

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "G" NEW DELHI**

**BEFORE SHRI J.SUDHAKAR REDDY, A.M.
AND SHRI C.M. GARG, JM**

**ITA No: 915/Del/2012
Assessment Year : - 2008-09**

| | | |
|----------------------------|-----|------------------|
| ACIT, Circle 28(1) | vs. | Shrikishan Dass |
| Room 105, Drum shape bldg. | | 5523, Moti Katra |
| I.P.Estate, New Delhi | | Nai Sarak, Delhi |

PAN: AFBPD 8156 Q

(Appellant)

(Respondent)

| | | |
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| Appellant by | : | Smt. Srujani Mohanty, Sr.DR |
| Respondent by | : | Shri K.Sampath, Sh.S.Krishnan& Sh. V.Raja Kumar, Adv. |

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Revenue and is directed against the order of the Ld.CIT(A)-XXV, New Delhi dated 13.12.2011 pertaining to A.Y. 2008-09.

2. Facts in brief:- The facts of the issue are brought out in para 3.1 and 3.2 of the Ld.CIT(A)'s order, which is extracted for ready reference

"3.1. The facts emanating from the order of the AO and the submissions of the assessee is that the assessee has sold/transferred a lease hold landed property at 36, SSGT road, Industrial area, Ghaziabad at a consideration of Rs.3,25,00,000/- to Sara exports Ltd. The said lease hold property was acquired by the assessee way back in 1971 as per the original elase deed dt. 26.8.71 for a consideration of Rs.12,20,500/- which included the cost of the land and building from UPSIDCO (UP State Industrial Development Corporation). The assessee has sold/transferred the lease hold property as per the agreement to sale dt. 27.8.2007 and the final lease deed dt. 29.10.2007. The elase hold

property has been transferred which included the land of 10,216 sq.metres @ Rs.3,181/- per sq.metre at a total consideration of Rs.3,25,00,000/-. The lease hold property was acquired in 1971 for 90 years and the same has been transferred/sold in 2007 as per the final transfer lease deed dated 29.10.2007 for the remaining period of 54 years (90 years-36 years) i.e. 2007-1971.

3.2. The AO has taken the rate of the lease hold land @ Rs.4,500/- per sq.metre as per the rate of the UPSIDCO and accordingly has worked out the sale consideration of the land at Rs.4,59,73,395/- @Rs.4,500 x 10,216 sq.m.) by invoking provisions of s. 50C and taking the circle rate as noted by the AO in the order.”

3. Aggrieved, the assessee carried the matter in appeal before the First Appellate Authority. The First Appellate Authority held that :- (a) Sec. 50 “C” is not applicable as the transfer of the land is of lease hold property and the actual owner of the property is UPSIDCO and there is no involvement of the Stamp Valuation Authority in the entire process; (b) that the lease hold rights transferred were for the remaining period of 54 years and the rate of Rs.4500 per square feet was for a standard period of 90 years of lease and hence the property reduction of the standard rate would demonstrate that there is no undervaluation of the sale consideration.

4. Aggrieved the assessee is in appeal before us on the following grounds.

“1. On the facts and in the circumstances of the case, the Ld.CIT(A)-XXV, New Delhi has erred in not adopting the circle rate at the rate of Rs.4500/- per sq. meter of land as per provision of s.50C of the Act for calculating long term capital gain.

2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”

5. We have heard Smt. Srujani Mohanty, the Ld. Sr.DR on behalf of the revenue and Sri. K. Sampath, the Ld. Counsel for the assessee.

6. On a careful consideration of the facts and circumstances of the case and on a perusal of the papers on record, as well as the orders of the authorities below, and case laws cited, we hold as follows.

7. The undisputed fact is that there is no involvement or requirement of approaching the Stamp Duty Authority by the persons involved in the transaction as per law in this case. The lease in question has been granted by UP State Industrial Development Corp. Ltd. to the assessee vide lease agreement dated 29th day of October, 2007 for a period of 90 years. These lease hold rights were transferred to M/s. Sara Exports Ltd., Ghaziabad for a total consideration of Rs.3,25,00000/- only. Such transfer requires the approval of UPSIDCO. On these facts we have to see whether S.50`C` applies.

