

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.114 of 2015 (O&M)
Date of decision: 15.9.2015**

B.M.J.Real Estate (P) Limited

.....Appellant.

Commissioner of Income Tax, Ludhiana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Radhika Suri, Sr. Advocate with Ms. Rinku Dahiya, Advocate
for the appellant.

Mr. Rajesh Katoch, Advocate for the revenue.

Ajay Kumar Mittal,J.

CM No.8043 CII of 2015

1. Delay in filing the appeal is condoned. CM stands disposed of.

CM No.8044 CII of 2015

2. There is a delay of 75 days in refiling the appeal. For the reasons stated in the application and after hearing learned counsel for the parties, the delay in refiling the appeal is condoned. CM stands disposed of.

ITA No.114 of 2015

3. This appeal has been preferred by the assessee-appellant under section 260A of the Income Tax Act, 1961 (in short, "the Act) against the

order dated 28.4.2014, Annexure A.6 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (in short, “the Tribunal”) in ITA No.179/Chd/2013 for the assessment year 2006-07, claiming following substantial questions of law:-

“i) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the full value of consideration for the purpose of computation, the capital gains were ₹ 1.25 crores as opposed to ₹ 73,60,000/- shown in the sale deed?

ii) Whether in the facts and circumstances, the ITAT had fallen in error in not considering that the property in question being in possession of the tenant and being closed to cremation ground was correctly valued at ₹ 73,00,000/- (correct figure being ₹ 73,60,000/-) and not ₹ 1.25 crores?

4. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The return of income of ₹ 25,26,880/- was filed by the assessee on 27.11.2006 which was processed under Section 143(1) of the Act on 2.8.2007 which was later on selected for scrutiny assessment. The Assessing Officer by placing reliance on Section 50C of the Act considered the sale consideration of plot on the basis of stamp duty paid on circle rate of ₹ 1.25 crores as opposed to disclosed consideration of ₹ 73,60,000/- and made addition of ₹ 51,72,000/- to the income of the assessee vide order dated 15.12.2008, Annexure A.1. The appellant filed appeal before the Commissioner of Income Tax (Appeals) II, Ludhiana [CIT(A)]. Vide order dated 31.8.2009, Annexure A.2, the CIT(A) upheld the order of the Assessing Officer and dismissed the appeal. The appellant went in appeal before the Tribunal. Vide order dated 30.4.2010, Annexure A.3, the Tribunal partly allowed the appeal holding that the

Assessing Officer had failed to make a reference to the District Valuation Officer (DVO) and remitted the issue back to the Assessing Officer for deciding the same afresh after making reference to the DVO to ascertain the fair market value of the asset on the date of the transfer. The DVO determined the value of the property at ₹ 2,97,98,550/- on 19.12.2011 treating the same to be commercial property situated on main GT road whereas while assessing the value of the property for the purpose of the stamp duty, the revenue authority considered the same to be residential area at Gandhi Nagar. The assessee pointed out that as per agreement of sale dated 6.11.2004, the property was shown to be residential and in occupation of the tenants. The assessee filed objections before the Assessing Officer. The Assessing Officer vide order dated 30.12.2011, Annexure A.4 treated the sale consideration at ₹ 2,97,98,550/-. The assessee filed appeal before the CIT(Appeals). The CIT(A) vide Annexure A.5 observed that the addition made by the Assessing Officer by adopting the sale consideration at ₹ 2,97,98,550/- was contrary to the provisions of Section 50C of the Act as the full value of consideration by the DVO could not exceed the value on which stamp duty was paid. The CIT(A) considered the sale value at ₹ 1,25,32,000/-. Still not satisfied, the appellant filed appeal before the Tribunal. Vide order dated 28.4.2014, Annexure A.6, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellant submitted that there was defect in the valuation of property adopted by the Valuation Officer under Section 50C(2) of the Act. It was urged that under sub section 3 of Section 50C of the Act, it was open for the appellant to have raised objection with

regard to the report of the Valuation Officer. It was also argued that the sale consideration of ₹ 73,60,000/- was the correct value whereas the sale value adopted by the CIT(A) and the Tribunal at ₹ 1,25,32,000/- was unsustainable.

