

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBARAYON

T.C.A.No.329 of 2020

The Commissioner of Income Tax,
Chennai. ... Appellant/Appellant

Versus

Shri Vummudi Amarendran
New No.4, Old No.19, Valmiki Street,
T.Nagar, Chennai 600 017. ... Respondent/Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 27.02.2020 in I.T.A.No.2933/Chny/2019 for the Assessment Year 2014-15.

against the Order of the Commissioner of Income Tax (Appeals)-6, dated 25/07/2019 made in ITA.No. 471(CIT (A)-6/2016-17 for the assessment Year 2014-15 and against the Order of the Assistant Commissioner of Income Tax, Non Corporate Circle 1 (1), Chennai - 34, dated 29/12/2016 made in GIR.No.PAN AAEPA3310M for the Assessment Year 2014-15.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 27.02.2020 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench ('the Tribunal') in I.T.A.Nos.2933/Chny/2019 for the Assessment Year 2014-15 and the Revenue has filed this Appeal raising the following Substantial Questions of Law:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amendment to Section 50C which was introduced with effect from 2017-18 prospectively was applicable retrospectively for the assessment year

2014-15 when the language used in the proviso does not indicate that it was inserted as a clarification?

2. Is not the reasoning and finding of the Tribunal bad by holding that the prospective amendment to provisions Section 50C for the assessment year 2017-18 is applicable retrospectively to assessment year 2014-15 without appreciating the fact that unless explicitly stated a piece of legislation is presumed not to be intended to have retrospective operation based on the principle ''lex prospicit non respicit'' meaning that the law look forward and not backwards?

2. The facts which are necessary for answering the questions raised before us are set out hereunder. The respondent/assessee is an individual filed its original return of income on 28.09.2014, admitting a total income of Rs.7,40,50,990/-. The case was selected for scrutiny and Notice under Section 143(2) of the Act dated 28.08.2015 was issued. Subsequently since there was a change in the Officer, Notice under Section 142(1) read with Section 129 of the Act was issued. The assessee was represented by his authorized representative before the Assessing Officer and submitted details called for. The assessee had owned 44,462 sq.ft of land in Neelankarai Village and the property was sold by the Sale Deed dated 02.05.2013 registered on the file of the Sub Registrar, Neelankarai. The assessee had entered into an Agreement for Sale on 04.08.2012 agreeing to sell the property for a total sale consideration of Rs.19 Crores and in terms of the conditions contained therein, the assessee had received a sum of Rs.6 Crores as advance consideration and the same was effected by Cheque payment by the purchaser. The Assessing Officer found that on the date of execution and registration of the Sale Deed i.e., on 02.05.2013, the guideline value of the property as fixed by the State Government was Rs.27 Crores. Thus, the Assessing Officer came to the conclusion that since the assessee had not parted with possession and had received only Rs.6 Crores as advance which was not disclosed during the relevant financial year, held that the Agreement for Sale cannot be regarded as a transfer for the purpose of Section 2(47)(V) of the Act. The assessee while computing Capital Gain had taken the sale consideration for the property at Rs.19 crores. This according to the Assessing Officer was not a full value of consideration because on the date when the property was sold, i.e., date on which the Deed of conveyance was executed and registered, the guideline value was much higher than the agreed sale price and therefore, the said amount should be reckoned for all purposes as a full value of consideration and Capital Gain thereon ought to have been computed.

3. The assessee before the Assessing Officer did not seek to bring his case under the ambit of Section 2(47)(V) of the Act. The argument was that the proviso to Section 50(C) of the Act would stand attracted. Though it was applied with effect from 01.04.2017, it would have retrospective effect as the proviso seeks to mitigate the undue hardship faced by the assessee. The Assessing Officer did not agree with the statement of the assessee on the ground that the proviso applied only with effect from 01.04.2017, applicable for the assessment year 2017-18 and the same is prospective. Further the Assessing Officer held that the conditions laid down for the proviso to be applicable, is absent in the assessee's case. The Assessing Officer came to such conclusion on the ground that the proviso would be applicable if at the first place Agreement has been treated as a transfer of a capital asset which was absent in the assessee's case, on the date when the Agreement for sale was entered into. Accordingly, the assessment was completed under Section 143(3) of the Act vide order dated 29.12.2016 by adopting the full value of consideration at Rs.27 Crores and the Capital Gain was recomputed and tax was demanded. The assessee filed an appeal before the Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)]. The appeal was allowed by order dated 25.07.2019. The Revenue preferred an appeal before the Tribunal which was dismissed vide order dated 27.02.2020, which is impugned in this appeal.

4. We have elaborately heard Mr.T.Ravikumar, learned Senior Standing Counsel for the Revenue.

5. It is the submission of Mr.T.Ravikumar, learned Senior Standing counsel that the amendment to Section 50(C) of the Act introduced by the Finance Act 2016 is effective only from 01.04.2017, prospectively. In this regard, the learned Senior Counsel referred to the legal maxim 'lex prospicit non respicit' which means law look forward and not backwards. The learned Senior Counsel referred to the Circular issued by the Central Board of Direct Taxes ('CBDT') in Circular No.3/2017 dated 20.01.2017 and has drawn the attention of this Court to the paragraph no.29 which deals with the Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property. It is submitted that CBDT has clarified that the amendment shall take effect from 01.04.2017 and would accordingly apply from assessment year 2017-18 and subsequent years. Further it is submitted that the language of the proviso is clear and it does not indicate it is either clarificatory to be held to argue that the proviso would have retrospective effect. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, (Central)-1, New Delhi Vs. Vatika Township Private Limited [2014 (367) ITR 466 (SC)] and our

attention was drawn to paragraph no.39 of the judgment, in support of his contention that the Statute has to be held to be prospective from the date fixed by the legislature.

6. Reliance was also placed on the decision of the High Court of Calcutta in the case of Bagri Impex (P.) Ltd., Vs. Assistant Commissioner of Income-tax, Circle-9, Kolkata;2013 (31) Taxmann.com 39 (Calcutta), in support of his contention that where the date of Sale was registered in the year, subsequent to the year in which consideration was received, applying Section 50(C) of the Act, value assessed by stamp valuation authority in subsequent years should be taken as full value of consideration. Reliance is also placed on the decision of the Honble Division Bench of this Court in Ambattur Clothing Company Limited Vs. Assistant Commissioner of Income Tax [2010 (326) ITR 0245] to support the contention that the Assessing Officer was justified in treating the value adopted by the stamp valuation authority as the deemed sale consideration received / accruing as a result of transfer. Reliance was also placed on the decision of the Hon'ble Supreme Court in R.Saibharathi Vs. J.Jayalalitha [2004 (2) SCC 9], with regard to the effect of the guideline value fixed by the Government. As pointed out by us, the assessee sought to take the benefit of the proviso inserted to Section 50C of the Act. It is no doubt true and as clarified by the CBDT vide Circular No.3 of 2017 dated 20.01.2017 that the amendment to Section 50C would start effect from 01.04.2017 and will accordingly apply from assessment year 2017-18 and subsequent assessment years. However one important factor which needs to be noted is that amendment seeks to relieve the assessee from undue hardship caused on account of the computation of higher rate of capital gains.

7. Before we proceed to consider as to whether proviso inserted in Section 50C of the Act has to be read retrospective or prospective, we need to point out that the Assessing Officer did not doubt the bonafides of the transaction done by the assessee, since the Assessing Officer accepted the fact that the assessee had entered into an Agreement for Sale of the property in question vide Agreement for Sale dated 04.08.2012, wherein agreed sale consideration was Rs.19 Crores and the assessee had received Rs.6 Crores by way of account payee cheque on the date of signing the Agreement. This fact was noted by the CIT(A) and held that the Agreement cannot be treated to be ante-dated as the assessee had received Rs.6 crores as advance on the date of Agreement through banking channel. The only reason for the Assessing Officer to adopt higher value is based upon the guideline value fixed by the State Government. The question would be as to what is the effect of the guideline value fixed by the Government and the purpose behind fixing the same. This aspect was clearly explained in the case of J.Jayalalitha. It

has been pointed out that the guideline value has relevance only in the context of Section 47A of the Indian Stamp Act (as amended by Tamil Nadu Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by the authorities under the Stamp Act for the purpose of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area to ascertain the true or correct market value. It is open to the Registering Authority as well as the person seeking registration to prove the actual market value of the property. The authorities cannot regard the guideline valuation as the last word on the subject of market value but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies . It was further pointed out that this position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968; this explanation also will have to be read in conjunction with explanation to Section 47(A) of the Indian Stamp Act (as amended by the Tamil Nadu Act 24/1967). It was further pointed out that undue emphasis on the guideline value without referred to the setting in which it is to be viewed will obscure the issue for consideration. Further it was held that in any event, if for the purpose of the Stamp Act, guideline value alone is not a factor to determine the value of the property, its worth will not be any higher in the context of assessing the true market value of the properties in question to ascertain whether the transaction has resulted in any offense so as to give a pecuniary advantage to one party or other.

8. Thus, the Assessing Officer could not have based his conclusion solely based on the guideline value which has been held to be only a prima facie rate prevailing in the area to ascertain the true or correct market value and it is not the last word on the subject of market value but only a factor to be taken note of. As pointed out earlier, the genuinity of the transaction done by the assessee was not doubted and the receipt of advance was through banking channel by way of a demand draft.

9. Therefore, in our considered view the Assessing Officer could not have based his finding solely relying upon the guideline value especially when the Assessing Officer is not a person who is computing stamp duty under the provisions of Indian Stamp Act on the Deed of conveyance. Having observed so we need to take note of the next issue would be as to whether the proviso to Section 50C could be read to be prospective or retrospective. Section 50C(1) proviso reads as follows:

''Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capita

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.''

10. Reading of the above proviso would show that the legislature took note of the fact that there are several occasions where the Agreements are entered into between a willing vendor and willing purchaser on an agreed sale consideration, the Agreement is reduced into writing and in many a cases a substantive portion of the sale consideration is given to the vendor as advance on the date of execution of the Agreement. There are other types of transaction where the vendor executes Power of Attorney in favour of the intending purchaser empowering him to sell the property at any time he proposes to do so. In fact this was also a subject matter of consideration, when the legislature thought to introduce the amendment to Section 50C of the Act. There may be cases where the sale consideration will be taken as deferred payment subject to certain contingencies. However the case on hand is very straight forward case, where there is an Agreement for Sale, agreeing to sell the property at Rs.19 Crores and a sum of Rs.6 Crores has been received as advance sale consideration. The proviso to Section 50C(1) of the Act deals with cases where the date of the agreement, fixing the amount of consideration and the date of registration for the transfer of the capital assets 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. Thus an amendment by insertion of proviso seeks to relieve the assessee from undue hardship.

11. The Hon'ble Supreme Court in Commissioner of Income Tax, Kolkata Vs. Calcutta Export Company [2018 (404) ITR 654 (SC)], considered the question as to whether the amendment made by the Finance Act 2010 to Proviso of Section 40(a)(ia) of the Act is curative in nature and it has to given retrospective operation from the date of insertion of the said proviso i.e., with effect from Assessment Year 2005-06. It was pointed out that the purpose of the amendment made by the Finance Act 2010 is to solve the anomalies with the instrument of Section 40(a)(ia) of the Act, caused to the bona fide tax payer. It was further held that the amendment even if not given any operation retrospectively, may not materially to be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assesses having substantial turnover and equally huge expenses and necessary cushion to absorb the effect; however a marginal and medium tax payer who work at low gross product rate and when expenditure becomes subject matter of an order under Section 40(a)(ia) is substantial, can suffer severe adverse

consequence if the amendment made in 2010 is not given retrospective operation i.e., from the date of substitution of the provision. Thus, the amendment made by the Finance Act 2010 being curative in nature was held to be retrospective in operation. In the above decision, the Hon'ble Supreme Court took note of the fact that the statutory amendment was being made to remove undue hardship to the assessee or held to be retrospective.

12. The Honble Supreme Court in Kolkata Export Company took note of the earlier decisions on the same issue in the case of Allied Motors Private Limited Vs. CIT [1997 (224) ITR 677 (SC)], Whirlpool of India Limited Vs. CIT, New Delhi [2000 (245) ITR 3], CIT Vs. Amrid Banaspati Company Limited [2002 (255) ITR 114] and CIT vs. Alom Enterprises [2009 (319) ITR 306] and held that the new proviso should be given retrospective effect from the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. Thus by taking note of the above decisions, we have no hesitation to hold that the proviso to Section 50C(1) of the Act should be taken to be retrospective from the date when the proviso exists. The CIT(A) while allowing the assessee's appeal vide order dated 25.07.2019, took note of the submissions made by the assessee wherein they placed reliance on the decision of the Ahmadabad Bench of the Tribunal in the case of Dharamshi-bhai Sonani Vs. ACIT [2016 75 taxmann.com 141 (Ahmedabad- Trib)]; order of the Delhi Bench of the ITAT in the case of Income Tax officer Vs. Modipon Limited [2015 (57) taxmann.com 360 (Delhi Tribunal)].

13. On a reading of the order passed by the CIT(A), it is interesting to note the report submitted by the Income Tax Simplification Committee set up in 2015, headed by a Former Judge of the High Court, Delhi.

14. Mr.T.Ravikumar, learned Senior Standing Counsel is right in a submission that this report is not binding or cannot be taken to have a statutory force. Nevertheless Simplification Committee was consisted of experts in the field of taxation and it would be worthwhile and interesting to note as to why they have considered the insertion of the proviso to Section 50(C) of the Act should be held to be retrospective; In the report there is an extract of Memorandum explaining provisions of Finance Bill 2016 which reads as follows:

'Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property. Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being

land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. When an immovable property is sold as a stock-in-trade. It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property. These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years.''

15. Taking note of the above Memorandum, it was pointed out that once a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced. The report also referred to the decision in the case of Alom Enterprises [2009 (319) ITR 306].

16. Reverting back to the decisions relied on by the Revenue, the decision in Bagri Impex (P.) Ltd., supra is distinguishable on facts as the assessee therein contended that the date of agreement should be taken as date on which the property was transferred by bringing the same within the ambit of Section 2(47) of the Act, which is not the case before us. In Ambattur Clothing Company Limited, the assessee contended that since the buyer wanted the Sale Deed to be released after

registration, they had paid stamp duty as per the guideline value which is higher than the sale consideration agreed to be paid on the instruments. This explanation offered by the assessee was found to be factually incorrect and rejected and in the background of the said facts, the Honble Supreme Court observes that the Assessing Officer was justified in treating the value adopted by the stamp valuation authority as the deemed sale consideration, received/ accruing as a result of transfer.

17. On going through the facts of the case on hand, we find that no such observation was made by the Assessing Officer. The assessee's consistent case was that the sale consideration agreed to be paid to him by the purchaser was Rs.19 crores and Rs.6 crores was received as advance on the date of entering into the Agreement for Sale. However, the Assessing Officer disbelieved the same and applied the guideline value at Rs.27 crores on the date when the Sale Deed was executed and registered. Therefore, in our considered view, the decision in Ambattur Clothing Company Limited cannot be applied with the facts and circumstances of the case on hand.

18. Mr.T.Ravikumar, learned counsel is right in a submission that the observations made by the Tribunal qua the decision of the Honble Supreme Court in Vatika Township is incorrect. In fact we find that the Tribunal did not assign any reasons as to why the decision in Vatika Township do not apply to the facts of the case. In fact the decision in Vatika Township should be referred for the purpose as to when a Statute can be treated to be clarificatory and when not?. The legal principle laid down therein ought to have been taken note of by the Tribunal. Therefore, the Tribunal may not be fully right in stating that the judgment in Vatika Township will not be applicable to the facts as the judgment needs to be looked into to consider the legal principle of retrospectivity, retro activity or prospectivity. In any event, the ultimate conclusion arrived at by the Tribunal confirming the above order passed by the CIT(A) cannot be found faulted with.

19. For all the above reasons, the appeal filed by the Revenue is dismissed. The Substantial Questions of Law raised in these appeals are answered against the Revenue and in favour of the assessee. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax Appeals-6,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

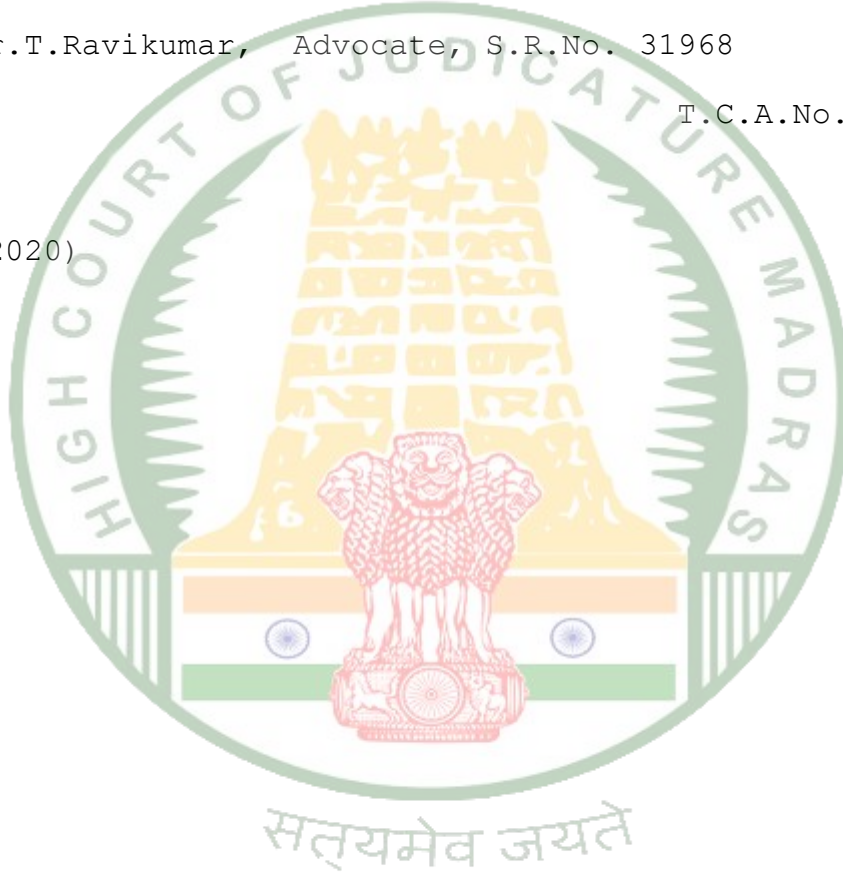
2.The Income Tax Appellate Tribunal,
Madras " D " Bench,
Chennai.

3.The Assistant Commissioner of Income Tax,
Non Corporate Circle - (1), Chennai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No. 31968

T.C.A.No.329 of 2020

VG II(CO)
GN(18/11/2020)



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