8. In the case of Carlton Hotels (P) Ltd. Vs ACIT, 35 SOT 26(lucknow) ,122 TTJ 515, the Lucknow `A` bench of the ITAT held that "One of the relevant ingredients for invoking S.50`C` is that there is a payment of stamp duty in respect of transfer of capital assets being land or building or both. The event which receipts adopting of valuation done by the Stamp Valuation Authority is the registration of a sale recording transfer of capital asset for which there is payment of stamp duty. Payment of stamp duty is required only when transfer of capital asset is registered under the Registration Act. If payment of stamp duty for the purpose of the transfer is not required, then there is no occasion to look into other conditions as mentioned in S.50`C`. Therefore, in those cases of transfer where agreement or sale deed is not registered and stamp duty is not paid, or capital gain is simply charged by deeming certain

transactions as transfer as per other provisions of the act or some transactions of transfer are not registered or are not legally required to be registered under the Registration Act, S.50C cannot be put into operation.”

9. The Mumbai `A` Bench of Tribunal in the case of Atul G.Puranik vs. ITO(2011) 11 Taxman.com 92 Mumbai, at para 11.4 held that:

“Turning to S.50C, it is seen that the deeming fiction of substituting adopted or assessed or assessable value by the stamp valuation authority as full value of consideration is applicable only in respect of ‘land or building or both. If the capital asset under transfer cannot be described as ‘land or building or both’, then s.50C will cease to apply. From the facts of this case narrated above, it is seen that the assessee was allotted lease right in the plot for a period of sixty years, which right was further assigned to M/s Pathik Construction in the year in question. It is axiomatic that the lease right in a plot of land are neither ‘land or building or both’ as such nor can be included within the scope of ‘land or building or both’ is well recognized under the I.T.Act. Sec.54D deals with ;certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub sec.(1) of sec.54D opens with: “Subject to the provisions of sub section(2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in the land or building, forming part of an industrial undertaking...”. It is palpable from s.54D that ‘land or building’ is distinct from ‘any right in land or building’. Similar position prevails under the W.T.Act, 1957 also. S.5(1) at the material time provided for exemption in respect of certain assets. Clause (xxxii) of s.5(1) provided that “the value, as determined in the prescribed manner, of the interest of the assessee in the assets (not being any land or building or any rights in land or building or any asset referred to in any other clauses of this sub section) forming part of an industrial undertaking” shall be exempt from tax. Here also it is worth noting that a distinction has been drawn between ‘land or building’ on one hand and ‘or any rights in land or building’ on the other. Considering the fact that we are dealing with special provision for full value of consideration in certain cases u/s 50C, which is a deeming provision, the fiction created in this section cannot be extended to any asset other than, those specifically provided therein. As s.50C applies only to a capital asset, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee transferred lease right for sixty years in the plot and not land itself, the provisions of s.50C cannot be invoked. We, therefore, hold that the full value of consideration in the instant case be taken as Rs.2.50 crores.”

These case laws apply on all force to the facts of the case in hand.

10. In the case of DyCIT vs. Tejender Singh, 19 Taxman.Com 4, Calcutta the Bench was considering a case where the nature of property transferred was tenancy rights. It held that S 50`C` would not have been invoked on the facts on hand. Applying the propositions laid down in all these cases to the facts on hand, we uphold the order of the First Appellate Authority on this issue.

11. Even otherwise, on the issue of valuation, the working given by the Ld.CIT(A) could not be disputed by the Ld.DR. The Ld. CIT(A) held that the rate of Rs.4500/- per sq. feet is applicable for the standard period of 90 years and as what was transferred was lease rights for 54 years, the proportionate rate works out to Rs.2700/- and whereas the assessee has transferred these rights for an amount of Rs.3181/- and hence there is no undervaluation.

12. Hence for all these reasons we dismiss this appeal of the revenue.

13. In the result the appeal by the Revenue is dismissed.

Order pronounced in the Open Court on 07th June, 2013.

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 07th June, 2013

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Dy. Registrar

1. Date of Dictation:
2. Draft placed before the Author on:
3. Draft proposed and placed before Second Member on:
4. Draft discussed/approved by the Second Member on:
5. Approved draft came to Sr.P.S. on:
6. Date of Pronouncement :
7. File sent to Bench Clerk on :
8. Date on which file given to Head Clerk on:
9. Date of dispatching the Order on: