

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, AM AND SHRI A.T. VARKEY, JM

ITA No.2389/Del/2011
Assessment Year : 2005-06

ITO,
Ward 27(4),
New Delhi.

Vs. Prem Chand Mittal,
6/52, Punjabi Bagh (West),
New Delhi.

PAN: AAMPM1160H

(Appellant)

(Respondent)

Assessee By : Shri Ved Jain, &
Smt. Rano Jain, Advocates
Department By : Shri Vikram Sahay, Sr. DR

Date of Hearing : 11.03.2015.
Date of Pronouncement : 12 .03.2015.

ORDER

PER R.S. SYAL, AM:

This appeal by the Revenue is directed against the order passed by the CIT(A) on 18.2.2011 in relation to the assessment year 2005-06.

2. The only issue raised in this appeal is against the direction to adopt sale consideration at Rs.12.50 lac instead of a higher value computed by the Departmental Valuation Officer (hereinafter called 'the DVO').

3. Briefly stated, the facts of the case are that the assessee sold certain properties during the year in question. One of the properties sold was B-1/455, Janak Puri, New Delhi, in which the assessee had half share. Long-term capital gain of Rs.9,90,294/- was declared from the transfer of this property. Such property was sold for a sum of Rs. 25 lac and the full value of consideration in relation to the assessee's half share was taken at Rs.12.50 lac. The AO was not satisfied with the amount of sale consideration at this level. He deputed an Income-tax Inspector to make a fair estimate of the market value of the property, who gave the approximate value at Rs.1.25 crore. Thereafter, the matter was referred by the AO to the DVO, who determined the fair market value of the property at Rs.76,46,300/-. By considering this valuation of the DVO, the AO adopted the sale price at Rs.38,23,150/-, being half share in the property and re-computed the amount of long-term capital gain. The ld.

CIT(A) overturned the assessment order on this issue. The Revenue is aggrieved against the reduction in the amount of full value of consideration of this property.

4. We have heard the rival submissions and perused the relevant material on record. It can be observed that the only point agitated by the Revenue before us is the computation of the full value of consideration of the property. Section 45(1) provides that any profit or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income-tax under the head 'Capital gains.' Section 48 is the 'Mode of computation' of income. This section provides that the income under the head 'Capital gains' shall be computed by deducting: (i) expenditure incurred wholly and exclusively in connection with the transfer of property and (ii) the cost of acquisition of the asset and the cost of any improvement thereto; from *'the full value of the consideration received or accruing as a result of the transfer of the capital asset'*.

5. Coming back to the factual matrix of the case, it can be seen that the property was apparently transferred for a sum of Rs.25 lac. Now, the question arises as to whether the AO was right in substituting *'the full value of the consideration received or accruing as a result of the transfer of the capital asset'* with the *'fair market value'* determined by the DVO. The answer to this question has to be given in the negative alone. The obvious reason is that when the legislature has provided to consider the full value of the consideration received or accruing as a result of the transfer of the capital asset, there can be no question of the AO substituting it with the fair market value as determined by the DVO. Of course, the AO is entitled to carry out investigation and conclusively prove with some clinching evidence that the *'full value of the consideration received or accruing as a result of the transfer of a capital asset'* was, in fact, any amount higher than the one depicted in the sale deed. In the absence of any such an evidence, there can be no scope for frustrating the prescription of section 48, which mandates that the computation of capital gains should be done by considering the full

value of the consideration received or accruing as a result of the transfer of a capital asset.

6. The Hon'ble Supreme Court in the case of *K.P. Varghese vs. ITO (1981) 131 ITR 597 (SC)* has held that the onus of establishing that the conditions of taxability are fulfilled, is always on the Revenue. It is for the Revenue to show that there is an understatement of the consideration. It has further been laid down that to throw the burden of showing that there is no understatement of the consideration on the assessee, would be to cast an almost impossible burden upon him to establish a negative. Similar view has been reiterated in *CIT vs. Shivakami Co. P. Ltd. (1986) 159 ITR 71 (SC)*. In this case, their Lordships have laid down that no addition can be made unless there is evidence that more consideration than what was stated in the document, was received. In the light of the above decisions, it is manifest that no addition can be made unless the Revenue proves understatement of consideration with some cogent evidence. A mere report of the DVO estimating higher value of the property cannot be considered as an

evidence of the actual full value of consideration received or accruing as a result of the transfer of capital asset.

7. To curb the practice of understatement of sale consideration in transactions of sale of property and the resultant loss of taxes, the legislature stepped in by inserting a deeming provision in terms of section 50C w.e.f. 1.4.2003 containing a special provision for 'full value of consideration in certain cases.' Sub-section (1) of section 50C provides that : `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'. A bare perusal of this provision indicates that where 'the full value of consideration received or accruing as a result of transfer of a

capital asset' is less than the stamp value, then, such stamp value is to be substituted with 'the full value of consideration.' Reverting to the facts obtaining in this case, it is manifest from a copy of the Registered sale deed that the stamp value of the property is the same figure, which is the value of consideration received at Rs.25 lac. In that view of the matter, the provisions of section 50C are also of no help to the Revenue.

8. In view of the foregoing discussion, we are of the considered opinion that the Id. CIT(A) was justified in directing to take full value of consideration of the property transferred at Rs.12.50 lac.

9. In the result, the appeal is dismissed.

The order pronounced in the open court on 12.03.2015.

Sd-

[A.T. VARKEY]
JUDICIAL MEMBER

Sd-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 12th March, 2015.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.