IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 08.02.2023
DELIVERED ON: 24.02.2023

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT NO. 282 OF 2022
(G.A. NO. 02 OF 2022)

PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL

VERSUS

M/S. THE DURGAPUR PROJECTS LIMITED

Appearance:-
Mr. Vipul Kundalia, Senior Standing Counsel.
Mr. Amit Sharma, Junior Standing Counsel.

.....For the Appellant.

Mr. Sumit Ghosh, Advocate.
Mr. Anupam Dey, Advocate.
Mr. Souradeep Majumdar, Advocate.
Mr. Bhaskar Sengupta, Advocate.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T. S. Sivagnanam, J. And Hiranmay Bhattacharyya, J.)

1. This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 09.02.2022 passed by the Income Tax Appellate Tribunal "C" Bench Kolkata (tribunal) in ITA Nos. 87/Kol/2019 for the assessment year 2015-2016. The revenue has raised the following substantial questions of law for consideration:-

(i) Whether the Learned Tribunal erred in law in holding that Section 50C of the said Act cannot be invoked in the case of the respondent since the transfer of land was made to the NHAI.

(ii) Whether the decision of the Learned Hyderabad "SMC" Bench of the Tribunal arrived at in ITA Nos. 1680/Hyd/2018 & 1681/Hyd/2018 is applicable to the instant case.

(iii) Whether the Learned Tribunal erred in law in upholding the decision of the Commissioner of Income Tax (Appeals) with regard to the claim of shortage of coal without appreciating the materials on record and without giving its findings on the issue.

(iv) Whether the Learned Tribunal is justified in allowing the claim of shortage of coal when the respondent in its reply dated 16.12.2017 has stated that there was surplus of coal as shown in the annual account for the F.Y. 2014-2015.

2. We have heard Mr. Vipul Kundalia, learned senior standing counsel along with Mr. Amit Sharma, learned junior standing counsel for the appellant and Mr. Sumit Ghosh assisted by Mr. Anupam Dey, Mr. Souradeep Majumdar and Mr. Bhaskar Sengupta, learned advocates for the respondent.

3. The respondent filed its original return of income on 28.09.2015 declaring loss of 591,64,96,295/-.Subsequently revised return was filed on 16.01.2017 declaring loss of 581,04,07,134/-. The case was selected for scrutiny and notices under Section 143(2) and 142(1) of the Act were issued and the respondent assessee was heard and the assessing officer completed the assessment under Section 143(3) of the Act by order dated 30.12.2017. The assessing officer added a sum of Rs. 5,48,43,584/- to the total income being capital gain on transfer of land to the National Highways Authority of India (NHAI) and also initiated penalty proceedings under Section 271(1)(c) of the Act; disallowed the claim towards shortage of coal amounting to Rs. 7,41,00,000/- and disallowed the claim towards shortage of imported coal amounting to Rs. 16,36,000/- and added the same to the total income and also initiated penalty proceedings under Section 271(1)(c) of the Act; disallowed depreciation claimed by the assessee at 15% amounting to Rs. 56,74,275/- and added the same to the total income and also initiated penalty proceedings under Section 271(1)(c) of the Act and disallowed the claim of prior period expenses amounting to Rs. 60,31,554/- and added the same to the total income. The assessee preferred appeal before the Commissioner of Income Tax (Appeals), Durgapur, [CIT(A)]. The appeal was partly allowed by order dated 30.10.2018. The CIT(A) held that the assessing officer was not justified in invoking Section 50C of the Act on the land which was compulsorily acquired for NHAI and directed to re-compute the capital gains without applying Section 50C of the said Act. Further the addition made towards the shortage of coal was also deleted. The revenue challenged

the said order by filing the appeal before the tribunal. The appeal was dismissed by the impugned order.

4. The learned senior standing counsel for the appellant would contend that the tribunal affirmed the decision of the CIT(A) to hold that the assessing officer was not justified in invoking Section 50C of the Act by relying upon an order passed by Hyderabad tribunal in ITA No. 1680, 1681/Hyd/2018 dated 22.07.2020 without noting that the said decision cannot be applied to the facts of the case as in the said case the assessee had not transferred therein own property consisting of land and building but had only transferred their right to receive the amount of compensation. Mr. Kundalia placed reliance on the judgment of the Hon'ble Division Bench of the High Court of Madras in ***Ambattur Clothing Company Limited Versus Assistant Commissioner of Income Tax,*** [1] for the proposition that the assessing officer was justified in treating value adopted by the stamp valuation authority as deemed sale consideration received as a result of the acquisition. Further it is submitted that while passing the impugned order on the issue of shortage of coal, the learned tribunal had merely reproduced the findings of the CIT(A) and did not examine the matter in an independent manner. Thus, according to the learned senior standing counsel, the tribunal failed to properly exercise his powers and mechanically dismissed the appeal filed by the assessee.

