

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-C” BANGALORE BENCH**

**BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT**

<b>ITA No.1527/Bang/2019</b>
<b>Assessment Year : 2011-12</b>

Shri. Ayi Vaman Narasimha Acharya, #65/2, Nanjappa Estate, Magadi Main Road, Kamakshipalaya, Bengaluru – 560 079. <b>PAN : AAJPA 7697 J</b>	Vs.	Deputy Commissioner of Income Tax, Circle – 6[2][1], Bengaluru.
<b>Appellant</b>		<b>Respondent</b>

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Jr. Standing Counsel

Date of hearing	:	08.02.2021
Date of Pronouncement	:	10.02.2021

**ORDER**

This is an appeal of the assessee against the order dated 24.05.2019 of CIT(A)-6, Bengaluru, relating to Assessment Year 2011-12. At the time of hearing, learned Counsel for the assessee submitted that he does not wish to press for adjudication ground No.2 raised by the Revenue with regard to the challenge to the validity of initiation of reassessment proceedings under section 148 of the Income Tax Act, 1961 (hereinafter called ‘the Act’).

2. The only ground that needs to be adjudicated in his appeal is as to whether the Revenue authorities were justified in bringing to tax as capital gain a sum of Rs.25,53,315/- by invoking the provisions of section 50C of the Act.

3. The assessee is an individual. For Assessment Year 2011-12, he filed return of income on 16.09.2011 declaring a total income of Rs.18,83,160/-. This return was accepted under section 143(1) of the Act. Subsequently, the assessment was reopened under section 148 of the Act by issue of a notice dated 30.03.2018. The reasons for issue of notice were that the Assessee sold two shops at Cavalry Road, Bangalore (hereinafter referred to as “the property”) under a sale deed dated 10.8.2009 for a sale consideration of Rs.32,27,010/-. The value adopted by the registering authority for the purpose of stamp duty and registration charges i.e., as per guideline valuation was Rs:57,80,325/-. The Assessee had not disclosed the capital gain on sale of the property, the AO initiated proceedings for reassessment to assess capital gain that escaped assessment.

4. In the reassessment proceedings, the Assessee took a stand that Section 45(1) of the Act clearly lays down that any gain arising on the transfer of the capital asset effected in the previous year shall be chargeable to income tax under the head “capital gain” and shall be deemed to be the income of the previous year in which the transfer took place. Section 2(47) of the Act defines transfer which includes a sale. The sale deed was executed by the Assessee on 10.08.2009 and was presented for registration on 10.08.2009. Since the parties disputed the value adopted by the registering authorities for the purpose of stamp duty and registration, the matter was referred to the District Registrar and determined the value of the property for the purpose of stamp duty and registration at a sum of Rs.57,80,325/-. This order of the District Registrar was passed on 31.03.2010. The assessee paid the stamp duty as demanded by the registering authorities on 26.06.2010 and the document was registered on 26.06.2010. Since the sale deed was executed on 10.08.2009 which falls within the Financial Year 2009-10 relevant to the Assessment Year 2010-11, the capital gain in question cannot be brought to tax in Assessment Year 2011-12.

5. The AO however wanted to tax the difference between the value adopted by the registering authorities at Rs.57,80,325/- and the sale consideration between the parties at a sum of Rs.32,23,000/- viz., a sum of Rs.25,53,315/- in Assessment Year 2011-12 on the ground that since the document was ultimately registered on 26.06.2010 Assessment Year 2011-12 will be the year in which the provisions of section 50C of the Act would be attracted and according brought to tax a sum of Rs.25,53,315/-. The AO held that since higher value was fixed for stamp duty purpose during the AY.2011-12 and as such the deemed capital gains accrued to the assessee for AY: 2011-12. The AO also observed that the Assessee's stand that capital gain on sale of property it is assessable for AY 2010-11, is only for the reason that, it is not possible to re-open the assessment for AY 2010-11 now, as the-same is already barred by limitation of time for re-opening. For the above reasons, the AO brought to tax additional capital gain of Rs.25,53,315/-, which accrued to the assessee, by applying provision of Sec.50C, for the AY 2011-12, being the year of accrual.

