

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

समक्ष श्री जी.डी.अग्रवाल, उपाध्यक्ष एवं श्री कुल भारत, न्यायिक सदस्य ।
BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT (AZ) And
SHRI KUL BHARAT, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2404/Ahd/2011
(निर्धारण वर्ष / Assessment Year : 2008-09)

Shri Nikunj Kumar H. Jariwala Prop. of Harihar Textiles 3/2246-A, Salabatpura Balabhai-ni-Sheri Surat - 395 003	बनाम/ Vs.	The ITO Ward-1(4) Surat
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQPJ 6781 R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Divyakant Parikh, AR
प्रत्यर्थी की ओर से / Respondent by :	Shri M.K. Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	17/03/2015
घोषणा की तारीख / Date of Pronouncement	19/03/2015

आदेश / ORDER

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-I, Surat ('CIT(A)' in short) dated 28/06/2011 pertaining to Assessment Year (AY) 2008-09.

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2. At the outset, during the course of hearing, the assessee has restricted the arguments only on the additional ground. Additional ground raised by the assessee reads as under:-

“Appellant craves leave to raise this additional ground of appeal before the Hon’ble ITAT as attached herewith.

This ground is to refer the matter to DVO as against the adoption of stamp duty valuation u/s.50C by the appellant before the ld.AO in its letter dated 10/12/2010 (AO page 3 para 6). Thus the facts about such request made to the AO is on record.

On identical facts in the case of another joint holder (seller of said property alongwith appellant) namely Shri Nilesh Kumar H.Jariwala, the valuation is referred to the DVO and the DVO has arrived at fair market value as per copy attached.

The ground has remained to be taken in the Memo of appeal inadvertently but is a legally allowable claim and is raised as such being mandatory in law once the objection taken in terms of sec.50C(2) and in the best interest of justice.

The Honble ITAT be pleased to admit the same since as per the judgement of Rajasthan High Court in the case of Shilpa Associates (263 ITR 317), it can be raised before the Hon’ble ITAT.”

3. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s.143(3) of the Income Tax Act,1961 (hereinafter referred to as “the Act”) was framed vide order dated 14/12/2010, thereby the Assessing Officer (AO in short) computed the Long Term Capital Gain (LTCG) amounting to Rs.9,76,210/- as against the Long Term Capital Loss (LTCL) amounting to Rs.1,83,713/-.

Against this, the assessee filed an appeal before the Id.CIT(A), who after considering the submissions, dismissed the appeal. Aggrieved by the order of the Id.CIT(A), the assessee is in appeal before us.

4. The Id.counsel for the assessee pointed out that in view of the provisions of section 50C(2) of the Act, the AO should have referred to the DVO for arriving at a fair market value of the property. He submitted that in the case of another joint-holder of the property; namely, Shri Nilesh Kumar H.Jariwala, the valuation was referred to the DVO and the DVO has arrived at a fair market value. He submitted that on the basis of the fair market value, as assessed by DVO, the AO ought to have computed the capital gain accordingly.

4.1. On the contrary, the Id.Sr.DR has supported the order of the authorities below.

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that in the instant case, the AO has made addition on the basis of the difference in the value of the property declared by the assessee as sale consideration and adopted by the stamp valuation authority. The contention of the Id.counsel for the assessee is that in terms of the provisions of section 50C(1) of the Act, where the AO finds that the

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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 (or assessable) by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed (or assessable) 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. The Id.counsel for the assessee submitted that the AO adopted the full value of the consideration as adopted by the “stamp valuation authority”. However, the AO failed to take note of the mandate of sub-section(2) of Section 50C of the Act. At this juncture, it would be appropriate to reproduce hereunder the section 50C(2) of the Act for the better appreciation of the submission of Id.counsel for the assessee.

“Section 50C(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 or assessable] 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 or assessable] 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. : [1] 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).

[**Explanation 2** : For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]”

5.1. The Id.counsel for the assessee has drawn our attention towards para-6 of the assessment order in support of the contention that before the AO a request was made to refer the case to DVO for seeking his report on the fair market value of the property. Para-6 of the assessment order is reproduced hereinbelow:-

“6. The reply of the assessee dated 10.12.2010 is reproduced as under:-

“We just come to know that one open land in the same locality was sold at 5,000/- per sq.mt. Before one year ago, we are in the opinion that what we got amount @ 10,000/- per sq.mt. is true & fair market value.

Secondly, we are of the opinion to refer the case to the D.V.O., Surat to justify the case.

There are cases of judgement of :

- *New Kalindi Kamavati Co-Op. Housing Society Ltd. Vs. State of Gujarat & Ors. 2006(2) Guj.L.R.Vol.XL VII(2).*
- *Dineshkumar Mittal Vs. ITO 193 ITR 770 (All.)*
- *Hindustan Motors Ltd. Vs. Members Appropriate Authority (2001) 249 ITR 424 (Mad.)*
- *K.R. Palanisamy Vs. UOI 306 ITR 61 (Mad.).*

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In which the juntry value is a guideline & not instrument to lay down on the assessee”.

5.2. Therefore, in view of the provisions of section 50C(2) of the Act, we are of the considered view that the AO was not justified in adopting the value of the property as adopted by the “stamp valuation authority” without referring to the DVO for ascertaining the fair market value of the property. Therefore, the orders of the authorities below on this issue are hereby set aside and the additional ground raised by the assessee is restored back to the file of AO to decide the same in accordance with law. Needless to say that the AO would afford reasonable opportunity of being heard to the assessee before passing the order. Thus, additional ground raised by the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on Thursday, the 19th day of March, 2015 at Ahmedabad.

Sd/-
(जी.डी.अग्रवाल)
उपाध्यक्ष
(G.D. AGARWAL)
VICE PRESIDENT (AZ)

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad; Dated 19/ 03 /2015
टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Surat
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad