

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1353/Ahd/2019
Assessment Year 2015-16**

Smt. Rashidaben Taher Morawala Badri Mohalla, Vohawad, Godhra PAN No: AQRPM1254F (Appellant)	Vs	The DCIT, International Taxation, Baroda (Respondent)
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**Appellant by : Shri Bandish Soparkar, A.R.
Respondent by : Shri Sudhеду Das, Sr.D.R.**

Date of hearing : 22-07-2022
Date of pronouncement : 19-10-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This is an filed by the Assessee as against the order dated 28.06.2019 passed by the Commissioner of Income Tax (Appeals)-13, Ahmedabad, as against the assessment order passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2015-16.

2. The brief facts of the case is that the assessee is an individual and Non Resident Indian. For the Assessment Year

2015-16, the assessee filed her Return of Income on 11.03.2016 declaring total income at Rs. 16,70,390/-. The return was taken for scrutiny assessment. The assessee sold immovable property on 23.01.2015 in the form of office premises bearing No. 3,4,5,6,7,13 & 14, in building wing "CBI" at Wonder City situated at Katran village, Taluka-Haveli, Pune-District and also adjacent Terrace portion for a consideration of Rs. 1,50,00,000/-. On 09/11/2017, the A.O. referred the transaction to the Valuation Officer, Solapur u/s. 142A to ascertain the property value as on the date of sale. The stamp value of the property as on the date of sale was Rs. 2,21,40,900/-. The Valuation Officer submitted his report on 14/08/2018 valued the Fair Market Value of the property at Rs. 1,80,39,000/-. The A.O. based on the Valuation Report issued a show cause notice on 05/09/2018 as to why the said value as per the Valuation Report amounting to Rs. 1,80,39,000/- should not be considered as Fair Market Value of the said immovable property on the date of sale.

2.1. The assessee replied the Valuation Officer has made the higher value, when the assessee sold seven office units vide two sale deed. Naturally when large area is sold, the sale price realized is less. Further the Valuation Officer has valued the same rate for the Terrace area sold. Therefore the valuation arrived by the Valuation Officer is not correct. The above objection was overruled by the Assessing Officer and determined the Long Term Capital Gain as Rs. 11,93,809/- and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals). The assessee challenged the validity of assessment order on the ground that the assessment order was required to be passed on 31.12.2017 for the Assessment Year 2015-16 but the same has been passed on 28.09.2018. The assessee contended that the A.O. has referred the matter to DVO under section 50C of the Act hence no extension is granted under section 153(1) of the Act. The Ld. CIT(A) called for a report from the Assessing Officer whether the assessment order is time barred or not. The Assessing Officer filed his reply vide letter dated 07/05/2019 stating that the case was referred to DVO under section 142A of the Act and not under section 50C of the Act hence as per Explanation-1 to Section 153(1) extended period is available to AO for completion of assessment proceedings. The relevant documents for the above reference were also relied upon by the Assessing Officer. Considering the above submissions of the assessee that the assessment order is time barred and therefore dismissed the same. Regarding the valuation made by the DVO, the Ld. CIT(A) held that the DVO is a technical person with requisite competency to determine the real value of asset. Once the professional has taken a view looking at the facts and circumstances of the case, which has rightly been done by the DVO in the instance case, the valuation report cannot be faulted in facts and in law for the purpose of computing LTCG. Therefore the A.O. is correct in adopting Fair Market Value of the property at Rs. 1,80,39,000/- and thereby assessee appeal is dismissed.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts of the appellant's case in holding that assessment order passed by Ld. AO is not time barred.*

Both the lower authorities have erred in law and on the facts of the appellant's case in not appreciating the fact that Assessment Order in question is time barred.

2. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts of the appellant's case in upholding the action of the Ld. AO of taxing the "Income from Capital Gain" at Rs. 11,27,203/- instead of Capital Loss amounting to Rs. 19,11,797/- returned on the erroneous plea that sale consideration received by the appellant is less than the value as per Stamp Duty Authority.*

Both the lower authorities have erred in law and on the facts of the appellant's case in not appreciating the fact that value estimated by the Ld. Valuation Officer is excessive.

