

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.981 OF 2016

Jagdish C. Dhabalia
An Individual residing at
Ground Floor, Bhavsar Compound
M.G. Road, Borivali (W),
Mumbai – 400 066.

.... Appellant

versus

The Income Tax Officer, 25(2)(1)
Having his office at
Pratyakshakar Bhavan,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051.

... Respondent

**WITH
INCOME TAX APPEAL NO.983 OF 2016**

Mehul Jagdish Dhabalia
An Individual residing at
501/502 Alaknanda, B-Wing
TPS, III 51st Road Borivali (W)
Mumbai – 400 092.

.... Appellant

versus

The Income Tax Officer, 25(2)(2)
Having his office at
Pratyakshakar Bhavan,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051.

... Respondent

.....

- Mr.V.Joshi a/w Mr.Nishith Gandhi, Ms.Namrata Kasa,e
Mr.Mayur Patel & Ms.Urvi Patel i/b. M.M. Patel & Co.,
Advocate for Appellants.
- Mr.Arvind Pinto, Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 12th MARCH, 2019.**

ORAL JUDGMENT -: (PER : AKIL KURESHI, J.)

1. These Appeals arise out of common background. They have been heard together and would be disposed of by this common order. We may record facts from Income Tax Appeal No.983/16. The Appeal is filed by individual assessee to challenge the Judgment of Income Tax Appellate Tribunal ('Tribunal' for short). Following question is presented for our consideration;

“Whether, in the facts and circumstances of the case, and in law, the Tribunal was right, while reversing the order of CIT in confirming the action of the assessing officer in taxing capital gain, to the extent of the enhanced and notional sale consideration under section 50 C of the Act, in spite of the fact that the Appellant had invested the entire sale consideration accruing on transfer of the immovable property in the prescribed bonds in terms of section 54 EC of the Act?”

2. The assessee was a joint owner of a plot of land situated at Borivali, Mumbai, having 25% undivided share in the plot. The assessee and other co-owners transferred the plot in favour of purchaser under a sale deed dated 29/09/2007 pursuant to which the assessee received a sum of Rs.25 lakhs by way of sale consideration. The assessee invested entire amount of Rs.25 lakhs in the bond of 'Rural Electrification Corporation Ltd.' as specified under section 54 EC of the Income Tax Act, 1961 ('the Act' for short). In the return of income filed for the year 2008-2009 the assessee had declared the long term capital gain on transfer of land at Rs.21,19,344/- and claimed full exemption of such capital gain, under section 54 EC of the Act.
3. The Stamp Duty Authorities however had valued the land for the purpose of levying stamp duty at Rs.3,04,70,810/-. The Assessee's share of such stamp valuation of the property at 25% comes to Rs.76,17,702/-.
4. During the course of scrutiny of assessee's return, the Assessing Officer determined the long term capital gain of

Rs.49,47,344/- and accordingly passed the order of assessment on 29/12/2010.

5. The assessee filed Appeal against the order of Assessment, before CIT (Appeals). The Assessee contended that since the entire sale consideration of Rs.25 lakhs was invested in the specified bond, the assessee must get full exemption from capital gain, irrespective of the computation of the deemed sale consideration under section 50C of the Act. CIT Appeals allowed the assessee's Appeal, upon which the revenue filed Appeal before the Tribunal. The Tribunal by the impugned judgment allowed the revenue's Appeal. The tribunal was of the opinion that for the purpose of exemption under section 54EC of the Act, deeming fiction contained in section 50C of the Act cannot be ignored. The assessee could claim exemption only in relation to the investment made in the specified bond and not qua the entire capital gain.

6. Learned Counsel for the Appellant raised following contentions;

- (i) Taking through the provisions contained in Chapter IV of the Act it was contended that the deeming fiction contained in section 50C of the Act, would have no applicability while computing the exemption as provided in section 54EC of the Act. He contended that section 45 which is a charging provision, is made subject to various exemption provisions, including (though not so stated in the section) section 54EC of the Act.
- (ii) It was contended that section 50C of the Act creates a deeming fiction for the purpose of computation of capital gain under section 48 of the Act. Such fiction would have no applicability for the purpose of charging capital gain as per section 45 or for computing exemption under section 54EC of the Act. It was contended that the effect of deeming provision would be limited to the purpose for which the same has been enacted. In this context, learned Counsel relied on the decision of

Supreme Court in the case of *CIT Vs. Amarchand N. Shroff, reported in (1963) 48 ITR 59 (SC)* and *CIT Vs. Vadilal Lallubhai, reported in (1972) 86 ITR 2 (SC)*.

- (iii) Learned Counsel submitted that in the present case, the relevant provisions would require harmonious construction. The interpretation adopted by the revenue as accepted by the tribunal would lead to anomalous situation which should be avoided.
- (iv) It was further contended that the legislature would not expect a person to perform an impossible task. If the assessee had received total sale consideration of Rs.25 lakhs from transfer of the land, he could not be expected to invest any amount in access thereto, for claiming full exemption under section 54 EC of the Act.
- (v) Our attention was drawn to the decision of Supreme Court in case of *K.P. Verghese Vs.*

Income Tax Officer, as reported in 131 ITR 597

(SC) in support of the proposition that to avoid absurdity and incongruent consequences, the Court would adopt an interpretation not emerging from the plain language of a statute.

7. On the other had, the learned Counsel Mr.Arvind Pinto for the revenue contended that tribunal has correctly interpreted the relevant statutory provisions. The interpretation advanced by the Assessee would effectively render the provisions of section 50C of the Act redundant. The exemption provision should be strictly construed. Assessee can claim exemption only in relation to investment made in the specified bond and not beyond.

8. Having heard learned Counsel for the parties, to test the correctness of the interpretation of the tribunal, we may refer to the relevant statutory provisions. Part E of the Chapter IV of the Act pertains to capital gains. Section 45 contained the

said part is the charging provision for the capital gain arising from transfer of a capital asset. Sub-section (1) of section 45 provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in section 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H be chargeable to income tax under the head “Capital gains” and shall be deemed to be the income of the previous year in which the transfer took place. Section 48 of the Act provides the mode of computation of capital gain. In terms of this provision, the income chargeable under the head “Capital gains” would be computed by deducting from the full value of consideration received or accruing as a result of the transfer of the capital any amounts towards expenditure incurred wholly and exclusively with such transfer and the cost of acquisition of the asset and the cost of any improvement thereto.

9. Section 54EC of the Act pertains to capital gain not to be charged on investment in certain bonds. Relevant portion of this section reads as thus ;

54 EC. - (1) Where the capital gain arises from the transfer of a long-term capital asset (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say, -

- (a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;*
- (b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45.”*

10. Section 50C of the Act introduced by the legislature under Finance Act 2002 with effect from 01/04/2003, reads as under ;

50 C. - (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.

"Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for 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.]

11. Combined reading of these provisions would show that capital gain upon transfer of a capital asset is to be charged as per section 45 of the Act and which shall be deemed to be the income of the assessee for the previous year in which the transfer took place. In terms of the provisions contained in section 48 the capital gain would be computed by deducting from the full value of consideration received or accruing as a result of transfer, expenditure incurred wholly and exclusively in connection with the transfer and the cost of acquisition of the asset and cost of improvement thereof. It is at the stage of computation that section 50C of the Act kicks in. This provision, as can be seen, provides for a deeming fiction. Sub-section (1) of section 50C provides 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 plot or both is less than the value adopted or assessed or assessable by stamp valuation

authority for the purpose of stamp duty collection in respect of such transfer, the value so adopted, assessed or assessable shall for the purpose of section 48 be deemed to be the full value of consideration for transfer received or accruing as a result of such transfer. In plain terms, the stamp valuation assessment by the stamp duty officer of the State Government would be deemed to be the sale consideration of capital asset, replacing the declared sale consideration, if it happens to be less than stamp duty valuation. For the purpose of charging capital gain in view of section 45, to be computed as provided in section 48, this deemed consideration would be applied.

12. We may refer to section 54EC which is an exemption of provision. Sub-Section (1) of section 54EC provides that where the capital gain arising from the transfer of a long-term capital asset being land or plot or both and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or part of the capital gains in specified asset, the capital gain shall be dealt with in accordance with clause (a)

and (b) of sub-section (1). As per clause (a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45. As per clause (b) if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, the Assessee would receive proportionate exemption from payment of capital gain. Further proviso of sub-section (1) of section 54EC limits the investment that an assessee can make in any specified asset to Rs.50 lakhs. In other words, therefore clauses (a) and (b) of sub-section (1) of section 54EC would always have limit of Rs.50 lakhs specified in the further proviso for investment in the specified asset.

13. We do not find any conflict or any incongruent consequences of applying the provisions of section 50C for the purpose of computation of capital gain tax after claiming exemption under section 54EC of the Act. The deeming fiction under section 50C of the Act, must be given its full effect and

the Court should not allow to boggle the mind while giving full effect to such fiction. We are not opposing the proposition canvassed by the Counsel of the Assessee that deeming fiction must be applied in relation to the situation for which it is created. However, while giving full effect to the deeming fiction contained under section 50C of the Act for the purpose of computation of the capital gain under section 48, for which section 50C is specifically enacted, the automatic fallout thereof would be that the computation of the assessee's capital gain and consequently the computation of exemption under section 54EC, shall have to be worked out on the basis of substituted deemed sale consideration of transfer of capital asset in terms of section 50C of the Act.

14. Any other interpretation, particularly one canvassed by the learned Counsel for the Assessee, would render the provisions of section 50C redundant. In a situation like the one on hand, even if for the purpose of section 48, in terms of section 50C of the Act, the sale consideration deemed to have

been received by the Assessee may be much higher than one declared in the sale deed, the Assessee would claim no further capital gain tax liability by simply claiming to have made investment in specified asset the full declared sale consideration.

15. Under such circumstances we do not find that the Tribunal has committed error in interpreting the relevant statutory provision. Income Tax Appeals are therefore dismissed.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)