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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 432/2023

PR.COMMISSIONER OF INCOME TAX-1, AGRA.....Appellant
Through: Mr. Puneet Rai, Sr.SC with Mr. Ashivini Kumar and Mr. Rishabh NangiaAdvs.

Versus

SMT AMITA GARG AND ORS. (LEGAL HEIRS OF LATE SH.RAKESH KUMAR GARG & ORS. …..Respondents
Through: Mr. Madhur Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>OR DER</u>

% 04.04.2024

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. This appeal, filed at the instance of the Revenue under Section 260A of the Income Tax Act,1961 ["**Act**"], has arisen from the decision of the Income Tax Appellate Tribunal ["**ITAT**"] dated 19 January 2023 passed in ITA 896/Del/2016 for the Assessment Year ["**AY**"] 2009-2010.

2. The assessee, Late Mr. Rakesh Kumar Garg, was an individual deriving income from salary and rental income from house properties etc. The facts indicate that the Income Tax Return [**"ITR"**] for the relevant AY was filed by the assessee on 03 September 2010 in response to the notice issued under Section 142(1) of the Act wherein a total income of INR 9,39,00,720/- was declared by the assessee. The case of the assessee was selected for scrutiny and the Assessing Officer ["**AO**"] passed an

assessment order dated 29 December 2010 under Section 143(3) of the Act, making an addition of INR 11,49,99,010/-, rendering the total income to be INR 20,88,99,730/-.

3. Being aggrieved by the assessment order, the assessee challenged the same before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"]. The CIT(A) *vide* order dated 09 October 2015 allowed the appeal of the assessee and deleted the additions made by the AO. Thereafter, the Revenue preferred an appeal before the ITAT challenging the order of the CIT(A). The ITAT *vide* order dated 19 January 2023 dismissed the appeal and upheld the order of CIT(A).

4. In the meantime, during the pendency of the appeal, the assessee expired. Consequently, the legal heirs of the assessee-Late Mr. Rakesh Kumar Garg namely, Mrs. Amita Garg, Ms. Radhika Garg, Mr. Chaitanya Garg and Mr. Vasudev Garg participated in the proceedings and were arrayed as the respondents in the present appeal.

5. Assailing the order passed by the ITAT, the Revenue has pressed into service the following substantial question of law for our consideration:-

> "(1) Whether the ITAT failed to appreciate that the addition made under Section 50C of the Act by the AO was as per the value of stamp valuation authority and not as per the share purchase agreement?"

6. We have heard learned counsel appearing for the parties and perused the material available on record.

7. During the assessment proceedings, it was found that the assessee alongwith his brother Mr. Santosh Kumar Garg was holding

100 percent shares of M/s Raj Refullers and Fire Safety Equipment Private Limited and the company was the owner of an Industrial Plot No.115, Phase 1, Udyog Vihar, Gurgaon admeasuring 4000 sq. metres. The balance sheet of the said company also suggested that this plot/land and the building constructed on it were the only assets of the company.

8. Additionally, it reckons from the facts that on 06 November 2008, a "Share Purchase Agreement" was executed between the sellers namely, Late Mr. Rakesh Kumar Garg and Mr. Santosh Kumar Garg, and the buyers namely, Mrs. Deepti Arora and Mr. Ramesh Kumar for complete transfer of shareholding of the said company to the purchasers, for a sum of INR 2,18,00,000/-. The capital gains arising from this transfer of shares were disclosed by the assessee in AY 2009-10.

9. On the aforesaid disclosure, the AO made an adjustment under Section 50C of the Act, holding that the primary intention behind transferring the entire shareholding of the said company to Mrs. