

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

GA No. 3686 of 2013
ITAT No. 221 of 2013

SUNIL KUMAR AGARWAL

Versus

COMMISSIONER OF INCOME TAX - SILIGURI

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE DEBANGSU BASAK

Date : 13th March, 2014.

For Appellant : Mr. J. P. Khaitan, Senior Advocate with
Mr. Sanjoy Bhowmick and Mr. C.S. Das,
Advocates

For Respondent : Ms. A. Ghutghutia, Advocate

The Court : The subject matter of challenge in this appeal is a judgment and order dated 1st August, 2013 by which the appeal preferred by the assessee was dismissed. The assessee has come up in appeal.

The following questions of law have been raised by the assessee:

- (a) Whether the Tribunal misdirected itself in law in proceeding on the basis that reliance by the appellant on the deeds of conveyance containing the recital that the agreed consideration represented the highest prevailing market price was not sufficient for disputing the stamp value and making reference to the departmental valuation officer in terms of sub-section (2) of section 50C of the Income Tax Act, 1961 and its purported findings in that behalf are arbitrary, unreasonable and perverse?
- (b) Whether and in any event, upon a true and proper interpretation of the material provisions of the Income Tax Act, 1961, the entire capital gain would be exempted if the sale consideration received is fully invested in bonds notified for the purpose of section 54EC and the Tribunal was justified in law in taking a contrary view?"

The facts and circumstances of the case, briefly stated, are that the assessee sold a piece of land at a sum of Rs.10 lakhs by two several deeds of conveyance and invested the sale proceeds in the bonds and on that basis he claimed deduction under Section 54EC of the Income Tax, hereinafter referred to as the said Act. The market value of the land was, however, assessed by the District Sub Registrar at a sum of Rs.35 lakhs, which was duly paid. The assessing officer, in the circumstances, adopted the valuation made by the District Sub Registrar and computed the long term capital gain on that basis. The CIT(A) upheld the order of the assessing officer. An appeal preferred by the assessee was dismissed by the learned Tribunal for the following reasons:

“We have considered the rival submissions. A perusal of the grounds of appeal as raised by the assessee clearly shows that the assessee has not pointed out any reason for reference to the D.V.O. in respect of the provisions of section 50C of the Act. Admittedly, the valuation of the property by the stamp valuation authority at Rs.35 lakhs has not been disputed by the assessee. Once the stamp valuation authority’s value has been accepted by the assessee, then the same would have to be adopted in view of the specific provisions of section 50C of the Act. Further a perusal of the order of the

learned Commissioner of the Income-tax (Appeals) clearly shows that the learned Commissioner of Income-tax (Appeals) has given detailed reasons to show that the provisions of section 54F of the Act cannot be considered or treated as to be in *pari materia* with provisions of section 54EC of the Act. Further a perusal of the assessment order clearly shows that the Assessing Officer had provided the assessee an opportunity to take its stand in respect of the provisions of section 50C and the assessee had not replied in respect of section 50C. In the circumstances, we are of the view that the findings of the learned Commissioner of Income-tax (Appeals) and the Assessing Officer are on a right footing and do not call for any interference.”

Mr. Khaitan, learned Senior Advocate, appearing for the appellant-assessee, has drawn our attention to the following recital appearing from each of the deeds of conveyance:

“AND WHEREAS the Vendor finding the price offered by the Purchaser to be highest prevailing in the market agreed to sell scheduled land fully described in the schedule below for the sum of Rs.5,00,000.00 (Rupees Five Lacs Only) free from all encumbrances and charges whatsoever unto the Purchaser and the said land is transferred in the manner as appearing hereinafter.”

Mr. Khaitan submitted that the case of the assessee has always been that the price offered by the purchaser was the highest prevailing price in the market. The valuation made by the District Sub Registrar for the purpose of stamp duty, therefore, was not the prevailing price of the land in question. He added that the highest prevailing price in the market obviously is also the fair market value of the property. The expression "fair market value" cannot have any other significance than the price, which can fairly be expected to be had upon sale of the property. He, therefore, contended that the case of the assessee always was that the valuation made by the District Sub Registrar for the purpose of stamp duty was far in excess than the market value of the property. Both the deeds of conveyance were produced before the assessing officer. Therefore, the valuation was, in fact, challenged. In the facts of the case, the assessing officer, in fairness, should have referred the matter to a valuation officer contemplated under Section 50C of the Act, rather than proceeding to assess the capital gain on the basis of the valuation made by the District Sub Registrar. He added that this submission was specifically made before the learned Tribunal but the learned Tribunal chose to reject the prayer for technical reasons. He submitted that there has been total miscarriage of justice. In case

the valuation made by the assessing officer is to be accepted, the resultant effect will be that the assessee lost both the property and the money value thereof. He, as such, submitted that the order under challenge should be set aside and the matter should be referred to the valuation officer.

Ms. Ghutghutia, learned advocate appearing for the revenue, submitted that it does not appear from the assessment order that any such prayer was made before the assessing officer or before the CIT(A). She added that necessary grounds also do not appear to have been made for reference to the valuation officer. Therefore, the question of referring the matter to the valuation officer at this stage does not arise. She added that the requirement of clauses (a) and (b) of sub-Section 2 of Section 50C are also not met by the assessee. Therefore, the question of reference to a valuation officer in any event does not arise.

We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has not been met by the assessee, can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement

of clause (a) of sub-Section 2 of Section 50C was met by the assessee.

We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the

assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

For the aforesaid reasons, the order under challenge is set aside.

The impugned order including orders passed by the CIT(A) and the assessing officer are all set aside. The matter is remanded to

the assessing officer. He shall refer the matter to the departmental valuation officer in accordance with law. After such valuation is made, the assessment shall be made *de novo* in accordance with law.

(GIRISH CHANDRA GUPTA, J.)

(DEBANGSU BASAK, J.)

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