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W.P.Nos.5763 & 5764 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.08.2024
Pronounced On	21.12.2024

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.Nos.5763 & 5764 of 2020
and W.M.P.Nos.6742 & 6743 of 2020**

R.C.Kannan

...Petitioner in W.P.No.5763 of 2020

Smt.Kannan Manonmani

...Petitioner in W.P.No.5764 of 2020

Versus

1.The Principal Commissioner of Income Tax-1,
Coimbatore.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Ward 1 (2),
67, Race Course Road,
Coimbatore – 641 018.

...Respondents in both W.Ps

Prayer in W.P.No.5763 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the 1st respondent in his DIN & Letter No.ITBA/COM/F/17/2019-2020/1025233245(1) dated 15.02.2020 quash the same.



Prayer in W.P.No.5764 of 2020:

WEB COPY Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the 1st respondent in his DIN & Letter No.ITBA/COM/F/17/2019-2020/1025232753(1) dated 15.02.2020 quash the same.

For Petitioner in both W.Ps : Mr.R.Asokan

For Respondents in both W.Ps : Dr.B.Ramaswamy,
Senior Standing Counsel

COMMON ORDER

The petitioners are before this Court against the impugned orders both dated 15.02.2020 passed by the 1st respondent under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act').

2. By the impugned orders dated 15.02.2020, the applications filed by the respective petitioners under Section 264 of the IT Act who are husband and wife, have been rejected by two separate orders which are impugned before this Court.



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3. The operative portion of the impugned orders dated 15.02.2020 read identically. For the purpose of clarity, the operative portion of the impugned orders passed by the 1st respondent in both writ petitions reproduced below:-

“Thus, the Income Tax Act has clearly spelt out the situations, where the income that has to be assessed tax under head “Income from Other Sources”. The assumptions and presumptions of the AR in the submissions cannot be acceptable in view of the express provisions as laid out in the aforesaid section. The views given by the AR in the submissions are not borne out of facts or the law laid down in the Income Tax Act. The intention of legislature and the purpose for which the aforesaid law is enacted is very clear. The Central Government has been time and again taking various initiatives to curb the menace of black money circulation and there had been dramatic changes in the recent past in the income tax law in this regard. Action against black money is an on-going process. Such actions include policy-level initiatives, effective enforcement action on the ground, putting in place robust legislative and administrative frameworks, systems and processes. One of such initiatives taken by the Central Government is the introduction of Section 56(2)(vii)(b)(ii) to the Income Tax Act, 1961, via Finance Act, 2012. The objective of introducing Section 56(2)(vii)(b)(ii) was to discourage the generation and use of unaccounted money done through transaction in immovable property through a value that is lesser than the value determined by the Stamp Valuation Authorities.

4. It is to be noted further that the then authorized representative had accepted the above action of the AO as can be seen from the marking of signature in the order sheet against the narration of the AO in the said order sheet on invoking the



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provisions of said section. Coming to the case laws relied upon by the assessee.

i. CIT Vs. Chandani Bochar 323 ITR 519 (P & H).

ii. Sunil Kumar Agarwal Vs. CIT (Calcutta High Court 225 Taxmann)

iii. CIT Vs. Sarijan Realities Ltd.

iv. CIT Vs. Hanuman Prasad Ganeriwala

v. Mahtab Alam, New Delhi Vs. ITD

vi. K.P. Varghese Vs. ITO

From the above, it is amply clear that the case laws relied upon by the AR is on a different footing and on a different set of facts and in no way connected or related to the facts of the assessee's case. Moreover, in the assessee's case, the invoking of Section 56(2)(vii)(b)(ii) of the Act has been accepted by the Assessee during assessment proceedings and no objection whatsoever, has been placed on record by the assessee at the assessment stage. It is also noticed from the records that the tax demanded thereon based on the assessment order supra has been duly complied by the assessee by payment of taxes in instalment. Hence, the present petition u/s 264 of the Act lacks merit and is not tenable.

5. Considering the facts of the case, the petition filed by the assessee u/s 264 of the Act is hereby rejected, as it is held that the AO had rightly invoked the aforesaid Section and brought to tax the correct amount in the hands of the assessee for the Asst. Year 2015-16."



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4. The facts of the case are that the petitioners have jointly purchased a property measuring an extent of 2,791 sq.ft., from one V.Suresh Kumar for a total consideration of Rs.72,00,000/- vide Registered Doc.No.2722 of 2014 dated **30.06.2014**. However, they accepted to pay the stamp duty on the guideline value of Rs.97,69,000/- at the instance of the SRO.

5. On the aforesaid guideline value, the petitioners paid a sum of Rs.6,00,000/- towards stamp duty. In the returns of income that were filed by the respective petitioners, they had admitted total income of Rs.4,90,390/- (Rs.2,26,820/- + Rs.2,63,570/-) respectively.

6. The case of the petitioners was selected for limited scrutiny under CASS and the petitioners were called upon to attend the personal hearing pursuant to Notice dated 29.07.2016 issued under Section 143(2) of the IT Act.

7. During the course of the proceedings before the Assessing Officer, copy of the Sale Deed dated 30.06.2014 was produced. The Assessing



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Officer agreed for additions to be made. Thus, an Assessment Orders came to be passed on **30.11.2017**, whereby, the difference between the value adopted by the respective petitioners in the Sale Deed dated 30.06.2014 and the guideline value was taxed in the hands of the respective petitioners by equally dividing the difference.

8. Thus, a sum of Rs.12,84,500/- (Rs. 25,69,000 divided by 2) came to be added to the income of the respective petitioners. Details of the additions are as under:

Guideline Value	– Rs.97,69,000/-
Sale Consideration	– Rs.72,00,000/-

Difference	– Rs.25,69,000/-

The amount of Rs.97,69,000/- did not include the stamp duty and registration charges of Rs.6,00,000/-.

9. In the Return of Income dated 01.09.2015 for the Assessment Year 2015-2016, they have declared the total consideration of Rs.72,00,000/- towards the purchase.



10. The Income Tax Officer/Assessing Officer noticed that there was a difference, as stamp duty was added and eventually assessed the value of the property to Rs.1,03,69,000/-. Under these circumstances, the assessment was completed by the Assessing Officer.

11. By applying Section 56(2)(vii)(b)(ii) of the IT Act, the Assessing Officer only added a sum of Rs.12,84,500/- to the income of the petitioners from other sources in addition to the amount declared in the returns filed by the respective petitioners without including the stamp duty of Rs.6,00,000/-.

12. Before the Assessing Officer, the petitioners were represented by an Authorized Representative (AR) who agreed for the additions and thus, based on the above additions, the assessment was completed on 30.11.2017 for the Assessment Year 2015-2016.

13. Aggrieved over the same, the respective petitioners had filed revision petitions under Section 264 of the IT Act, though belatedly. The 1st respondent has condoned the delay in the interest of natural justice but has rejected the revision petitions with the following observations:-



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“From the above, it is amply clear that the case laws relied upon by the AR is on a different footing and on a different set of facts and in no way connected or related to the facts of the assessee's case. Moreover, in the assessee's case, the invoking of the Section 56(2)(viib)(ii) of the Act has been accepted by the assessee during assessment proceedings and no objection whatsoever, has been placed on record by the assessee at the assessment stage. It is also noticed from the records that the tax demanded thereon based on the assessment order supra has been duly complied by the assessee by payment of taxes in instalment. Hence, the present petition u/s 264 of the Act lacks merit and is not tenable.”

14. Learned counsel for the petitioners would draw attention to Section 50C(2) of the IT Act.

15. Learned counsel for the petitioners would submit that it was incumbent on the part of the Assessing Officer to have obtained a valuation report from the Stamp Valuation Officer/Stamp Valuation Authority. It is further submitted that merely because the Authorized Representative of the respective petitioners had wrongly admitted to the addition *ipso facto* would not mean that the value adopted has to be upheld.



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16. Learned counsel for the petitioners would draw attention to Section 56(2)(vii)(b)(ii) of the IT Act. Learned counsel also referred to Proviso to Section 56(2)(vii)(c) of the IT Act.

17. It is further submitted that the petitioners are individuals who have unnecessarily been exposed to tax liability which was totally unwarranted merely because the guidelines value of the property was shown as higher.

18. Learned counsel for the petitioners has drawn attention to the decision of the Division Bench of this Court referred in ***The Commissioner of Income Tax, Chennai Vs. Shri Vummudi Amarendran (T.C.A.No.329 of 2020 dated 28.09.2020)***, wherein, referring to the decision of the Hon'ble Supreme Court in ***R.Saibharathi Vs. J.Jayalalitha*** reported in ***2004 (2) SCC 9***, the Division Bench of this Court held as follows:-

“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



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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



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transaction has resulted in any offense so as to give a pecuniary advantage to one party or other.”

19. It is submitted that the Division Bench of this Court held that 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.

20. On the other hand, the learned Senior Standing Counsel for the respondents would submit that the impugned orders does not suffer from any irregularity or illegality warranting interference under Article 226 of the Constitution of India.

21. Specifically, the learned Senior Standing Counsel for the respondents would draw attention to the initiatives of the Government for inserting/introducing Section 56(2)(vii)(b)(ii) of the IT Act vide Finance Act, 2012. It is further submitted that the objective of inserting/introducing the aforesaid provision was to discourage the generation and use of



unaccounted money done through transaction in immovable property through a value that is lesser than the value determined by the Stamp Valuation Authorities is adopted.

22. It is therefore submitted that the impugned orders do not call for any interference and prays for dismissal of the writ petition.

23. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

24. I have also perused the Assessment Order dated 30.11.2017 passed under Section 143(3) of the IT Act by the 2nd respondent in both the Writ Petitions. I have also perused the impugned orders dated 15.02.2020 passed by the 1st respondent under Section 264 of the IT Act.

25. The point that arises for consideration is whether Section 50C(2) of the IT Act is relevant to the facts of the case.



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26. Section 50C of the IT Act itself came to be incorporated into the statute book by Finance Act, 2002 w.e.f. 01.04.2003. Section 50C of the IT Act reads as under:-

Section 50C Special provision for full value of consideration in certain cases		
(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	(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	(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 subsection (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.



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consideration received or accruing as a result of such transfer :¹ <i>Provided</i> 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: <i>Provided further</i> 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 or [through such other electronic mode as may be	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 subsection (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 subsection (1) of section 16A of that Act. <u>Explanation 1.</u>—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). <u>Explanation 2.</u>—For the purposes of this section, the expression "assessable"
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¹ Brought in by Finance Act, 2016 w.e.f. 01.04.2017



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prescribed, on or before the date of the agreement for transfer:]²

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.³

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.

27. As mentioned above at the bottom of the above Table, provisos to the Section 50C(1) of the IT Act were not in the statute book as on date of execution of the Sale Deed dated 30.06.2014.

28. Section 50C(1) of the IT Act applies to the seller/vendor where

² Inserted by Finance Act (No.2), 2019 w.e.f. 01.04.2020

³ Brought in by Finance Act, 2018 w.e.f. 01.04.2019



there is a variance between the value adopted in the Sale Deed and the value adopted by the appropriate authority for the purpose of payment of stamp duty under the Indian Stamp Act, 1899. As far as the buyer is concerned, it is only Section 56 of the IT Act which is relevant.

29. I shall deal with Section 56 of the IT Act in due course.

30. As per Section 50C(1) of the IT Act where the consideration received or accruing as a result of transfer by an assessee of the 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 for the purpose of payment of stamp duty value in respect of such transfer, the value so adopted or assessed or assessable by such authority shall, for the purposes of Section 48, be deemed to be the full value of the consideration received or accruing as a result of transfer.

31. Thus, the value adopted for the purposes of payment of stamp duty value shall be deemed to be the full value of the consideration received or accrued as a result of such transfer.



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32. As per sub-section 2 to Section 50C of the IT Act where 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 and the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) to Section 50C of the IT Act 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 as the case may be refer the valuation of the capital assets to a Valuation Officer. Where such a reference is made, the provisions of sub-section 2, sub-section 3, sub-section 4, sub-section 5, sub-section 6 of Section 16A, clause (i) of sub-section (1) and sub-sections (6) and sub-section 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.



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33. As per Section 56(1) of the IT Act, income of every kind which is not to be excluded from the “total income” under the Act shall be chargeable to income-tax under the head “Income from other sources”, if it is not chargeable to income-tax under any of the heads specified in Section 14, Items A to E.

34. Under sub-section 2 to Section 56, several incomes have been grouped. They are chargeable to Income-tax under the head “Income from other sources”.

35. TRANSFER OF IMMOVABLE PROPERTY WITHOUT CONSIDERATION:

Under sub-clause (vii)(b)(i) to sub-section (2) to Section 56 of the IT Act, where an individual or a Hindu Undivided Family receives any immovable property without consideration from any person or persons on or after the 1st day of October 2009, but, before the 1st day of April 2017, where the stamp duty value of such immovable property exceeds



Rs.50,000/- in any previous year, the value of such property for consideration shall be the income of such person chargeable to income-tax under the head “Income from other sources.”

36. TRANSFER OF IMMOVABLE PROPERTY WITH CONSIDERATION:

On the other hand, under sub-clause (vii)(b)(ii) to sub-section (2) to Section 56 of the IT Act where an individual or a Hindu Undivided Family receives any immovable property for consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000/- in any previous year, from any person or persons on or after the 1st day of October 2009, but, before the 1st day of April 2017, the differential stamp duty value of such property exceeding such consideration shall be chargeable to tax.

37. Although Section 56(2)(vii)(c) of the IT Act applies only any property, other than immovable property, the first proviso to it makes it clear that in case of immovable property, where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of Section 50C, the

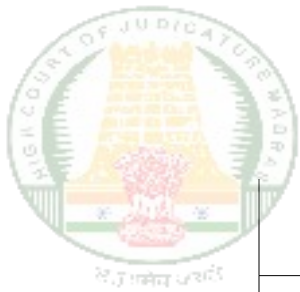


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Assessing Officer may refer the valuation of such property to a Valuation Officer and the provisions of Section 50C and sub-section (15) of Section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections. Section 50C of the IT Act does not contain a ground for objecting the valuation by the seller of the immovable property. However, under the first proviso to Section 56(2)(vii)(c) of the IT Act, it is specified as a ground to make a reference to the Valuation Officer. Thus, there is ambiguity in Section 50C of the IT Act.

38. Section 56(2)(vii)(b)(ii) and Section 56(2)(vii)(c) of the IT Act are reproduced below:-

<i>56. Income from other sources.</i>	
<i>(1)</i>	
<i>(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely:—</i>	
<i>(i)</i>	<i>.....</i>
<i>(ii)</i>	<i>.....</i>
<i>(iii)</i>	<i>.....</i>
<i>(iv)</i>	<i>.....</i>
<i>(v)</i>	<i>.....</i>
<i>(vi)</i>	<i>.....</i>
<i>(vii) where an individual or a Hindu undivided family receives, in any</i>	



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previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration.

Provided 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 this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a

(c) any property, other than immovable property, -

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property.

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration.

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a



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part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

Valuation Officer, and the provisions of Section 50C and sub-section (15) of Section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections:

Provided further that this clause shall not apply to any sum of money or any property received-

- (a) from any relative;
or*
- (b) on the occasion of the marriage of the individual; or*
- (c) under a will or by way of inheritance;
or*
- (d) in contemplation of death of the payer or donor, as the case may be; or*
- (e) from any local authority as defined in the Explanation to clause (20) of Section 10; or*



- | | |
|--|--|
| | <p>(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of Section 10; or</p> <p>(g) from any trust or institution registered under [Section 12AA or Section 12AB] or</p> <p>(h) by way of transaction not regarded as transfer under clause (vib) or clause (vid) or clause (vii) of Section 47.</p> |
|--|--|

39. Sub-Clause (vii) to Section 56(2) of the IT Act was substituted by Finance (No.17) Act, 2013 w.e.f 01.04.2014. Since, the sale was registered on 30.06.2014, the above amendments are relevant.

40. In this case, admittedly, the value declared in the Sale Deed was **Rs.72,00,000/-**. The value adopted by the SRO was **Rs.97,69,000/-**.



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41. Thus, the differential value exceeds Rs.50,000/-. Therefore, the present case is covered by Section 56(2)(vii)(b)(ii) of the IT Act as extracted in the above tabular column. Thus, the value adopted for assessment of the stamp duty by the SRO at **Rs.97,69,000/-** has to be adopted for the purpose of computation of Income of the petitioner. If the value is disputed on the grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of Section 50C and sub-section (15) of Section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections.

42. In the case of *Commissioner of Income Tax, Chennai Vs. Shri Vummudi Amarendran (T.C.A.No.329 of 2020 dated 28.09.2020)*, following substantial questions of law were framed by the Division Bench of this Court:

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



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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?

The case pertained to the Assessment Year 2014-2015. It dealt with Section 50C(1) of the IT Act as it stood between 2009 and 2013. There the decision of the Hon'ble Supreme Court in ***R.Saibharathi Vs. J.Jayalalitha, 2004 (2) SCC 9*** was referred.

43. In ***Commissioner of Income Tax, Chennai Vs. Shri Vummudi Amarendran (T.C.A.No.329 of 2020 dated 28.09.2020)***, the Division Bench of this Court while deciding whether the amendment to Section 50C(1) of the IT Act in 2017 can be retrospectively applied to the Assessment Year 2014-15, referred to the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax, Kolkata Vs. Calcutta Export***



Company reported in **2018 (404) ITR 654 (SC)**. There, the Hon'ble Supreme Court had observed that a new proviso can be given retrospective effect with the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission. So, a retrospective effect would serve the object behind the enactment. Taking note of the same, the Division Bench of this Court in the aforesaid case held that the proviso to Section 50C(1) of the IT Act can be given a retrospective effect.

44. At the time of personal hearing before the Assessing Officer, the Authorized Representative of the petitioner did not dispute the valuation. In fact, the Authorized Representative accepted to the addition which culminated in the Assessment Order dated 30.11.2017.

45. The case of the petitioners has to be looked at from the point of view of Section 56(2)(vii)(b) of the IT Act which has been extracted above. Since the guideline value of the property is more than the value adopted in the Sale Deed dated 30.06.2014, the petitioners herein would be entitled to take advantage of the first proviso to sub-clause (vii)(c) to sub-section 2 to



Section 56 of the IT Act read with Section 50C(2) of the IT Act.

46. The first proviso to sub-clause (vii)(c) to sub-section 2 to Section 56 of the IT Act entitles the petitioner to raise a dispute regarding the valuation of the immovable property as in the case of a seller under sub-section 2 to Section 50 of the IT Act, in which case, the Assessing Officer has to refer the valuation of such property viz., capital asset to the Valuation Officer.

47. Provisions of Section 50C & sub-section 15 to Section 155 of the IT Act are to apply in relation to the stamp duty value of such property for the purpose of sub-clause (vii)(b) to sub-section 2 to Section 56 of the IT Act as they would apply for valuation of the capital asset under those sections.

48. Thus, it is clear that if the valuation is disputed, the conditions stipulated in sub-clause (a) & (b) to sub-section 2 to Section 50C will apply. Therefore, I am of the view that the impugned orders rejecting the request of the respective petitioners for revising the orders is unsustainable and therefore, the same warrants interference. The Assessing Officer has to



therefore refer the valuation of the property viz., capital asset under proviso to sub-clause (vii)(c) to sub-section 2 to Section 56 of the IT Act to the Valuation Officer.

49. Merely because the Authorized Representative of the petitioner did not raise any objection before the Assessment Order dated 30.11.2017 was passed, *ipso facto* would not mean that reference under sub-clause (vii)(c) to sub-section 2 to Section 56 of the IT Act would be barred.

50. Even if, no objections was raised before the Assessing Officer prior to the assessment order being passed, the assessee would still be entitled to raise such objections both before the Revisional Authority under Section 264 of the IT Act or before the Appellate Commissioner under Section 246A of the IT Act as these proceedings are continuation of the original assessment proceedings.

51. Under such circumstances, the impugned orders are liable to be quashed and the cases are remitted back to the 2nd respondent to re-do the exercise under first proviso to sub-clause (vii)(c) to sub-section 2 to Section



56 of the IT Act read with sub-section 2 to Section 50C of the IT Act.

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52. Since the dispute pertains to Assessment Years 2015-16, the 2nd respondent shall endeavour to pass a final order on merits, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

53. In the result, these writ petitions are disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2024

arb/mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Principal Commissioner of Income Tax-1,
Coimbatore.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Ward 1 (2),
67, Race Course Road,
Coimbatore – 641 018.

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W.P.Nos.5763 & 5764 of 2020

C.SARAVANAN, J.

arb/mrr

**Pre-Delivery Order in
W.P.Nos.5763 & 5764 of 2020**

21.12.2024