Bench of this Tribunal as aforesaid.

15. In that view of the matter the appellant-assessee would be entitled to the benefit of section 50C of the Act. Consequently, the appeal succeeds. The impugned addition stands set aside.

Order pronounced in the open court on 17th January, 2024.

Sd/-

[B R Baskaran]
ACCOUNTANT MEMBER

Mumbai, Dated : 17th January, 2024.
SA

Sd/-

[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai