IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.1399 of 2020 and
WMP.Nos.1645 of 2020 & 26967 of 2022

Avisaa Trading Private Ltd.,
rep. by its Director,
No.672, VI Floor, Temple towers,
Anna Salai, Nandanam,
Chennai-600 035.
PAN-AAICA2692P ... Petitioner

Vs

Income Tax Officer,
Corporate Ward-1(1),
No.121, Mahatma Gandhi Road,
Chennai-600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in PAN No:AAICA2692P, quash the assessment order dated 28.12.2019 passed therein relating to the assessment year 2016-17.

For Petitioner : Mr.RL.Ramani, Senior Counsel
for Mr.B.Raveendran

For Respondent : Mr.D.Prabhu Mukund Arunkumar
Junior Standing Counsel

ORDER

The petitioner is a company and claims to be a regular assessee under the provisions of the Income Tax Act, 1961 (in short 'Act'). It challenges an order of assessment passed for the assessment year (A.Y.) 2016-17. For the financial year (F.Y.) relevant to the AY in question, the petitioner had purchased property comprising 2.82 cents at S.F.Nos.719 & 720 of Thuvakudi Village, Thiruvarambur Taluk, Trichy District in an auction sale conducted under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act') on 01.02.2012.

2.The property had thereafter been sold by the petitioner to one, M/s.Educational Trustee Company Private Limited, under a deed of sale dated 22.05.2015 for a sale consideration of Rs.4.90 Crores. The stamp duty paid for the purpose of registration was computed on the guideline value at a sum of Rs.10,49,31,060/- (Rs.10.49 Crores approx.).

3.The return of income filed by the petitioner had not been taken up by scrutiny resulting in the assessing officer issuing a notice under Section 148 for escapement of assessment. The petitioner reiterated the original return filed by it, and sought the reasons on the basis of which the assessment had been re-opened.

4.The reasons for reopening proceeded on the basis that there had been information that the sale value of the property had been undervalued, to the extent of Rs.5,59,31,060/-, (Rs.10.49 Crores – Rs.4.90 Crores), by the application of Section 50C of the Act. The petitioner accepted the assumption of jurisdiction under Section 147 and contested the matter on merits.

5.The premise upon which the authorities proceeded was that there had been escapement to the extent of Rs.5.59 Crores (approx.), since the stamp duty ought to have been paid on the guideline value, whereas the document reflected a lower sale consideration. The petitioner, in the course of its reply, had specifically sought an opportunity to contest the valuation of the property in question before the valuation officer. Such opportunity is provided for under Section 50C(2).

6. The provisions of Section 50C including Sub-section (2), which is relevant, are extracted below:

> *"Special provision for full value of consideration in certain cases:*
>
> *50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being a 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 for 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 for 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 I-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).

7.The assessment came to be completed by the officer by way of impugned order dated 28.12.2019, wherein he does not refer to the request of the assessee for reference to valuation which is specifically noted by him in the assessment order at paragraph No.5 while extracting the response of the assessee. Instead, what the assessing officer does is to look into the aspect of valuation himself. He discusses the consideration received and the veracity of the same, coming to the conclusion that the proposal for re-assessment was well-founded and that the consideration should, indeed, be taken to be the guideline value only.

8.While the assessing authority is no doubt entitled to decide the question by application of his own mind, in a circumstance where the assessee has specifically sought reference to the valuation officer under Section 50C(2), it is incumbent upon the officer to provide such opportunity to the petitioner. The purpose of Sub-section (2) to Section 50C is to enable the assessee to raise a dispute in regard to the proper sale consideration to be adopted in a particular case.

9.Sub-section (2) recognizes the possibility of sale consideration varying from the guideline value on account of various factors such as distress or pecularities/special and unique factors in the location of property concerned. The defence put forth by the learned Standing Counsel is that Sub-section (2) to Section 50C only uses the word '*may*' and thus there is no mandate cast upon the authority to have made a reference to valuation. To be noted, such is not the case of the assessing authority who does not reject the request of the assessee on that ground.

10.Seeing as that argument is raised now, this Court clarifies that it is indeed a mandate cast upon the assessing authority to refer a request of the assessee under Section 50C(2) to the stamp valuation officer as this process of reference has been built into Section 50C(2) to provide an avenue for an assessee to raise grievances relating to, and for defending the sale consideration.

11.Thus, in a case of dispute between the Revenue Department and an assessee as to whether the sale consideration to be adopted should be that adopted by an assessee in the sale deed or the guideline value and if an assessee seeks proper determination of the sale consideration taking assistance of the stamp valuation officer by way of an opportunity set out under Section 50C(2), it is incumbent upon the authority to make such reference.

12. The case of *Jaganathan Sailaja Chitta V. Income Tax Officer, International Taxation, Chennai* (104 taxmann.com 131), decided by a Division Bench of this Court has been cited by the assessee. That case really does not answer this point, insofar as the dispute that arose in that case related to the non-grant of opportunity to that assessee to respond to the valuation obtained by the assessing officer in arriving at the sale consideration.

13. The assessee in that case does not appear to have sought opportunity of reference to the stamp valuation officer as provided for under Section

50C(2). The opportunity to respond to the valuation obtained by the assessing authority had been sought for only in appeal which opportunity had been denied to that assessee. This was corrected in the tax case appeal by way of remand to the assessing authority.

14. In light of the discussion as aforesaid, the imugned order is set aside and the assessment remanded to the file of the assessing authority. The assessing officer shall make a reference to the valuation of the District Valuation Officer (DVO) as sought for by the assessee, obtain a report and take matters forward in accordance with law. The entirety of the exercise shall be completed within a period of sixteen (16) weeks from the date of receipt of a copy of this order after affording proper opportunity to the assessee at all stages.

15.This writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2022

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Index : Yes
Speaking Order

To

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