

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SH. KUL BHARAT, JM & SH. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 11/JP/2016
निर्धारण वर्ष/ Assessment Year :2011-12

The Income-tax Officer, Ward 2(1), Ajmer	बनाम Vs.	Shri Raj Kumar Parashar, Versha Palace, Near Ram Bhawan, Shastri Nagar, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN No. – AJDPP4910A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by : Sh. Prithviraj Meena (Addl. CIT)
निर्धारिती की ओर से/ Assessee by : Sh. Hemang Gargieya (Adv)

सुनवाई की तारीख/ Date of Hearing : 06/09/2017
घोषणा की तारीख/ Date of Pronouncement :28/09/2017.

आदेश / ORDER

PER SH. VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A), Ajmer dated 19.10.2015 wherein the Revenue has taken the following grounds of appeal:

"1. *Deleting the addition of Rs. 70,00,800/- without appreciating the fact of the case that the AO has rightly taken the full value of consideration as per explicit provisions of section 50C of the Act and rightly allowed the benefit of deduction u/s 54F to the assessee to the extent he actual made investment in the new house.*

2. *Holding that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration."*

2. The facts of the case are that during the year under consideration, the assessee has sold a property situated at Khasra No. 8175, Thok Maliyan, Ajmer for a consideration of Rs. 24,60,000/-. Subsequently, the Sub-Registrar-1, Ajmer has adopted the value of the property at Rs. 96,03,000/-. Since the assessee has not disclosed the sale value adopted by the Sub-Registrar, the case was reopened by issuance of a notice u/s 148 dated 29.05.2013. During the course of assessment proceedings, the assessee submitted that it has invested the entire amount of the sale consideration amounting to Rs. 24,60,000/- in the capital gain account scheme for the purposes of purchasing a new house property, hence capital gains would be exempted u/s 54F and provisions of section 50C would not be applicable. However, the submissions of the assessee were not acceptable to the Assessing Officer. According to the Assessing officer, "the income which has been adopted by the stamp authorities is deemed to have been received. Section 50C has been specifically introduced with a view to prevent evasion of tax and under valuation of the transaction and it is in that context, section 45, section 48 and section 50 must be read. Therefore, the assessee was supposed to declare the correct sale consideration and according to the correct sale consideration, investment for deduction u/s 54F is to be made. The AO accordingly computed income under the head "capital gains" as under:

Sale Consideration as adopted by the stamping authorities (under section 50C)	96,03,000
Less:	
Indexed cost of Plot purchased in 1979 FY 1981-82: 20000*711/100	1,42,200

Balance	94,60,800
Deduction u/s 54F (to the extent of actual investment)	24,60,000
Income from Long Term Capital Gain	70,00,800

3. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) and it was submitted that the value adopted for stamp duty purposes is to be considered as full value of consideration for the limited purposes of computing the capital gains u/s 48. It was further submitted that provisions of section 50C are deeming provisions and artificial meaning of full value of the consideration has been given in section 50C for the purposes of capital gains u/s 48 and deeming fiction so created does not apply to other provisions of the Act including section 54F of the Act. It was submitted that for the purposes of section 54F, the full value of consideration means value at which the asset has actually been transferred and not notional value as defined u/s 50C of the Act. It was accordingly submitted that when the entire amount of sale consideration has been invested in the new house property, capital gains would be exempted u/s 54F and the provisions of section 50C would not be applicable.

4. The Id. CIT(A) referred to the definition of "net consideration" as defined in explanation to section 54F of the Act and also referred to the decision of the Co-ordinate Bench in case of Gyanchand Batra, Jaipur vs. Income Tax Officer, Jaipur (ITA No. 9/JP/2010) dated 13th August, 2010 and has held as under:

"The deeming provisions as mentioned in section 50C would not be applicable to section 54F. So far as the meaning of full value consideration is considered, deeming provision mentioned in section 50C is for specific asset and for the purpose of Sec. 48 of the I.T. Act, 1961. Therefore, respectfully following the decision of jurisdictional ITAT, it is held that the provisions of Sec. 50C(1) are

not applicable to Sec. 54F for the purpose of determining the meaning of full value of the consideration. Hence, it is held that the deduction in respect of 54F, admissible to the appellant has to be computed on the basis of full value of consideration specified in the sale deed. Accordingly, the AO is directed to compute and allow deduction u/s 54F to the appellant by adopting the sum of Rs. 24,60,000/- as full value of the consideration (as specified in the sale deed) received or accrued to the appellant."

5. During the course of hearing, the Id. AR submitted that while computing the deduction u/s 54F, it is only and only the actual sale consideration received or accrued to the appellant which has to be considered while computing LTCG and not the sale consideration adopted or assessed by the Registering Authority for the purposes of stamp valuation as deemed u/s 50C of the Act for the following reasons:

5.1 Firstly, Sec. 45(1) provides that "any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54F, 54G and 54H, x x x x". Further Sec. 45(2) provides for the computation of the profits or gains arising from such transfer in accordance with Sec. 48 and for that purpose, the FMV of the asset shall be deemed to be the full value of consideration received or accruing as a result of such transfer. Furthermore, Sec. 48 provides modes of computation received or accruing, the COA and/or improvement and transfer expenses etc. shall be reduced. However, because of Sec. 50C such full value of consideration shall be replaced by the deemed sale consideration.

Thus, there are two parts of computing LTCG firstly computing the LTCG for which sale consideration is defined separately i.e. u/s 45, 48 r/w 50C and secondly, after computing the net sale consideration when it comes to the

computation of the deduction part, a different set of provisions have been inserted in the statute which are not to be governed by the earlier part of the Chapter IV-E. There cannot be any Capital Gain Tax, in a case covered by the aforesaid exception.

5.2 Secondly, Sec. 50C specifically mentions that for the purpose of Sec. 48 the value adopted or assessed for the purpose of stamp duty shall be deemed to be the full value of consideration received or accruing as a result of transfer. Meaning thereby, the deeming fiction created u/s 50C, is limited only to the extent and for the purpose of Sec. 48 and this deeming fiction cannot be extended or interpreted as meant for the purpose of other provisions of the Act (including Sec. 54/54F). Interpreting the provisions otherwise, shall render Sec. 54F or other similar provisions for that reason, as otiose/nugatory, which is not the intention of the legislature.

5.3 Thirdly, on the other hand, the term "Net consideration" is separately and specifically defined for the purpose of Sec. 54F, in the Explanation below Sec. 54F, which means the full value of sale consideration received or accruing as a result of transfer of the capital asset as reduced by the expenditure incurred wholly and exclusively in connection with such transfer. Thus, as against the deemed consideration, it is the actually received or actually accrued sale consideration, the full value of which, has to be considered for the purpose of Sec. 54F. Actually received/accrued here means the actual amount of consideration as mentioned in the registered sale deed as held in CIT v/s Nilofar 1. Singh (2008) 14 DTR 108/309ITR 0233 (Del), relied upon Gyan Chand Batra (Infra).

5.4 This way, Sec. 50C appears to be a general provision, whereas Sec. 54F is a special provision and law is well settled that special provision has always to prevail over or to be given preference and priority as against a general provision as expressed in the legal maxim that "generalia specialibus non

derogant”, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn. at p. 205, thus: *“The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to effect only the other parts of the statute to which it may properly apply.”*

In view of the above legal position, the controversy involved has to be decided in the light of special provision contained u/s 54F and not u/s 50C of the Act. Moreover, Sec. 48 r/w/s 50C do not start with a non-obstante clause and therefore do not have any overriding effect over the other provisions of the Act including Sec. 45 and/or Sec. 54F of the Act.

5.5 It was further submitted that the above issue is directly covered by the consistent view being taken by this Hon’ble Bench of ITAT and by various other Hon’ble Courts and Tribunals, as submitted herein below:

In case of Gyan Chand Batra v/s ITO (2010) 133 TTJ 482 (JP), it was held as under:

“Capital gains – Exemption under s. 54F – Full Value of consideration vis-a-vis value adopted for stamp duty – Legislaure in its wisdom has referred to s. 48 in s. 50C for adopting the stamp duty value as fair market value – Hence, the deeming fiction as provided in s. 50C in respect of the words ‘full value of consideration’ is to be applied only to s. 48 – words ‘full value of consideration’ as mentioned in other provisions of the Act are not governed by the meaning of these words as mention in s. 50C – Hence, for ascertaining the full value of consideration as mentioned in different provisions except s. 48, consideration specified in sale deed has to be considered – Thus, meaning

of full value of consideration as referred to in Explanation to s. 54F(1) is not governed by the meaning of the words 'full value of consideration' as mentioned in s. 50C – In the instant case, the cost of new asset is not less than the net consideration – Thus, whole of the capital gain is not chargeable to tax even if the capital gain is computed by taking the value adopted by the stamp registration authority – Hence, the assessee is entitled for exemption under s. 54F."

In case of Nandlal Sharma v/s ITO (2015) 122 DTR 404 (JP), it was held as under:

"Capital gains – Exemption under s. 54 – Full value of consideration vis-a-vis value adopted for stamp duty – Sec. 50C is deeming fiction by which stamp duty value of the asset sold is to be substituted for actual consideration – This being purely a fiction, its scope is limited to s. 50C only and cannot be enlarged without a specific reference – Therefore, while computing exemption under s. 54, the actual sale consideration is to be taken into consideration and not the stamp duty valuation under s. 50C – CIT vs. Smt. Nilofar 1. Singh (2008) 14 DTR (Del) 108 : (2009) 221 CTR (Del) 277: (2009) 309 ITR 233 (Del) and Gyan Chand Batra v/s ITO (2010) 113 TTJ (JP) 482: (2010) 45 DTR (JP) (Trib) 41 followed."

The Id AR also relied upon the following decisions:

- Dhanveer Singh Gambhir vs ITO (2015) 68 SOT 0343 (Indore)
- Prakash Karnawat vs ITO (2012) 49 SOT 0160 (JP)
- In Raj Babbar vs ITO (2013) 56 SOT 0001 (Mum)

5.6 It was further submitted that similar occasion also arose in the context of Sec. 50 of the Act which provides that capital gain on the sale of depreciable assets has to be deemed as STCG. However, the Hon'ble Bombay HC in the case of CIT v/s Ace Builders (P) Ltd. 281 ITR 210 held that the

fiction created u/s 50C is limited and shall apply only to the computation of capital gain and not to the exemption provisions. For allowing deduction u/s 54E, there will be no distinction between depreciable assets and non depreciable assets therefore, the fiction created for one provision cannot automatically apply to the other provisions.

5.7 In light of above, on the facts of the present case, it will be found that admittedly the investment in the new house at Rs. 24,63,610/- was much higher than the amount of the actual sale consideration of Rs. 24,60,000/- hence, assessee was held entitled to full deduction u/s 54F of the Act.

5.8 Referring to the Doctrine of impossibility of performance, it was further submitted by the Id AR that the law requires as assessee to invest the net sale consideration however, the inability of the assessee is that once he has not actually physically received the entire deemed consideration (here actual consideration was Rs. 24,60,000/- only as against the deemed sale consideration of Rs. 96,03,000/- which is 4 times), it is impossible for him to have complied with the law to ensure the deduction u/s 54F by investing a huge Rs. 96,03,000/-. It is only to the extent of the funds available with the assessee that he can be expected to invest. This way, it was impossible for the appellant to perform the act desired on his part. Thus, Doctrine of impossibility of performance applies in all force in this case and hence, the appellant cannot be denied the exemption claimed u/s 54F. In support, he relied on National Aviation Co. of India vs Deputy Commissioner of Income Tax (2011) 137 TTJ 662/53 DTR 379 (Mumbai) and Jagdish Malpani v/s ACIT (2005) 94 TTJ 321 (Ind)

6. Regarding decision of Hon'ble Karnataka High Court in the case of Gouli Mahadevappa v/s ITO (2013) 356 ITR 90 (Kar), it was submitted as under:

6.1 At the outset, it is submitted that the real controversy involved in the facts and circumstances of the present assessee's case related to the true scope of the word "net consideration" defined u/s 54F to compute the allowable amount of the deduction and the LTCG u/s 45 r/w Sec. 48(2) without invoking Sec. 50C. In the case of Gouli Mahadevappa also to some extent this controversy was involved however, the Hon'ble Court in its wisdom did not deal with this issue at all in as much as the very substantial questions of law formulated and admitted by the Hon'ble Court for its consideration, solely confined to the applicability/consideration of Sec. 45, Sec. 48(2) and Sec. 50C and there was not a single substantial question of law formulated or whispered therein as regards the applicability of Sec. 50C in the context of Sec. 54F of the Act. This is evident from a bare perusal of Para 3 and 4 of the said order.

This is also evidently clear from various questions framed by the assessee in that case, some of which were directly related to similar controversy involved here however, the Hon'ble High Court did not at all admit those questions in view of the peculiar facts of the case.

The Law is well settled that ratio laid down or a decision of a court has to be read in the light of/context of the question formulated by the Hon'ble Court for its consideration and not otherwise/not beyond such question. Although some of the facts of that case may appear identical to the facts of the present assessee's case yet however, the decision given by the court must always be read in the light of the questions admitted. This contention is clearly supported by the discussion made by the Hon'ble High Court in Para 5 onward wherein, after reproducing Sec 50C onward, the discussion and the decision revolved around the controversy involved u/s 50C r/w 48(2) only and not relating to Section 54F vis-à-vis 50C r/w 48(2).

6.2 Further, the Hon'ble High Court noted in the facts of that case that the opportunity granted u/s 50C, was not availed by that assessee. Whereas, in our case the buyer admittedly filed an appeal before the competent authority against the stamp duty valuation enhanced to Rs. 96.03 lakhs from originally assessed value of Rs. 24.60 lakhs. Kindly refer letter dated 07.08.2014 to the AO and 12.01.2015. Thus, S. 50C value was not disputed. Hence factual context was completely different.

6.3 There apart, in the present case, the assessee even filed a valuation report of a registered valuer approved by the Central government, who valued the subjected land sold at Rs. 21.83 lakhs only as against Rs. 96.03 lakhs evaluated by the stamp authority. Kindly refer letter dated 07.08.2014 to the AO.

6.4 Moreover, there was no contrary material found in that case, showing higher stamp valuation than the real market value as wrong. On the contrary, in our case apart from the valuation report which justified/supported the declared sale consideration, that land was wrongly valued at commercial rates. Kindly refer letter dated 7.8.14. Therefore, the said decision cannot be said to be a law and laid down on the controversy which is involved in the present appeal.

6.5 Even assuming for a moment that in Gouli Mahadevappa (Supra), the Karnataka High Court has taken a contrary view in the context of Sec. 54F (though not admitted as stated above) the same may be having a persuasive value but not binding, not being a decision of Hon'ble Apex Court or of the Jurisdiction High Court. More particularly, when this Hon'ble Bench in as many as three decisions cited above, had already taken a view in favour of the assessee and the rule of consistency demands to follow them only, without taking a contrary view and other HC decisions is available on analogous law.

Moreover, this decision of Hon'ble Karnataka High court has already been considered in the case of Prakash Karnawat (Supra).

6.6 Lastly, in any case (assuming Karnataka High Court is read as deciding against the assessee), the issue becomes highly debatable and therefore, the view which favour the assessee, must be adopted, as per the law settled in the case of CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC) and followed thereafter in several cases.

6.7. Lastly, an incentive provision should be construed liberal as held in Bajaj Tempo Ltd 104 CTR 116 (SC).

7. On the other hand, Id. D/R vehemently argued the matter, took us through the findings of the AO, supported the order of the Assessing Officer and submitted that the findings of the Id CIT(A) are not in accordance with the express provisions of section 50C of the Act.

8. We have heard the rival contentions and pursued the material available on record. Firstly, it is not in dispute that the AO has rightly taken the full value of consideration as determined by the stamp duty authorities as per explicit provisions of section 50C of the Act and has determined the long term capital gains of Rs 94,60,800 after providing indexed cost of acquisition.

9. The limited controversy revolves around determination of extent of deduction under section 54F to the assessee. As per Revenue, the AO has rightly allowed the benefit of deduction u/s 54F to the assessee to the extent of actual investment of Rs 24,60,000 in the new house property. Per contra, the contention of the assessee is that where the whole of the actual sale consideration of Rs 24,60,000 has been invested in the new house property, the whole of the capital gains, even though worked out in terms of section 50C of the Act, would be eligible for deduction under section 54F of the Act and the assessee is not liable to pay any capital gains tax.

10. To appreciate the issue under consideration, we refer to the provisions of section 54F which reads as under:

"54F. (1) Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45 ;*
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

Explanation.—For the purposes of this section—

"net consideration" in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the

date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset.”

11. On perusal of the above provisions, it is clear that the where the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45. What is therefore relevant is the investment of the net consideration in respect of the original asset which has been transferred and where the net consideration is fully invested in the new asset, the whole of the capital gains shall not be charged under section 45 of the Act. The net consideration for the purposes of section 54F has been defined as the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. In other words, the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset. In the instant case, undisputedly, the consideration which has accrued to the assessee as per the sale deed is Rs 24,60,000 and the whole of the said consideration has been invested in the capital gains accounts scheme for purchase of the new house property which is again not been disputed by the Revenue. The consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been

received by or has accrued to the assessee. Rather, it is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under section 48 of the Act. Therefore, in the instant case, the provisions of section 54F(1)(a) are complied with by the assessee and the assessee shall be eligible for deduction in respect of the whole of the capital gains so computed under section 45 read with section 48 and section 50C of the Act. The decisions of the Coordinate Benches as referred supra support the case of the assessee. The subject issue was not for consideration before the Hon'ble Karnataka High Court and hence, the same doesn't support the case of the revenue. We are therefore of the considered view that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration.

In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28/09/2017.

Sd/-

(KUL BHARAT)

न्यायिक सदस्य / Judicial Member

Sd/-

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 28/ 09/2017.

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- The Income-tax Officer, Ward 2(1), Ajmer
2. प्रत्यर्थी / The Respondent- Shri Raj Kumar Parashar, Ajmer
3. आयकर आयुक्त / CIT-2, Jaipur
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.11/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar