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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 136/2021**
PRINCIPAL COMMISSIONER OF INCOME TAX DELHI
10Appellant

Through: Mr. Abhishek Maratha, SSC
along with Mr. Apoorv
Agarwal, JSC and Mr. Gaurav
Singh, Mr. Parth, Ms. Nupur,
Ms. Muskan, Mr. Bhanukaran
Singh, Advs.

versus

GUPTAJEE AND COMPANYRespondent

Through: Mr. Rohit Jain, Mr. Aniket D.
Agrawal and Mr. Abhishek
Singhvi, Advs.

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+ **ITA 663/2023**
GUPTAJEE AND COMPANYAppellant

Through: Mr. Rohit Jain, Mr. Aniket D.
Agrawal and Mr. Abhishek
Singhvi, Advs.

versus

ACITRespondent

Through: Mr. Abhishek Maratha, SSC
along with Mr. Apoorv
Agarwal, JSC and Mr. Gaurav
Singh, Mr. Parth, Ms. Nupur,
Ms. Muskan, Mr. Bhanukaran
Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
06.08.2024

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ITA 136/2021

1. The Principal Commissioner impugns the order of the Income
Tax Appellate Tribunal [“**Tribunal**”] dated 24 February 2020 and has



proposed the following questions of law for our consideration: -

(1) Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of law, passing the impugned order, affirming the order of CIT (A) holding that multiplicative factor of "1" is applicable to property sold by the appellant assessee?

(2) Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of law, passing the impugned order, affirming the order of CIT(A) in the facts and circumstances of the present case, ignoring the fact that rejecting the suggestion of the Assessing Officer pleading for disallowance of appropriate amount u/s 14A of the Income Tax Act, 1961?

(3) Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of law, passing the impugned order, affirming the order of CIT(A) reducing the disallowance of Rs.95,75,917/made by Assessing Office on account of w .r. t. packing expenses to Rs. 6,00,000/-, ignoring that the appellant/assessee had no supporting evidence to justify the expenses?

(4) Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of law, passing the impugned order, affirming the order of CIT(A) reducing the ad hoc disallowance from Rs. 10,66,284/- made by the Assessing Officer made on account of expenses on loading and unloading, cartage outward, general expenses, staff-welfare, business-promotion, printing and stationery, to Rs. 1,00,000/- ignoring that the appellant/assessee has no supporting evidence to justify the expenses?

(5) Whether the impugned order passed by Hon'ble Income Tax Appellate Tribunal is perverse both on law and facts?

2. Pursuant to the orders dated 17 August 2022 and 11 September 2023 passed during the pendency of this appeal, we are essentially left with the question of applicability of Section 50C of the Income Tax Act, 1961 [**“Act”**] and of the multiplicative rate which was to be applied at the behest of the appellant.

3. We also take note of a cross-objection which has come to be preferred on behalf of the respondent assessee and which had sought to question the correctness of the view expressed by the Commissioner of Income Tax (Appeals) [**“CIT(A)”**] on the



applicability of Section 50C.

4. We note that while dealing with both the question of Section 50C as well as the multiplicative factor which would apply, the CIT(A) had come to the following conclusions:-

4.01 "I went through the submissions of the appellant as well as of the AO alongwith various documents and remand reports furnished by the AO. There were essentially twin disputes. The **FIRST ONE** was that as per the appellant Sec. 50 C was not applicable. Therefore, deemed sale value could not be applied.

After considering the contentions of the appellant, as elaborated above under para 3 supra, I am not inclined to agree with it. Sec. 50 C (1) as amended w.e.f. 01.10.2009 "by the Finance (No. 2) Act, 2009, came to have the word "Assessable". Prior to it the only words in the said Section were as "*value adopted or assessed*". The word "assessable" was defined in Expln. 2 to Sec. 50 C according to which the expression "*assessable*" meant the price which the stamp valuation authority would charge, 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 payment of stamp duty. It implied that even if the property was not registered or not assessed to stamp valuation authorities, it was covered U/s. 50 C for valuation purposes supposing that the said property had been referred to the stamp valuation authority for the purposes of payment of stamp duty. Hence, this contention of the appellant stands rejected. Consequently, the contention of the appellant that where the property could not be registered due to any reason (here being in extended lal - doora) the transaction in relation thereto was outside the scope of Sec. 50 C stands rejected.

4.02 The **SECOND ISSUE**, was as to in which category, whether "G" or "H", the said property lay. As per the AO, It was in "G" category while as per the appellant it was in "H" category. The appellant furnished the copy of printouts from the MCD authentic website for house tax purposes. As per the said website, the area of Samaypur village fell in "H" category and Shamaypur village in "G" category.

4.03 The appellant while filing the print outs from the MCD's authenticated website also pointed out that as per the said website, there were two different areas, (1) "Shamaypur village" in "G" category and (2) "Samaypur village (urban)" In "H" category. It was claimed by the appellant that if it was a case of printing error then why Shamaypur village and Samaypur village would be shown separately at two places on the same website. The appellant



in this regard also filed a letter dtd. to MCD on 26.05 2015 for clarifying this issue as well as some more Issues arising out of letter dtd. 21.05.2015 Issued by NDMC, but It did not meet with success.

4.04 The above conflict was carefully studied by me. Basically the quarrel between the AO and the appellant was over the treatment of the "Lal Dora land" in question. According to the AO, it was in 'G' category while as per the appellant it was in 'H' category.

The matter was examined by me. I have no hesitation in siding with the AO that the land in question fell in 'G' category. The "stamp law in Delhi" authored by Shri. K.K.Gupta clearly depicted the land of the appellant in 'G' category. That being so, the contention of the appellant that the land in question fell in 'H' category is held by me to be incorrect.

As far as the application of the multiplicative factor is concerned, the AO applied the multiplicative factor of 3 as against 1 as canvassed by the appellant.

The above dispute was gone into by me. I am of the firm view that the AO was completely misconceived in applying the multiplicative factor of '3' on the basis of the fact that the appellant was discovered by it to be misusing the agricultural lands owned by it for other than agricultural purposes for which no permission or sanction of or notice to the appropriate authority was given by the appellant. Until and unless by the delegated or subordinate legislation such misuse of lands was subjected to suitable levy by the Delhi government, the multiplicative factor was to be taken as applicable for the lands as appearing in the revenue records of the state government. So long as the revenue records held the lands of the appellant as agricultural, there could be no dispute about the character of the land, which in the Instant case was agricultural.

As a corollary of the above the multiplicative factor in the case at hand would be the one which was prescribed by the Delhi government for permissible/ sanctioned use of lands either as agricultural or residential or industrial or commercial. So long as the legislation was not in place to cover situations of abuse of lands as above, the prevalent law was to be applied without any extrapolation and permutations and combinations. Any departure therefrom would subtracting words from the statute. tantamount to adding or subtracting words from the statute.

In such a scenario I am of the considered view that the multiplicative factor prescribed for agricultural/ residential lands was applicable. In the above backdrop, it is held by me that the multiplicative factor of '3' applied by the AO was misdirected as



the same was done by the AO on the basis of -- the factor of abuse of the land by the appellant which was not envisaged by the Delhi Government while laying down the different multiplicative factors as 1,2 and 3 for "permissible" uses of lands. Since such a situation was not envisaged by the Delhi stamp Rules, the factor of '3' is held to be invalid.

Accordingly the AO shall work out the value of the land by applying the factor of "1" The appellant gets relief of the consequential reduction resulting from the decrease in the multiplicative factor from 3 to 1. Accordingly the ground no. 2 is partly allowed

In the remand report (RR for short), the AO had asked for enhancement by applying category "F" instead of category "G" as applied in the Asstt. Order. This issue of category has been dealt with in detail above holding that category "G" is attracted in the instant case.

The AO in RR proposed that STCG should be charged on sale of building portion on the ground that the depreciation was claimed, which brought into play Sec 50. The appellant filed the copy of depreciation chart claiming that no depreciation was charged on the building ever in the past. This fact was apparent from the depreciation chart also. Since, the depreciation was not charged, therefore, STCG on sale of building portion was not legal. **In result the prayer of AO for enhancement stands rejected."**

5. When the matter reached the Tribunal, these issues were cursorily disposed of with it being observed as follows: -

"5.1 After hearing both the parties and perusing the orders passed by the revenue authorities, especially the impugned order dated 09.6.2015 of the Ld. CIT(A), as reproduced above, we are of the considered view that Ld. CIT(A) has decided the issues and deleted the additions, after elaborately discussing the detailed evidences. Therefore, we are fully agree with the findings of the Ld. CIT(A) passed in his impugned order and we are of the view that no interference is called for in the well reasoned order passed by the Ld. CIT(A). Accordingly, we uphold the findings of the Ld. CIT(A) on the issues in dispute and accordingly reject the grounds raised by the Revenue."

6. It is thus manifest that the Tribunal has failed to record or assign any reasoning, even if it be rudimentary, while proceeding to affirm the ultimate findings returned by the CIT(A).



7. In our considered opinion, the appeal must succeed on this short ground alone and the matter consequently be placed before the concerned Tribunal for adjudication afresh.

8. We consequently allow the instant appeal and set aside the order of the Tribunal dated 24 February 2020. We leave all questions open to be addressed before the Tribunal afresh.

9. The cross objection which was otherwise pending before the Tribunal at the time of consideration of the appeal of the Department shall also stand revived.

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10. In view of the order passed in ITA 136/2021, the present appeal stands disposed of as having been rendered infructuous.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 6, 2024/*neha*