7. On the other hand, learned counsel for the revenue besides supporting the impugned order submitted that the value disclosed by the assessee was ₹ 73,60,000/- and the value assessed by the Collector under Section 50C(1) of the Act was ₹ 1.25 crores which was never challenged by the assessee. It was urged that on a prayer made by the assessee, under sub section 2 of Section 50C of the Act, the matter was referred to the Valuation Officer and the value was determined at ₹ 2,97,98,550/-. In such circumstances, the value of ₹ 1.25 crores was justified.

8. Section 50C of the Act reads thus:-

“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.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the

stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.”

9. A perusal of the above provisions shows that under sub section (1) of Section 50C of the Act, where the consideration received or accrued as a result of transfer of capital asset being the land or building or both is less than the value adopted or assessed by the stamp valuation authorities,

then the value so adopted or assessed for the payment of stamp duty in respect of such transfer shall be deemed to be the full value of consideration received or accruing as a result of such transfer and should be adopted for the purposes of section 48 of the Act. Sub section (2) of Section 50C of the Act provides that where the assessee claimed before any Assessing Officer that the value adopted or assessed by the stamp Valuation authorities exceeds the fair market value of the property as on the date of transfer and the said value had not been disputed in any appeal or revision or no reference had been made before any authority, the Assessing Officer may refer the valuation of the capital asset to the Valuation officer who in turn shall value the property. According to sub section (3) of Section 50C of the Act, where the value ascertained under sub section (2) of section 50C of the Act exceeds the value adopted or assessed by the stamp valuation authorities then the value so adopted or assessed by such stamp valuation authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

10. In the present case, the assessee had sold the property for an amount of ₹ 73,60,000/- and the stamp duty had been paid at the rate of ₹ 1.25 crores whereas against the said stamp duty valuation, the Valuation officer had valued the property at ₹ 2,97,98,550/-. The CIT(A) applied the value determined by the stamp valuation authorities as to be fair market value of the property on the date of transfer. Hence the value assessed in the hands of the assessee was ₹ 1.25 crores as against the value assessed by the DVO at ₹ 2,97,98,550/-. The Tribunal after considering the matter held that the stand of the assessee and the objections raised by it against the valuation report had no meaning including the stand of the DVO to have

adopted commercial rates for valuing the said property as the assessment in the hands of the assessee had not been made on such valuation report but on a much lesser value of ₹ 1.25 crores and even if credit is given on account of all objections raised by the assessee, the value of the property adopted in the hands of the assessee is much lower than the value determined by the DVO. The relevant findings recorded by the Tribunal read thus:-

“17. In the facts of the present case the requirements of section 50C of the Act have been met with by the Assessing Officer by making reference to the Valuation Officer and in turn received valuation report of the property determining the value of property as on the date of sale. The learned AR for the assessee has vehemently pointed out various defects in the valuation report made by the valuation officer and the main grievance of the assessee is that the valuation officer has adopted higher rates i.e. the commercial as against the residential rates which resulted in higher valuation of the property. However, if we look at the case in entirety and considering the facts and circumstances of the present case, we find that the assessee had sold the said asset for an amount of ₹ 73,60,000/- and the stamp duty had been paid at the rate of ₹ 1.25 crores whereas against the said stamp duty valuation, the Valuation Officer had valued the property at ₹ 2.97 crores. The CIT(Appeals) had applied the value determined by the stamp Valuation authorities as to be fair market value of the property on the date of transfer, against which revenue is not in appeal. Hence the value assessed in the hands of the assessee is ₹ 1.25 crores as against the value assessed by the DVO at ₹ 2.97 crores. The perusal of the grievances raised by the assessee reflects that all the grievances were against the valuation framed by the Valuation Officer and even if the value is reduced as per the said grievances, there is no substance in the grievance of the assessee where reduced value has been adopted by the CIT(Appeals) as fair market value of the property. In the entirety of the facts and

circumstances, we find no merit in the stand of the assessee and the objections raised against the valuation report have no meaning including the stand of DVO to have adopted commercial rates for valuing the said property as the assessment in the hands of the assessee has not been made on such valuation report but on a much lesser value of ₹ 1.25 crores and even if credit is given on account of all the objections raised by the assessee, the value of property adopted in the hands of the assessee is much lower than the value determined by the DVO. Hence we uphold the order the CIT (Appeals) in adopting the value assessed by the Stamp Valuation authorities as the fair market value of the property on the date of transfer in computing the income of the assessee.”

11. Learned counsel for the appellant has not been able to show any illegality or perversity in the findings recorded by the Tribunal, warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 15, 2015
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(Ramendra Jain)
Judge