6. It was the case of the assessee before the CIT(A) that there was no transfer of the capital asset in the previous year relevant to Assessment Year 2011-12 because the sale deed is dated 10.08.2009 which falls within Assessment Year 2010-11. It was further pleaded by the assessee that the date on which the document is registered is not the date of transfer and it is only the date of sale deed which can be regarded as the date of transfer. The assessee placed reliance on the provisions of section 47 of the Indian Registration Act, 1908, which provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. The CIT(A) however did not agree with the stand taken by the assessee and he agreed with the view of the AO that section 50C would be applicable in Assessment Year 2011-12 because it is only in Assessment Year 2011-12 that the value for the purpose of stamp duty and registration was fixed by the registering

authorities. The CIT(A) also drew support from the decision of the Hon'ble Calcutta High Court in the case of M/s. Bagri Impex Pvt. Ltd., Vs. ACIT (2013) 31 taxmann.com 39 (Calcutta). In that case, full consideration on transfers was received in one year and the registration of the sale deed happened in a subsequent Assessment Year. The application of section 50C of the Act in another Assessment Year, which is neither the year of receipt of sale consideration nor the year of determination of valuation by the registering authority u/s.50C, was upheld by the Hon'ble Calcutta High Court.

7. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal. Learned Counsel for the assessee reiterated the stand of the assessee as was put forth before the CIT(A). He further relied on the decision of the Hon'ble Supreme Court in the case of Gurbax Singh Vs. Kartar Singh and Others 254 ITR 112 (SC). In the aforesaid decision, the Hon'ble Supreme Court took a view that in view of the provisions of section 47 of the Indian Registration Act, 1908, a document will take effect from the time when it was executed and not from the time of its registration. The learned Counsel also distinguished the decision of the Hon'ble Calcutta High Court by pointing out that in that case, the assessee offered capital gains for taxation in the year of receipt i.e., 2006-07 but the sale deed had been executed in Assessment Year 2007-08 and registration took place in the year 2008-09. The assessee had offered the capital gain to tax in Assessment Year 2006-07. The Hon'ble Calcutta High Court upheld levy of capital gain in AY 2006-07 by applying provisions of Sec.50C of the Act. He pointed out that the decision has to be read with the peculiar facts and circumstances of that case and not applicable to the present case. He also pointed out that section 50C of the Act was amended w.e.f. 01.10.2009 substituting the word 'assessed' by the word 'assessable'. It was in this context that the Hon'ble Kolkata High Court upheld the Revenue's contention. Learned DR for the Revenue reiterated the stand of the Revenue as contained in the order of AO and CIT(A). He also relied on a decision of the ITAT Hyderabad Bench

in the case of Sri J.Appa Rao Vs. ACIT ITA No.`518/Hyd/2010 order dated 29.11.2013.

8. I have given a careful consideration to the rival submissions and I find that the sale deed in the present case was executed by the assessee selling two shops at Cavalry Road on 10.08.2009. The sale deed operates from the date on which it was executed and there are no covenants regarding the period of operation of sale under the sale deed to have been postponed. Because of dispute with regard to valuation, the registration could be completed only on 26.06.2010. That will not postpone the date of vesting of title in favour of the transferee from the date of sale. As per section 47 of the Indian Registration Act, 1908, the sale by the assessee to the transferee would operate from 10.08.2009. Therefore transfer by way of sale of the property took place on 10.8.2009.

9. Under section 45(1) of the Act, the charge on capital gain is in the year of transfer. Section 45(1) of the Act clearly lays down that any gain arising on the transfer of the capital asset effected in the previous year shall be chargeable to income tax under the head "capital gain" and shall be deemed to be the income of the previous year in which the transfer took place. Section 2(47) of the Act defines transfer which includes a sale. The transfer in the present case is "sale" and since sale in the present case has taken place in the previous year relevant to Assessment Year 2010-11, the capital gain in question cannot be brought to tax in Assessment Year 2011-12. This aspect has been accepted by the AO in the order of assessment. Because the assessment for Assessment Year 2010-11 was barred by time and could not be reopened, he resorted to the provisions of Sec.50C of the Act and taxed deemed accrued capital gain. Section 48 of the Act lays down that capital gain has to be computed by reducing from the full value of consideration received or accruing as a result of transfer expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of improvement if any. Sec.50C of the Act is a Special provision for full value of consideration in

certain cases and it lays down 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. Sec.50C of the Act substitutes the full value of consideration received or accruing on transfer which otherwise would be the value as envisaged u/s.48 of the Act. Sec.50C of the Act is therefore an exception to Sec.48 of the Act in certain circumstances. Section 50C of the Act does not operate to change the year of transfer as laid down in section 45(1) of the Act.

10. Section 45 of the Act is a charging section as far as capital gain on transfer of capital asset is concerned. Section 48 is a machinery or computation provision. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 of the Act to be a subject of charge. This inference flows from the general arrangement of the provisions in the Act whereunder each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. Referring to the fundamental integrality of the statutory scheme provided for capital gains, the Supreme Court observed in B.C. Srinivasa Betty's case 128 ITR 294 (SC) at p. 299 of the report;

"Section 45 charges the profits or gains arising from the transfer of a capital asset to income-tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings s. 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge, Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable

profits and gains. All transactions encompassed by s. 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by s. 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income-tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. **Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section.** Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head.” (emphasis supplied)

The reverse inference that can be drawn on the basis of the aforesaid observations underlined, is that if there is no charge to tax on capital gain in AY 2011-12 u/s.45(1) of the Act, the computation provision u/s.48 of the Act, cannot operate to create a charge.

11. The decision referred to by the learned Counsel for the Revenue of the Calcutta High Court is on different facts and not applicable to the present case. In the case of Bagri Impex (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-9, Kolkata, (2013) 31 taxmann.com 39 Calcutta, the facts were that the Assessee was owner of 2/5th share in a land situate at Kolkata. The case of the assessee was that the land in question or the interest of the assessee was agreed to be sold on 15th October, 1996 to 15 several buyers. Deeds of conveyance in favour of five buyers were executed on 15.1.1998. The balance 10 deeds of conveyance were executed on 26th May, 2006

and registered on 27th November, 2007. The stamp duty was assessed on 27th November, 2007. The assessee offered capital gain on sale for taxation in AY 2006-07. Therefore in AY 2006-07 neither the sale deed was executed nor registered. The AO applied the provisions of Sec.50-C of the Act and determined capital gain based on the value adopted by the registering authority for the purpose of stamp duty and registration charges. Case of the assessee was that it had received money before executing the deed of conveyance and therefore the provisions of Sec.50C of the Act were not applicable. Sec.50C of the Act was inserted by the Finance Act, 2002 w.e.f 1-4-2003 and was as follows:

"Special provision for full value of consideration in certain cases.

50C.(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 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** 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."

**The provisions were amended by the Finance Act, 2009 w.e.f 1-10-2009 by adding the word "Assesseable" after the word adopted or assessed.** After the amendment with effect from 1st October, 2009 the provision of Section 50C stood as follows:

"Special provision for full value of consideration in certain cases.

50C.(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."

The case of the assessee was that the provision of Section 50C has no manner of application because on the date when he received the money by way of sale proceeds neither the deed of conveyance had been executed and naturally it could not have



been registered on that date. The Hon'ble Calcutta High Court had to decide the following substantial question of law: viz.,

"Whether, on the facts and circumstances of the case, the learned Tribunal was justified in law in not considering that the words "or assessable" was introduced in section 50C(1) of the Income Tax Act, 1961 with effect from 1st October, 2009 and thus erred in taking the value of the capital asset as assessed by the Stamp Valuation Authority on 27th November, 2007 instead of actual transfer price for the relevant assessment year 2006-07?"

The Court held as follows:

“7. We have not been impressed by this submission. It is true that 'Transfer' has been defined in Section 2(47) quoted above. But the aforesaid definition was made before Section 50C was introduced to the Income Tax Act. After section 50C was introduced in the year 2003, the value of the land or building or both sold or otherwise transferred has to be the value assessed by the authority of the State Government for the purpose of stamp valuation. The submission that in the financial year 2005-06 when the consideration was received, the Deed of Conveyance had not even been executed has not found favour with us for the simple reason that the intention of the Parliament is that in a case where the land or building or both are sold or otherwise transferred, such transfer shall be deemed to have taken place only after the stamp duty has been assessed by the State Government, because it is on the valuation made for the purpose of stamp duty that the tax is payable under the Income Tax Act. The amendment made in the year 2009 may have made the things simpler, but the intention of the legislature was very clear from the beginning that the value for the purpose of income tax shall be the same as the value for stamp duty. By adopting devices to defeat the provision, the assessee cannot be heard to contend that section 50C would not be applicable merely because the Deed of Conveyance had not at that time been executed or registered. The contention that the property stood transferred in the financial year 2005-06 when the sale proceeds were received on the basis of the definition appearing from s.2(47)(v) of the I.T. Act is without any substance for reasons already discussed. The assessee itself did not follow s.2(47)(v) of the I.T. Act because it did not offer the transfer for taxation in the year 1996 when the possession is claimed to have been made over on the basis of the agreements for sale in accordance with s.2(47)(v) quoted above. Designs to evade tax cannot be permitted. The Assessing Officer on the date of assessment for the assessment year 2006-2007 had before him the valuation made by the State for the purpose of stamp duty and rightly applied the same.”

12. The aforesaid decision is not applicable to the facts of the present case as there was no device adopted by the Assessee to ensure that provisions of Sec.50C of the Act were not applicable to his case. Secondly, the registration was completed in the case before the Hon'ble Calcutta High on 27.11.2007 i.e., in AY 2008-09 but the case before the Hon'ble Court related to AY 2006-07. The Court was interpreting the term "assesseeable" and countered the contention of the Assessee that prior to the amendment of Sec.50C of the Act w.e.f 1-10-2009, it is only cases where the valuation is completed in the relevant AY that provisions of Sec.50C of the Act can be applied. In the present case, no such device to evade tax has been pleaded by the revenue nor a plea has been taken by the Assessee that sale having taken place earlier to the execution or registration of sale, provisions of Sec.50C of the Act are not applicable. As rightly contended by the learned Counsel for the assessee, it was a decision rendered on the scope of amendment to section 50C of the Act w.e.f. 01.10.2009.

13. The decision referred to by the learned DR in the case of J.Appa Rao(supra) is a case where it was held that applicability of the provisions of Sec.50C of the Act is mandatory w.e.f .1-4-2003. This decision does not in any way support the case of the revenue regarding the year in which capital gain is liable to be taxed.

14. For the reasons given above, I hold that the capital gain in question cannot be brought to tax in Assessment Year 2011-12. The Revenue authorities erred in bringing to tax the capital gain in Assessment Year 2011-12. The addition made by the AO is accordingly directed to be deleted.

15. In the result, appeal by the assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(N.V VASUDEVAN)**  
**Vice President**

Bangalore,  
Dated : 10.02.2021  
/NS/\*

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|-------------------------|---------------|---------------|-----------|
| 1. Appellant            | 2. Respondent | 3. CIT        | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. |               | 6. Guard file |           |

By order

Assistant Registrar  
ITAT, Bangalore.