5. The learned advocate appearing for the respondent assessee submitted that the entire factual position has been clearly brought out in the order passed by the CIT(A) which is a detailed well-reasoned order and the learned

[1] 2010 326 ITR 245 (Mad)

tribunal had examined the matter and has affirmed the said order and as such there is no error committed by the learned tribunal. The learned advocate referred to Section 96 of the Right to Fair Compensation and Re-Settlement Act, 2013 and submitted that the said provision states that no income tax or stamp duty shall be levied on any award or agreement made under the said Act except under Section 46 and no person claiming under any such award or agreement shall be liable to pay any fee for the copy of the same. Therefore, it is submitted that the appellant department are not justified in levying the tax as was done by the assessing officer. The learned advocate referred to Circular No. 36 of 2016 issued by the Central Board of Direct Taxes (CBDT) dated 25.10.2016 which dealt with the taxability of compensation received by the land owners for the land acquired under the 2013 Act. It is submitted that the circular clearly states that such compensation received by the land owners on account of compulsory acquisition of land under the said provision are not taxable. Further the learned advocate has drawn our attention to the various proceedings which were initiated by NHAI as also the cheques which were given in favour of the respondent assessee towards payment of compensation. With regard to the shortage of coal issue, the learned advocate referred to the statement of profit and loss for the year ended 31.03.2015 and pointed out that in column (iv) under the head expenses the cost of material consumed during the current reporting period 2014-2015 was Rs. 41,278.13. Referring to the notes on the financial statements for the year ended 31.03.2015, it is submitted that the total quantity of coal imported and indigenous both in the coke oven plant as well as in the power plant was mentioned and it has

been specifically mentioned about the shortage of both imported and indigenous coal and the quantity of 27,426.39 metric tons was subtracted from the total quantity and the value had been correctly arrived at Rs. 41,278.13. In this regard, the learned advocate also referred to a chart giving details of the coal consumption of the power plant for the year 2014-2015 wherein the said quantity of 27,426.39 metric tons has been mentioned and the figures clearly shows that the closing stock as per books as on 31.03.2015 was 115,602.77 metric tons. The closing stock as on 31.03.2015 upon physical verification and actually available was 143,029.16 metric tons and the difference being 27,426.39 metric tons and this was duly subtracted as could be seen from the notes on the financial statement for the year ended 31.03.2015. It is submitted that the assessing officer did not properly appreciate the quantity of coal as could be seen from all the statements and this was explained before the CIT(A) who has considered the factual matter and granted relief in favour of the assessee and this order was affirmed by the learned tribunal. The learned advocate placed reliance on the decision of the High Court of Rajasthan in ***Gopa Ram Versus Union of India and Others in Civil Writ Petition No. 12746 of 2017*** dated 22.01.2018 for the proposition that Section 24 of the Acquisition Act, 2013 has no application in the acquisition proceedings under National Highways Act, 1956.

6. The first aspect we will deal with is whether the assessing officer was justified in invoking the provisions of the Section 50C of the Act. Admittedly, the land in question was compulsorily acquired for the NHAI. The assessee received compensation of Rs. 4,47,17,396/- from NHAI and valuation of the

stamp valuation authority was Rs. 9,95,60,980/-.The assessing officer adopted the full value of sale consideration under Section 50C and calculated the capital gains in the hands of the assessee at Rs. 548,43,584/-. What is to be noted in the instant case is that the transfer of the land was not on account of the agreement between the parties, but it was the case of the compulsory acquisition under the provisions of the 2013 Act. Therefore, the transaction cannot be treated to be a transaction between two private parties where there may be room to suspect the correct valuation and the apparent sale consideration which was reflected in the sale documents. It is common knowledge that when compensation is determined by the authorities under the said Act, it is invariably lesser than the market value of the property as the determination is done in a particular manner by taking note of several factors. This is precisely the reason that the Act provides for an appellate remedy and further remedies in case the erstwhile land owner is of the view that the compensation paid/offered was inadequate. In this background, we are required to see the purpose behind enacting Section 50C of the Act. This provision has been designed to control the transactions where the correct market value is not mentioned and there is suppression of the correct value by the parties to the transactions. As in the instant case, it is an acquisition of land by the Government by way of compulsory acquisition, the appellant department cannot be heard to say that there was suppression of the value and consequently the question of invoking Section 50C of the Act does not arise. The case of ***Ambattur Clothing Company Limited*** relied on by revenue has no application to the facts of the case of hand. In the said case, the assessee who was a

manufacturer and seller of garments sold the property and the value as given by the assessee was not accepted by the assessing officer and the value was determined by adopting the value determined by the stamp duty authorities under Section 50C of the Act. This order was put to challenge before the CIT(A), who confirmed the order and the appeal filed by the assessee before the tribunal was dismissed. Challenging the said order, the assessee filed appeal before the High Court. The explanation offered by the assessee before the assessing officer in respect of deemed value of the properties was that while registering, the sub registrar refused to release the document except on payment of higher stamp duty on enhanced valuation and since the buyers wanted the title documents to be released at the earliest they had chosen to pay the stamp duty without contesting the same and without consulting the assessee and that the assessee as the vendor did not have any locus standi in the proceedings and hence the assessee should not be made to suffer by enhancing the assessment. The said explanation offered by the assessee was rejected on the premise that Section 50C of the Act makes it obligatory on the part of the assessing officer to treat the value adopted by the stamp valuation authority as deemed sale consideration received/accrued as a result of transfer. The facts of the case are entirely different and it was not a case of any compulsory acquisition of land as in the case on the hand. Thus, what is to be borne in mind is that in a case of compulsory acquisition of land by the Government there is no room for suppressing the actual consideration received on such acquisition. Unlike the transaction between the private parties where quite often the actual sale consideration paid for acquiring the immovable property is more than the

sale consideration disclosed in the sale deed. With a view to curb such transactions, Section 50C of the Act was introduced so as to adopt the market value determined by the stamp duty authorities as the sale consideration for the purpose of computing capital gains under the provisions of the Income Tax Act. The said provision therefore provides for referring the matter to the valuation officer of the revenue to determine the actual market value of the property sold and all other relevant factors which may be considered by the State Valuation Authority. The CIT(A) relied on the decision of the Hyderabad tribunal in the case of ***Southern Steel Limited*** and granted relief to the assessee. This finding of the CIT(A) was affirmed by the tribunal. The learned senior standing counsel for the revenue seeks to distinguish the decision in the case of ***Southern Steels*** by contending that it was not the case of the transfer of the immovable consisting of land and building but it is the case of transfer of their rights to receive the amount of compensation and the TDR rights and both the assets do not fall under the category of immovable property. Though it may be true that in the case of ***Southern Steels*** the facts were slightly different, the Hyderabad tribunal had analyzed the scope of Section 50C of the Act and the purpose for introducing the said provisions in the statute namely to curb the menace of unaccounted cash being infused in the real estate transaction. Therefore, the principle which was culled out by the Hyderabad tribunal is a correct interpretation of the provisions of the Section 50Cin the case of the compulsory acquisition of land. Thus, the findings rendered by the CIT(A) as affirmed by the tribunal on this issue does not call for any interference.

7. The next question is with regard to the disallowance made by the assessing officer on account of claim of shortage of coal. The assessing officer held that from the accounts presented by the assessee it was seen that there was shortage of coal of 27,426.39 metric tons valued at Rs. 7.41 crores. The assessing officer was of the view that the shortage of coal was abnormally high in view of the facts in the preceding assessment year namely the assessment year 2014-2015 there was a surplus of 18,450.24 metric tons of coal. Thus, the assessing officer declined to accept the explanation of the assessee largely on the ground that there was no shortage of coal in the preceding assessment year A.Y. 2014. The explanation which was offered by the assessee before the CIT(A) is entirely factual and was considered by the CIT(A) and accepted. According to the assessee, the shortage of 27.426.39/- metric tons of coal was actually a surplus and not a shortage. The assessee referred to the annual accounts for the financial year 2014-2015 and copy of the 597th Meeting of the Board of Directors of the appellant company held on 18.08.2015. The CIT(A) after taking note of the explanation offered by the assessee held that there are various circumstances in which a shortage may occur and the assessing officer failed to examine the reason as to why loss has occurred, was there a shortage of funds as a result of which coal could not be purchased or was there any mishap due to which coal could not reach the factory premises, what was the position of expenses on account of purchase and transportation related to coal as compared to the assessment year 2014-2015, was there any malfunction in the factory unit which led to more consumption of coal and what was action were taken by the company to tied

over the crises. Further the CIT(A)faulted the assessing officer for not having examined the import bills, dates of payments, dates of shipment to find out the exact quantity of coal imported by the appellant along with the opening stock etc. Therefore CIT(A) refused to accept the conclusion arrived at by the assessing officer and allowed the assessee's appeal and deleted the disallowance on the shortage of coal. Before us the learned advocates for the appellant had slightly tweeted his arguments and placed for our consideration the statement of profit and loss for the year ended 31.03.2017,notes of financial statement for the year ended 31.03.2015 and the chart showing the coal consumption of power plant for the year 2014-2015.

8. In the preceding paragraphs, we have mentioned about the quantity and value as was shown and from the notes and financial statements for the year ended 31.03.2015, we find that the quantity of 27,426.39 metric tons was subtracted from the total quantity of 10,52,299.00 metric tons which would show that the actual consumption of coal was 10,24,872.61/- metric tons. The total value of the coal as at 31.03.2015 was Rs. 41,278.13/-. If these figures are compared with the figures shown in the chart for coal consumption of power plant for the year 2014-2015, it clearly matches as the figures 27,426.39/- is reflected. Thus, the assessee did not properly explain the said aspect before the CIT(A) nevertheless such explanation has been given before us which we find to be factually acceptable.

9. From the decision of the 597th Meeting of the Board of Directors of the assessee held on 18.08.2015, in Item no. 06 pertaining to the concentration

and authentication of the annual accounts for the company for the financial year 2014-2015,it had been resolved as follows:-

> *RESOLVED FURTHER THAT the surplus on account of coal at Power Plant amounting to Rs. 740.98 lakhs, surplus on account of LAM Hard Coke amounting to Rs. 22.20 lakhs and LAM Mixed Coke amounting to Rs. 21.65 lakhs at Cokeoven, shortage on account of POL and Coking Coal at Cokeoven amounting to Rs. 0.31 lakhs and Rs. 16.37 lakhs respectively be adjusted in the Books of Accounts, as the case may be for the year 2014-2015.*

10. The above resolution is an explanation offered by the assessee which ought to have accepted by the assessing officer. Therefore, we are of the view that the issue relating to the alleged shortage of coal being entirely factual had been rightly explained.

11. Coming back to the taxability of the compensation received by the assessee for the lands compulsory acquired under the 2013 Act, it is relevant to take note of the circular issued by the CBDT dated 25.10.2016 in Circular No. 36/2016. It was pointed out that under the existing provisions of the Income Tax Act an agricultural land which is not situated in specified urban area is not regarded as a capital asset and hence capital gain arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. It is further stated that Finance (No. 02) Act, 2004 inserted Section 10(37) in the Act from 01.04.2005 to provide specific exemption to capital gains arising to an individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limited subject to fulfillment of certain conditions. Thus, it was ordered that the compensation received from the compulsory acquisition of an

agricultural land is not taxable under the Income Tax Act subject to the fulfillment of certain conditions for specified urban land. It was further stated that the 2013 Acquisition Act came into effect from 01.01.2014 and Section 96 inter alia provides that income tax shall not be levied on any award or agreement made except those made under Section 46 of the said Act. Therefore, it was directed that compensation for compulsory acquisition of land under the 2013 Acquisition Act except those made under Section 46 of the said act is exempted from the levy of income tax. Further it was ordered that as no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income tax under 2013 Acquisition Act, the exemption provided under Section 96 of the 2013 Acquisition Act is wider in scope than the tax exemption provided under the existing provisions of the Income Tax Act, 1961. It was pointed out that this aspect has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land especially those relating to acquisition of non-agricultural land. This matter was examined by the CBDT and it was clarified that compensation received in respect of award or agreement which has been exempted from the levy of income tax under Section 96 of the 2013 Acquisition Act shall also not be taxable under provisions of the Income Tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income Tax Act, 1961. The said Circular No. 36 of 2016 would come to the aid and assistance of the assessee and the compensation received by the assessee on account of the

compulsory acquisition of land under the 2013 Acquisition Act is exempt from the tax.

