IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH: VISAKHAPATNAM

BEFORE: SRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SRI B.R. BASKARAN, ACCOUNTANT MEMBER

I.T.A. No.12/Vizag/2009
Assessment Year : 2006-07

M/s. Lahiri Promoters Visakhapatnam	**Vs.**	**ACIT, Circle-1(1) Visakhapatnam**
(Appellant) PAN No.AACFL 5725D		(Respondent)

Appellant By : **Shri G.V.N. Hari, CA**
Respondent By : **Shri G.S.S. Gopinath, DR**

O R D E R

Per Shri B.R. BASKARAN, Accountant Member:

The appeal of the assessee is directed against the order dated 31.10.2008 passed by Ld CIT(A)-I, Visakhapatnam and it relates to the assessment year 2006-07.

2. The grounds raised by the assessee give rise to a single issue viz., Whether the Ld CIT(A) is right in law, in the facts and circumstances of the case, in confirming the addition of Rs.15,54,000/- made by the AO by invoking the provisions of section 50C of the Act.

3. The facts relating to the issue are stated in brief. The assessee, a partnership firm, filed its return of income for asst. year 2006-07 declaring the income under the head Capital Gains at Rs.28,767,565/-, which are related to the gains obtained on sale of three immovable properties. In respect of two properties, the market value of properties for the purposes of stamp duty

valuation was shown at Rs.36,98,500/- and Rs.38,56,500/- respectively. However the apparent sale consideration of the said two properties was shown at Rs.29,31,000/- and Rs.30,70,000/- respectively. Thus there was an aggregate difference of Rs.15,54,000/- between the apparent sale consideration and the market value determined for the purposes of collecting stamp duty. The assessee had computed the capital gains on the basis of apparent consideration. However, the AO, by invoking the provisions of section 50C, added the above said difference to the income disclosed by the assessee. The said addition was confirmed by Ld CIT(A). Hence the assessee is in appeal before us.

4. The assessee herein, by way of two sale agreements entered on 27.03.2003, agreed for the sale of the impugned properties for Rs.29,31,000/- and Rs.30,70,000/- respectively. At the time of entering into the agreements, the assessee had received advance of Rs.11,000/- and Rs.12,00,000/- from the vendees, being two brothers named V.Jayakanth and V.V.Kameswara Rao. Shri V.V.Kameswara Rao left India for further studies in 2002 and returned back to India in May, 2005 after the demise of his brother Shri V.Jayakanth, another vendee who expired on 20.5.2005. During the stay of V.V.Kameswara Rao in India, the impugned properties were registered in his favour by the assessee firm. According to the assessee, the delay between the dates of agreement and the sale deed was for reasons beyond the control of the assessee. According to Ld AR, both the vendees were regular Income tax assessees and the advance payments made as per Sale agreements were duly declared in their respective return of income.

5. The Ld AR has moved a petition for admission of an additional evidence consisting of a certificate obtained from the Joint Sub Registrar, Visakhapatnam who has certified that the market value of the impugned property as on 26.3.2003 as Rs.5,000/- per Sq. yard. The date 26.3.2003 is the date of sale agreement. By placing reliance on the said additional evidence, Ld AR contended that the sale value shown in the two sale agreements are well within

the market value prescribed for the stamp duty purposes as on the date on which the sale agreements were entered into. The Ld AR invited our attention to the decision of Hon'ble Supreme Court in the case of K.P. Varghese Vs. ITO (1981) (131 ITR 597) wherein the Hon'ble Supreme Court has held that the provisions of the Act should be interpreted keeping in mind the mischief sought to be rectified by the amendment and accordingly further held that bona fide transactions should be kept out of the provisions of then existing section 52. Section 52 that stood at the relevant point of time provided for adoption of fair market value on certain occasions for the purpose of computation of capital gain. He also invited our attention to the decision of the Hon'ble Madras High Court in the case of K.R. Palani Swamy Vs Union of India and others (2008) (306 ITR 61), wherein the Madras High Court has stated that the object of introduction of Sec 50C was to prevent large scale under valuation of the real value of the property in the sale deed so as to defraud revenue. Accordingly, Ld AR submitted that the section 52 which existed earlier and section 50C which has been introduced now has similar objectives. Thus by placing reliance on the decision of Hon'ble Apex court, Ld AR contended that in the instant case, the transaction being bona fide one and further since there was no intention to defraud revenue, the provisions of Sec 50C should not be made applicable to the impugned transaction of the transfer of house property as on the date of registration of the sale deed, but may be applied on the date of entering into the sale agreement.

6. On the contrary, Ld DR submitted that as per the provisions of section 50C, the AO has to make a comparison between the apparent consideration and the value adopted or assessed for stamp duty purposes. Ld DR further submitted that there is no reference in the sale deed, of the details of advance payments made by the vendees. Accordingly Ld DR contended that the provisions of section 50C, being a legal fiction created by the statute, is applicable to the impugned transactions and accordingly prayed for the confirmation of the orders passed by the tax authorities.

7. In the rejoinder, Ld AR submitted that the details of payment of advance have been declared by the vendees in the return of income filed by them and in that regard, he invited our attention to the copies of the return of income compiled in the paper book.

8. We have heard the rival contentions and carefully perused the record. The issue agitated before us revolves around section 50C of the Act. For the sake of convenience, we extract the section 50C(1) below:

> "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."

This section provides for adoption of value assessed/determined by the Stamp valuation authority for the purpose of payment of stamp duty (hereinafter "stamp duty value"), if the sale consideration disclosed in the sale deed is less than the stamp duty value. Section 50C was inserted by the Finance act 2002 w.e.f. 1.4.2003.

9. In the instant case, there is no dispute that the assessee herein entered into a separate sale agreement with the two vendees respectively on 27.3.2003. The assessee has cited certain reasons for not executing the sale deed immediately which were not found to be false. Thereafter, the sale deeds were executed on 30.6.2005 by complying with the terms of the sale agreement. Hence the sale deed was executed for the consideration as agreed between the parties as per the sale agreement. If we apply the provisions of section 50C literally, the tax authorities are right in adopting the value assessed by the stamp authority for the purposes of computation of capital gains. However, Ld AR has

heavily placed reliance on the decision of Hon'ble Supreme Court in the case of K.P.Verghese Vs. ITO, referred supra, with regard to the proper interpretation of section 50C in the facts and circumstances of the case.

10. The Hon'ble Supreme Court in the case of Shri K.P. Varghese Vs. ITO Supra has observed that while interpreting a provision, strictly literal reading of Section should not be adopted if it leads to manifestly unreasonable and absurd consequences. However attempt should be made to discover the intent of the legislature from the language used by it. The Hon'ble Apex Court rendered the said decision in the context of then existing Sec 52(2) of the Act, which provided that where a capital asset is transferred and if in the opinion of the ITO, the fair market value of that asset exceeds the full value of the consideration declared by the assessee by an amount of not less than 15% of the value so declared, then the full value of the consideration shall be taken to be its fair market value on the date of its transfer. The revenue took the stand that in order to invoke the provisions of section 52(2), it is enough if it is shown that the fair market value exceeded the disclosed value by 15%. However, the Hon'ble Supreme Court held that a fair and reasonable construction of Sec 52(2) would be to read into it a condition that it would apply only where the consideration for the transfer is under- stated and hence it would have no application in the case of a bonafide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. For the sake of convenience, we extract below the relevant observations of the Hon'ble Apex Court on the rule of interpretation and the logical conclusion:

> "5. Now, on these provisions the question arises as to what is the true interpretation of s.52, sub-s.(2). The argument of the Revenue was, and this argument found favour with the majority judges of the Full Bench, that on a plain and natural construction of the language of s.52, sub-s.(2), the only condition for attracting the applicability of that provision was that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeded the full value of the consideration declared by

the assessee in respect of the transfer by an amount of not less than 15% of the value so declared. Once the ITO is satisfied that this condition exists, he can proceed to invoke the provision in s.52, sub-s.(2), and take the fair market value of the capital asset transferred by the assessee as on the date of the transfer as representing the full value of the consideration for the transfer of the capital asset and compute the capital gains on that basis. No more is necessary to be proved, contended the Revenue. To introduce any further condition such as under-statement of consideration in respect of the transfer would be to read into the statutory provision something which is not there; indeed, it would amount to re-writing the section. This argument was based on a strictly literal reading of s.52, sub-s. (2), but we do not think such a construction can be accepted. It ignores several vital considerations which must always be borne in mind when we are interpreting a statutory provision. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and, as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of judge Learned Hand when he said:

…it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary: but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning".