3. *The initiation of penalty proceedings U/s 271(1) (c) of the Act is not justified*

4.1. Ld. Counsel Mr. Bandish Soparkar appearing for the assessee submitted that the assessment order passed in the case is barred by time, because the reference made by the Assessing Officer under section 142A is bad and illegal and cannot claim extension of time under section 153 Explanation 1(v) of the Act. Whereas the Assessing Officer could only exercise under section 155(15) namely the Assessing Officer could have amended the order of assessment within four years of receipt of the Valuation Report from the DVO. Thus the Assessing Officer ought to have completed the assessment, for the Assessment Year 2015-16 namely 21 months period as prescribed u/s. 153(1) which expired on 31.12.2017 and could have amended the assessment order u/s. 155(15) of the Act within four years thereafter. As far as the reference of the Valuation

Officer made u/s. 50C of the Act, no extension has been granted u/s. 153(1) of the Act. Whereas in the present assessee's case, the assessment order has been passed on 28.09.2018 which is clearly barred by limitation. The Ld. Counsel drawn to our attention to the show cause notice dated 05.09.2018 (at page no. 1 of the Paper Book) issued by the Assessing Officer clearly stating that he is referring valuation of the immovable property under section 142(A) of the Act. At Page No. 47 of the Paper Book, the DVO issued notice under section 142A of the Act to the assessee calling for her objection from the assessee. At Page No. 48 in the preliminary Valuation Report made by the Valuation Officer clearly says that the valuation is made under section 142A of the Act.

4.2. In this connection, the Ld. A.R. relied upon Delhi Bench decision in the case of Sumit Khurana vs. ACIT reported in [2011] 14 taxmann.com 44 (Delhi) whereas the Tribunal held that reference to valuation cell u/s. 142A of the Act can be referred for the purpose of determining the Fair Market Value of the investment covered u/s. 69, 69A and 69B of the Act and not for the purpose of computation of capital gains u/s. 48 of the Act which held as follows:

6. We have heard both the parties and gone through the material available on record. Under section 142- A of the Act /reference to the valuation officer can be made for the purpose of making an assessment or re-assessment where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or 69B of the Act is required to be made. The Assessing Officer may require the valuation officer to make an estimate of such value and report the same to him. From the plain reading of provisions of section 142A(1) it is clear that reference to the valuation officer can be made for the purpose of estimating the value of any investment referred to in section 69, 69 A or section 69B. Under

section 48 of the Income-tax Act, 1961 the income chargeable under the head 'capital gains' shall be computed by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely: —

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto: Thus no reference can be made under section 142A to the valuation officer for estimating the full value of consideration of the property for the purpose of computation of capital gains under section 48 of the Act. Under section 55A reference to valuation cell can be made for the purpose of determination of fair market value of the capital asset under certain circumstances. Therefore, reference under section 55A of the Act, cannot be made for the purpose of estimating the full value of consideration received or accrued. Further provisions of section 50C of the Act, defines the scope of full value of consideration in certain cases. Under section 50C(1) in a case 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 [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 the full value of the consideration received or accruing as a result, of such transfer. Thus, for the purpose of computing capital gains in respect of capital asset being land and building or both the full value of consideration will be the value adopted or assessed for the purpose of stamp duty. Sub-section (2) of section 50C empowers the Assessing Officer for making reference to the valuation officer in the cases where the assessee claims before assessing officer that the value adopted, assessed or assessable by stamp valuation authority under section 50C(1) exceeds the fair market value of the property as on the date of transfer. Clause (b) of section 50C(2) provides that the value so adopted or assessed or assessable by stamp valuation authority has not been disputed in any appeal or revision or no reference has been made before any authority, court or the High Courts, assessing officer may refer the valuation of the capital asset to the valuation officer. Therefore, provisions of section 50C(2) of the Act are applicable at the request of the assessee, when he claims that the stamp valuation is higher than the fair market value of the property. The provisions of section 55A are general and provisions of section 50C are specific. It is a settled law that in a case where there is clash between two provision dealing with the same subject and in the same statute, the specific provisions will override the general provisions. Provisions of section

50C are specific provisions for determination of 'full value of consideration' in respect land or building or both and therefore, they will override provisions of section 55A of the Act. From the above discussion, it is clear that provisions of section 142A of the Act are applicable for valuation of investments. For the purpose of computation of capital gains, stamp duty valuation has to be taken as full value of the consideration. Therefore, in our considered opinion, the Assessing Officer was not justified in making reference to the valuation cell under section 142A of the Act as the reference is to be made for the purpose of determination of fair market value of the investment covered under section 69, 69A and 69B of the Act and not for the purpose of computation of capital gains under section 48 of the Act.

4.3. The Ld. Counsel also relied upon Co-ordinate Bench of Hyderabad Bench decision dated 12.02.2014 in ITA No. 1748/HYD/2012 in the case of ACIT vs. Shri Shaik Ahmed Banafe wherein it is held as follows:

8. *After hearing the rival contentions, we do not see any merit in the Revenue's ground. The statute permits reference to Valuation Cell under S.50C, S.55A and S.142A. There is no dispute on the powers of the Assessing Officer in making a reference under these sections. However, what the CIT(A) has decided was that those sections do not apply to the facts of the case. Revenue is contesting that for ascertaining the Fair Market Value of a capital asset for computation of capital gains, reference can be made to a Valuation Officer under S.55A of the Act. On the face of it, the statement made on behalf of the Revenue is correct. However, ascertaining Fair Market Value will arise only in certain situations. Under S.50C in determining the sale value of consideration according to stamp value, if the assessee objects to the valuation, then reference under S.50C can be made to Valuation Officer. This situation does not arise in this case. Under S.55A, with a view to ascertain the fair market value of a capital asset, Assessing Officer can refer the valuation to Valuation Officer, but the fair market value under this Chapter is adopted for the purpose of cost of acquisition of an asset, while computing the capital gains and not for sale consideration. If S.55A could be invoked to arrive at the sale consideration, then there is no necessity to introduce provisions of S.50C, which enables the Assessing Officer to adopt the SRO value, where the sale consideration is not in accordance with the SRO value. While computing the capital gains, substitution of sale consideration with fair market value can only be done under S.50C. There is no other provision in the Act to do so. Even the reference under S.142A of the Act for determining the value of any investment can only be done with reference to S.69, S.69B, S.69A or for the purpose of fair market value of any property*

under 5.56(2). In the given facts of the case, these provisions are not applicable, nor can be invoked by the Assessing Officer. What Revenue is contesting can be appropriate if the reference was made in the hands of the builder, who may claim the cost of acquisition to ascertain the investment in the building, but in the assessee's case, who adopted the actual cost of construction for arriving at the sale consideration, these provisions do not apply. This is what the learned CIT(A) has decided. Therefore, we do not see any reason in the ground raised by the Revenue. Accordingly, the grounds are rejected, and the Revenue's appeal stands dismissed.

4.4. The Ld. Counsel also relied upon Co-ordinate Bench of Ahmedabad Bench decision in the case of ITO vs. Chandrakant R. Patel [2011] 11 taxmann.com 180 wherein it is held as follows:

"... Since the language in section 55A do not refer 'value of consideration' but only used the wordings 'fair market value' then its applicability for the purpose of reference to a valuation officer has to be exercised "within that limited area, so the scope is also confined to determine the fair market value of a capital asset only. Even if the Assessing Officer had called for a report to determine the fair market value of a capital asset but considering the language of section 48, the same cannot be substitute the 'full value of the consideration'. [Para 11]