12. For all the above reasons, we find no grounds to interfere with the order passed by the learned tribunal and consequently the appeal filed by the revenue fails and the substantial questions of law are answered against the revenue. No costs.

(T.S. SIVAGNANAM, J.)

(P.A – SACHIN)

1. I had the privilege of reading the judgment of My Lord and I fully agree with the findings and conclusions arrived at by My Lord. However, I wish to pen a few words in support of the conclusion arrived at by My Lord in respect of the 1st substantial question of law suggested by the Revenue by approaching the said issue from a different angle.

2. Section 50C was inserted by the Finance Act 2002 with effect from 01.04.2003 for the purpose of taking the value adopted or assessed by the stamp valuation authority as the deemed full value of consideration received or accruing as the result of transfer of a capital asset being land or building or both, in case the consideration received or accruing as a result of transfer is less than such value.

3. For the purpose of deciding as to whether Section 50C is applicable in case of compulsory acquisition of capital asset, it would be relevant to take note of the provisions of Section 50C(1) which runs as follows-

(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 [or assessable] 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 [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. (emphasis by the Court)

4. The object and purpose behind insertion of the said provision in the act was to curb the menace of the use of unaccounted cash in transfers of capital assets. Upon a plain and literal interpretation of the words used in Section 50C it is amply clear that the legislature intended to take the valuation adopted by the stamp valuation authorities as the benchmark for the purpose of payment of stamp duty in respect of transfer of the capital asset as the deemed full value of consideration. If the argument of Mr. Kundalia that the word “transfer” used in Section 50C shall have the same meaning as the word “transfer” defined under Section 2(47) of the Act is accepted, then it is to be held that in respect of transfers contemplated under Section 2(47) of the Act, the valuation adopted or assessed by the stamp valuation authority is to be deemed as the full value of the consideration received as a result of such transfer. In that event the expression “for the purpose of payment of stamp duty in respect of such transfer” would pale into insignificance and such expression is to be substracted from Section 50C of the Act which is against the canon of interpretation.

5. It is well settled that when the language of a statutory provision is plain and unambiguous, it is not permissible for the Court to add a substract words to or from a statute or read something into it which is not there. The Court cannot rewrite or recast a legislation [see (2022) 9 SCC 186 and (2010)4 SCC 653]. It is also well settled that the Court has to make an effort to give effect to each and every word used by the legislature and it is to be presumed that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the provision should have effect. While interpreting a provision the Court should keep in mind that the legislature did not intend to use superfluous word(s) or expressions in a statutory provision. [see (2005) 2 SCC 271]

6. Therefore, keeping in mind the aforesaid canons of interpretation and the object behind inserting the said provision it appears to this Court that the legislature used the words and expressions in Section 50C of the Act consciously to give the same a restricted meaning. In view thereof I am of the considered view that the term "transfer" used in Section 50C has to be given a restricted meaning and the same do not have a wider connotation so as to include all kinds of transfer as contemplated under Section 2(47) of the Act. This Court accordingly holds that the provisions of Section 50C shall be applicable in cases where transfer of the capital asset has to be effected only upon payment of stamp duty.

7. Now the question arises whether in cases of compulsory acquisition of a capital asset being land or building or both, the provisions of Section 50C will be applicable.

8. In case of a transfer by way of compulsory acquisition, the capital asset being land or building or both vests upon the government by operation of the provisions of the relevant statute governing such acquisition proceeding and subject to the terms and conditions laid down in the said statute being followed. In case of compulsory acquisition the transfer of property takes place by operation of law and the provisions of the Transfer of Property Act or the Indian Registration Act do not have any manner of application to such transfers. The question of payment of stamp duty also does not arise in such cases.

9. This Court accordingly holds that in case of compulsory acquisition of a capital asset being land or building or both, the provisions of Section 50C cannot be applied as the question of payment of stamp duty for effecting such transfer does not arise.

10. In the instant case, the property was acquired under the provisions of the National Highways Act 1956. The property vests by operation of the said statute and there is no requirement for payment of stamp duty in such vesting of property. As such there was no necessity for an assessment of the valuation of the property by the stamp valuation authority in the case on hand.

11. For the reasons as aforesaid it is held that the provisions under Section 50C of the Income Tax Act cannot be applied to the case on hand.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SANCHITA)