We must not adopt a strictly literal interpretation of s.52, sub-s. (2), but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which s.52, sub-s (2) appears, because, as pointed out by Judge Learned Hand in the most felicitous language:

"… the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

Keeping these observations in mind we may now approach the construction of s.52, sub-s. (2).

6. The primary objection against the literal construction of s.52, subs,(2), is that it leads to manifestly unreasonable and absurd consequences. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but it can certainly help to fix its meaning. It is a well recognized rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement – and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement – the market price shoots up with the result that the market price prevailing on the date of sale exceeds the agreed price, at which the property is sold, by more than 15% of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would find in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no under-statement of consideration in respect of the transfer and the transaction is perfectly honest and bonafide and, in fact, in fulfillment of a contractual obligation, the assessee, who has sold the property, should be liable to pay tax on capital gains which have not accrued or arisen to him? It would indeed be most harsh and inequitable to tax the assessee on income, which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carried out such a contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income, which has neither arisen to the assessee nor has been received by him. If we may take another illustration, let us consider a case where A sells his property to B with a stipulation that after some time which may be a couple of years or more, he shall re-sell property to A for the same price. Could it be contended in such a case that when B transfers the

> property to A for the same price at which he originally purchased it, he should be liable to pay tax on the basis as if he has received the market value of the property as on the date of re-sale, if, in the meanwhile, the market price has shot up and exceeds the agreed price by more than 15%. Many other similar situations can be contemplated where it would be absurd and unreasonable to apply s.52, sub-s (2), according to its strict literal construction. We must, therefore, eschew literalness in the interpretation of s.52, sub-s (2), and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction; Vide Luke vs. IRC (1963) AC 557 : (964) 54 ITR 692(HL). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well recognized rule of interpretation, a fair and reasonable construction of s.52, sub-s (2), would be to read into it a condition that it would apply only where the consideration for the transfer is understated or, in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in the case of a bonafide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. There are several important considerations which incline us to accept this construction of s.52, sub-s.(2)."

The Hon'ble Supreme Court also observed that while interpreting a section it would be legitimate to consider what was the mischief and defect, which was sought to be remedied by an enactment. In that connection the speech made by the Finance Minister while moving the amendment is extremely relevant as it throws a considerable light on the objectives and purpose of enactment. However, as pointed out by Ld AR the purpose of introduction of Sec 50C was not mentioned by the Finance Minister at the time of moving amendment. It was also not explained in the Notes on clauses and Explanatory Memorandum attached to

the relevant Finance Bill. However, the Hon'ble Madras High Court in the case of K.R. Palani Swamy and others Supra, while upholding the constitutional validity of Sec 50C, had an occasion to spell out the objective of introducing Sec 50C. The relevant observations are extracted below:

> "17. Let us consider the legislative competence of the Parliament in inserting the provision s.50C in the IT Act. **It is obvious from the reading of the above provision and rather it is not disputed that the same is inserted to prevent large scale under valuation of the real value of the property in the sale deed so as to defraud Revenue** the Government legitimately entitled to by pumping in black money. The impugned provision has been incorporated **to check such evasion of tax** by undervaluing the real properties.
> .....
> Tax could be evaded by breaking the law or could be avoided in terms of the law. When there is a factual avoidance of tax in terms of law, the legislature steps into amend the IT law to catch such an income within the net of taxation."

Hence the object of introduction of section 50C is to prevent under valuation of the real value of the property in the sale deed to avoid payment of tax or duty which the Government is entitled to, which, in our opinion, is akin to the objective of introduction of section 52, which was existing earlier.

11. In the case of K.P. Varghese, supra the Hon'ble Apex Court contemplated a situation, by way of an example, where the completion of sale took place after a couple of years after the date of agreement. In this connection it is pertinent to extract the relevant observations of the Hon'ble Supreme Court, at the cost of repetition, as the said example contemplated by the Hon'ble Apex Court is squarely applicable to the facts of the present case.

> "There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement – and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement – the market price shoots up with the

result that the market price prevailing on the date of sale exceeds the agreed price, at which the property is sold, by more than 15% of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would fine in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. **Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no under-statement of consideration in respect of the transfer and the transaction is perfectly honest and bonafide and, in fact, in fulfillment of a contractual obligation, the assessee, who has sold the property, should be liable to pay tax on capital gains which have not accrued or arisen to him? It would indeed be most harsh and inequitable to tax the assessee on income, which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carried out such a contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income, which has neither arisen to the assessee nor has been received by him."**

11.2 The Hon'ble Apex court in the case of K.P.Verghese, supra has held that the provisions of section 52(2) that was existing at the relevant point of time was not applicable to a honest and bona fide transaction where the consideration received by the assessee was correctly declared or disclosed by him and there was no concealment or suppression of the consideration. The Hon'ble Supreme Court, after considering the speech of the Finance Minister, has understood that the object of introduction of section 52(2) was to curtail those transactions of sale of property, where the actual consideration received was understated in the sale deed. However, though the object of introduction of section 50C was not mentioned in the relevant Finance bill or in the speech of the Finance minister, yet, the Hon'ble Madras High Court in the case of K.R. Palani Swamy and others, Supra has stated that the provision of Sec 50C was inserted in the income-tax act

to prevent large scale under valuation of real value of property in the sale deed, so as to defraud revenue which the government is legitimately entitled to, by pumping in black money. Thus we can see that the purpose of introduction of section 52(2) earlier and section 50C w.e.f. 1.4.2003 are for the purpose of achieving similar objectives.

11.3 In the instant case also, the assessee herein has fulfilled a contractual obligation on 30-6- 2005, which the assessee is bound by law to carry out as per the sale agreement entered in March, 2003. Now the next question that requires to be addressed is whether there was any under statement of actual consideration at the time when the sale agreements were entered into. The assessee has placed a copy of the certificate dated 16.4.2010 issued by the Jt. Sub Registrar, Visakhapatnam by way of additional evidence. According to the said certificate, the market value of the impugned property located at Allipuram Ward was Rs.5000/- as on 26.3.2003. According to Ld AR, the sale value agreed to by the parties, as per the sale agreement entered into on 27-03- 2003 was more than the market value fixed by the Jt. Sub Registrar at the time the sale agreement was entered into. Thus according to Ld AR, there is no understatement or suppression of actual consideration. It is also not the case of revenue that there was any understatement of actual consideration.

12. Thus, by executing the sale deed in June, 2005, the assessee has only completed the contractual obligation imposed upon it by virtue of the sale agreement. Since the process of sale has been initiated from the date of sale agreements, in our opinion, the character of the transaction vis-à-vis Income tax Act should be determined on the basis of the conditions that prevailed on the date the transaction was initially entered into. Accordingly, the applicability of the provisions of section 50C should be looked at only on the date of sale agreement. The assessee has filed a certificate obtained from the Joint Sub Registrar, Visakhapatnam, regarding market value of the impugned property as on the date of the sale agreements. The said certificate was not produced

before the tax authorities. We have already held that the provisions of section 50C should be applied to the impugned sale transactions as on the date on which sale agreements were entered into. Since the applicability of section 50C as on the date of sale agreements is required to be examined by the AO, we set aside the issue to the file of the AO with a direction to compute the capital gains on sale of impugned properties after applying the provisions of section 50C as on the date of sale agreements. Accordingly, the order of Ld CIT(A) is reversed.

13. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced accordingly on 22nd June, 2010.

Sd/-	Sd/-
(SUNIL KUMAR YADAV)	(B.R. BASKARAN)
Judicial Member	Accountant Member

Pvv/SPS
Visakhapatnam
Date: 22-06-2010

A copy of this order is forwarded to:

01 M/s. Lahiri Promoters, D.No.47-15-4, Dwarakanagar, Visakhapatnam
02 ACIT, Circle-1(1), Visakhapatnam
03 The CIT, Visakhapatnam
04 The CIT (A)-I, Visakhapatnam
05 The DR, ITAT, Visakhapatnam
06 Guard file.

By order

Senior Private Secretary
ITAT, Visakhapatnam Bench