The area of operation of section 55A is 'to ascertain the fair market value of a capital asset'. Since section 48 through which capital gain is computed prescribe to compute the gain on the 'full value of the consideration received or accruing as a result of the transfer'. Therefore, section 55A cannot give any assistance to compute the capital gain under section 48. The expression 'full value of consideration' (section 48) does not have the same meaning and cannot be used in place of 'fair market value' (section 55A) section 48 do not prescribe that the capital gain is to be computed on the fair market value of a capital asset, but it only prescribes to charge capital gain on the consideration received, therefore, section 55A cannot be used for the purpose of computation of capital gain under section 48. Even further, section 55A is meant only to ascertain the fair market value of a capital asset but not meant to determine the full value of the consideration received as a result of the transfer therefore section 55 A has its own limitation for I its operation. Since section 48 do not prescribe the determination of capital gain on 'Fair market value', hence out of the ambits of reference prescribed under section 55A [Para 12]

Section 50C is titled as 'Special provision for full value of consideration in certain cases'. Meaning thereby this section is not applicable to each and every case of sale but this is to be applied in respect of those sales instances where consideration received is less than the value adopted by

the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer. In that situation, for the purpose of section 48 computation of capital gain, value so adopted by the stamp valuation authority be deemed to be the full value of the consideration received as a result of such transfer. Meaning thereby the substitution of full value of consideration is possible, if the disclosed consideration is less than the value determined for payment of stamp duty. It had also been prescribed that where the assessee claims that the value adopted by the stamp valuation authority exceeds their fair market value or the value so adopted by the stamp valuation authority is not decided by any other Court or High Court, then the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer under section 55A. Therefore the conclusion is that the Act has prescribed that a reference under section 55A can be made for a limited purpose as prescribed under section 50C. Wherever the legislature considered it proper, a provision for reference to DVO has been prescribed in the statute, but reference under section 55A is not prescribed to be applied in each such case merely on the sweet will of the Assessing Officer. Therefore, it was held that if a reference can be made to ascertain the fair market value of a property, then wherever this phrase 'to determine the fair market value of the property' is used there only the recourse of section 55A is possible. It was held that for the purposes of the computation of capital gain under section 48, a reference can be made to DVO only in a situation as prescribed under section 50C, and not otherwise. [Para 13]

In this regard, provisions of section 142A was also examined titled as 'Estimate by Valuation Officer in certain cases'. This section prescribes that for the purpose for making an assessment where an estimate of the value of any investment referred to in sections, 69, 69B, 69A is required to be made the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to Assessing Officer. Therefore, the area of operation and the scope of section 142A is limited in its span only to determine the value of investment in respect of certain assets, such as, bullion, jewellery, valuable articles etc. In this section as well there is no power vest with Assessing Officer to seek the help of Valuation Officer in respect of determination of capital gain prescribed under section 48 of the Act. [Para 14]

Section 45 talks about substitution affair market value with the full value of consideration only in certain special circumstances, such as, determination of value of damage as a result offload, riot, accident, fire, etc. section 45(4) also prescribes that the fair market value be deemed to the fall value of the consideration in respect of distribution of capital asset on the dissolution of a firm. Certain specific instances have been prescribed under the Act and only under those circumstances the fair market value can be substituted with the amount of full value of consideration. But as per above discussion, there is no such clause of substitution while computing the capital gain under section 48 of the Act

and the gain has to be computed on the basis of the 'full value of the consideration'. A reference to valuation Officer under section 55A can be made to ascertain the fair market value of a capital asset section 48 is, therefore, out of the scope of Valuation made under section 55A because capital gain is to be taxed on the amount of consideration received on transfer of asset. If the Assessing Officer is of the opinion, that valuation of the capital asset is required, but such reference can be made only to ascertain the fair market value, therefore, the applicability of section 55A(b)(ii) is also limited one. On reading of section 50C alongwith these connected sections it could be said that the Assessing Officer is empowered to refer for valuation of a capital asset under specific circumstances as prescribed under this section provision of section 50C where he has found that the consideration received is less than the stamp duty. In the instant appeal there was a finding on facts that the consideration was not less than the stamp duty. Admitted factual position was that the 'Jantri' rate as per the 'Stamp Duty Authority' was at Rs. 4,500 and Rs. 7,000 per sq. meter respectively for the Plot 1 land 2; whereas the assessee had sold them at the rate of Rs. 41,860 per sq. mtr. It was held that 'the Assessing Officer was not empowered to refer to DVO because as per section 50C(2) the Assessing Officer may refer the valuation of a capital asset where assessee claims before Assessing Officer that the value adopted by the Stamp Valuation Authority exceeds the fair market value of the property as on the date of transfer. The valuation as suggested by DVO and the consequential addition as made by the Assessing Officer was to be reversed. The view taken by the Commissioner (Appeals) was to upheld. [Para 16]

5. Per contra the Ld. D.R. appearing for the Revenue supported the orders passed by the Lower Authorities and pleaded that the assessment order is passed well within the limitation as prescribed u/s. 153(1) of the Act and therefore requested to dismiss the appeal filed by the assessee.

6. Heard rival parties and perused the materials available on record including the Paper Book and Case Laws cited by the assessee counsel. Section 142A of the I.T. Act titled as 'Estimate by Valuation Officer in certain cases'. This section prescribes that for the purpose for making an assessment, where an estimate of the

value of any investment referred to in sections 69, 69A, 69B are required to be made, the A.O. may require the Valuation Officer to make an estimate of such value and report the same to A.O. Thus the scope of section 142A is limited in its span only to determine the value of investment in respect of certain assets, such as, bullion, jewellery, valuable articles etc. In this section as well there is no power vest with A.O. to seek the help of Valuation Officer in respect of determination of capital gain prescribed under section 48 of the Act.

6.1. Similarly Section 50C of the Act, is titled as 'Special provision for full value of consideration in certain cases'. Meaning thereby this section is not applicable to each and every case of sale but this is to be applied in respect of those sales instances where consideration received is less than the value adopted by the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer. In that situation, for the purpose of section 48 computation of capital gain, value so adopted by the stamp valuation authority be deemed to be the full value of the consideration received as a result of such transfer. Meaning thereby the substitution of full value of consideration is possible, if the disclosed consideration is less than the value determined for payment of stamp duty. It had also been prescribed that where the assessee claims that the value adopted by the stamp valuation authority exceeds their fair market value or the value so adopted by the stamp valuation authority is not decided by any other Court or High Court, then the Assessing Officer may refer the valuation of

the capital asset to a Valuation Officer under section 55A. Therefore the conclusion is that the Act has prescribed that a reference under section 55A can be made for a limited purpose as prescribed under section 50C.

6.2. It is seen from records and the Paper Books filed in the present case, the Assessing Officer referred the transaction to the Valuation Officer, Sholapur under section 142A on 09.11.2017 to ascertain the Fair Market Value as on the date of sale. The Valuation Officer determined the value of the property at Rs. 1,80,39,000/- vide his report dated 14.08.2018. Based on the above report, the Assessing Officer passed the assessment order on 28.09.2018 which is claimed by the assessee as barred by limitation u/s. 153(1) of the Act. The assessee's contention that the Assessing Officer ought to have passed the assessment order under 153(1) on or before 31.12.2017 and then invoking sub-section (15) of Section 155 and amend the assessment order within four years thereafter, is found to be justifiable.

6.3. In this connection, sub-section (15) of Section 155 is reproduced as follows:

(15)- where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration received or accruing as a result of the transfer to be the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in accordance with sub-section (1) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (b) of sub-section (2) of that section, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the full value of the consideration to be the value as so revised in such appeal or revision or reference; and the provisions of section 154 shall, so far as may be,

apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision or reference.]

6.4. Reading of the above provisions makes it very clear that the Assessing Officer is necessarily to pass the assessment order within the time limit as prescribed under section 153(1) of the Act which is in this case namely 31.12.2017. However the Assessing Officer has wrongly referred the valuation of the immovable property under section 142A of the Act which is not provided under the provisions of the Income Tax Act. However after receipt of the Valuation Report from the DVO, the A.O. passed the assessment order on 28.09.2008 which is clearly barred by limitation which is not sustainable in law. Therefore the assessment order is hereby invalid in law. Thus the ground no. 1 raised by the assessee is hereby allowed. As the entire assessment order itself is quashed, the second ground raised by the assessee does not require any adjudication by us.

7. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 19 -10-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 19/10/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT