

IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

I.T.A No. 97/Agra/2015
(ASSESSMENT YEAR-2007-08)

Anuj Kumar Goswami, Govind Ghera, Vrindaban. PAN No.BALPG5787J (Assessee)	Vs.	ITO, 3(1), Mathura. (Revenue)
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Assessee by	Shri Navin Gargh, AR.
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	07.02.2018
Date of Pronouncement	13.04.2018

ORDER

This is assessee's appeal for assessment year 2007-08, taking the following grounds:

- “1. Because, the Ld. Assessing Officer has wrongly and illegally calculated the long term capital gain u/s. 50C. But he has not followed the provision of section 50C.*
- 2. Because, the Ld. CIT (Appeal)-1 has wrongly and illegally confirmed the order of the Assessing Officer's. The Ld. CIT (A) has not applicable the facts of the case and the legal position.*
- 3. Because, the assessee has hold a very old property for Rs. 12 lac to the tenent who was living in this property*

more than fifty years. But the value of estimated 42,83,000/- by the registrar for the stamp purposes. The Assessing Officer has referred the case to the valuation officer but the valuation officer has not given the report. In absence of report of the Valuation Officer the value for the stamp purposes cannot be taken.

4. *Because, other nuisance of Vrindaban were forcing the assessee to sale the property at very nominal price, the assessee has denied them and due to his denial they have kidnapped the assessee and make signed an agreement forcefully in their favour. After releasing him the assessee discussed with the tenant and sold the property for Rs. 12 lac to him.*
5. *Because under the peculiar circumstances the value taken by the assessing officer is highly excessive.”*

2. The following additional grounds have also been taken:

- “7.1 *Because in any view, the Assessment framed u/s 148/143(3) of the I.T. Act by recourse to proceedings u/s 147 is wrong, illegal and bad in law, and are liable to be quashed/annulled.*
- 7.2 *Because in any view, the proceedings initiated u/s 147 by issue of notice u/s 148 in the peculiar facts and law taking recourse to section 50C of the IT Act is wrong, illegal and bad in law.”*

3. The additional grounds and ground no. 4 are not pressed. Rejected as not pressed.

4. The facts of the case are that on the basis of information received in the office of the AO, during the financial year 2006-07, the assessee has sold a residential property measuring 913.93 sq.mt., having stamp value of Rs.42,83,000/- to Shri Yogendra Kumar Agarwal for a consideration of Rs. 12,00,000/-. A notice under section 148 of the Act was issued to the assessee on 12.12.2011. After recording the reasons for belief of escapement of taxable income, the issue in detail and taking into account the assessee's explanation in this regard, the AO assessed long-term capital gain of Rs.32,86,722/- on sale of the aforesaid residential property. The assessment was, accordingly, completed by him at a total income of Rs.33,31,720/- as against the returned income of Rs.2,48,720/-, which the assessee had declared in his return of income filed in response to the notice under section 148 of the Act.

5. The ld. CIT(A) confirmed the assessment order and dismissed the assessee's appeal, observing as follows:

“5. I have considered the submissions of the ld. AR and also perused the assessment records. After perusal of the assessment records, I find that the AO has referred the valuation of the property to the departmental valuation officer under section 50C(2) of the Act for

determining the Fair Market Value of the property in question. However the DVO vide letter dated 14.08.2012 has returned the matter back to the AO as the assessee could not submit the documents, details and information as required by the DVO for determining the market value of the property. Therefore, the AO vide order sheet entry dated 16.10.2012 asked the assessee to furnish evidences if any writ was filed in the court in respect of the property in question and any order of the court in respect thereof. In reply to the AO's above query, as noted in order sheet entry dated 18.10.2012, the assessee answered negative. Therefore, the appellant has failed to prove the reasons given by him that the rate of the property is less than the circle rate for the stamp duty valuation. Also, the registered valuer, whose report has been submitted by the assessee, has also not controverted the circle rate by any example or giving any finding which could have been based upon the reasons given by the appellant himself that the sale consideration was less than the value determined for stamp duty purposes. Therefore, considering the above facts, in my view the AO has rightly adopted the market value of the property as per the Stamp Duty valuation for working out the long term capital gain u/s 50C of the Act. Accordingly, the grounds taken by the appellant in appeal are dismissed."

6. As to the CIT(A)'s observation that the assessee did not furnish the information required by the DVO for determining the market value of the property sold and he also did not state before the AO that any Court case had been filed regarding the property, the Id. Counsel for the assessee has referred to APB 3-4, a copy of notice dated 19.04.2012 issued under section 50C of the IT Act by the DVO. Attention has been drawn to the last Para at APB 4, wherein, the DVO has stated that the property would be inspected 'later on', which, as per the Id. Counsel, was never done. Then, the Id. Counsel has referred to APB 5-38, i.e., the assessee's reply to the DVO in response to the aforesaid notice under section 50C. It has been pointed out that as per the last para on PB-6, the assessee filed copies of municipal tax receipt (PB-7), sale deed (PB-8-37) and rent receipt (PB-38) in the reply. Further, attention has been invited to PB 106/1 to 106/2, written submissions dated 06.02.2012 filed before the AO, wherein, as per Para 9 (PB-106/2), a copy of sale deed has been enclosed in the written submissions. PB 87-89 is a copy of the assessee's reply dated 16.10.2012 to the AO's notice dated 08.10.2012. It has, inter alia, been stated that the DVO never valued the property which was on rent for the last fifty years and could never be got vacated. The Id. Counsel has also referred to PB 1-2, written submissions dated 24.12.2014 filed before the Id. CIT(A).

7. Per contra, the Id. DR has placed strong reliance on the impugned order. The assessee's written submissions dated 30.07.2012 before the DVO (APB 41-86)

have been referred to and it has been submitted that therein, no encumbrance over the property stands mentioned. It has been contended that section 50C is specific and in the present case, the option available there-under has not been exercised by the assessee.

8. Heard. First off as per the two replies filed by the assessee before the DVO, it is evident that the assessee *did* file the information required by the DVO. It was stated that the assessee has sold 913.93 Sq. Mtr. land to the tenant on 15/03/2007. This Land was on rent @45/- per month with the said tenant/purchaser. The tenant had constructed the house on the land about fifty years earlier. The possession of the property was with the tenant from the beginning, i.e., about for more than 50 years. The assessee had wanted to sell the property for necessity, but due to the possession of the tenant, nobody was interested to purchase the property specially the construction had been made by the tenant and the tenant's family was living in property since long. Due to these peculiar circumstances, the assessee was bound to sell the property to the tenant. The assessee has sold it for Rs.12 lac.

9. The assessee filed copies of municipal receipt, sale deed containing the Circle rate and accompanied site plan, rent receipts and the report of the registered valuer. The DVO returned the reference, as according to him, the assessee did not co-operate. This objection of the DVO is not borne out from the aforesaid undisputed replies by the assessee before the DVO. So far as regards the CIT(A)'s

observation regarding the assessee not having filed any Court case concerning the property, that is not determinative of the matter. It remains undisputed that the property was on rent with the purchaser for more than fifty years on a meager rent of Rs.45 per month. In such a circumstance, obviously, vacation thereof was not possible and the assessee sold it to the tenant. Then, the adverse position through the tenancy on a meager rent was itself and encumbrance on the property, as also considered in 'CIT vs. Chandra Narain Chaudhri', 1989 UPTC 791 (PB 98/1-98/10). Under such an encumbrance, the property could not have attracted the same value as compared to that of the case of a vacant or unencumbered property. In 'CIT vs. Chandra Narain Chaudhri' (supra), it was also held that the Stamp Valuation Authority does not take into consideration the attributes of the property, such as encumbrance, for determining the fair market value in case, as in the present one, it is offered for sale and is purchased. He is required to value the property in accordance with the Circle rate. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as its occupation by tenant. This was not done by the DVO.

10. For the determination of the value u/s 50C, it is incumbent on the AO to make reference for valuation to the DVO and the DVO's valuation is to be

considered for the purposes of section 48. This, in the case at hand, has not come about, as discussed and so, recourse to section 50C(1) of the Act is not as per law.

11. Accordingly, as also requested by the assessee, the matter is remitted to the file of the AO to be decided afresh in accordance with law, in view of the provisions of the complete section 50C. For this purpose, on reference being made to him by the AO, the DVO shall take into consideration, inter alia, 'Shri Prafulla Kumar Bhowse vs. ITO', order (APB100/1-100/6) dated 18.11.2015, passed by the Kolkata Bench of the Tribunal, in ITA No.316/KOL/2015, for A.Y. 2007-08, cited by the assessee before me, apropos the application or otherwise of the rent capitalization method. Ordered accordingly.

12. In the result, the appeal is partly allowed.

Order pronounced in the open court on 13/04/2018.

Sd/-

(A.D. JAIN)
JUDICIAL MEMBER

Dated 13/04/2018

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR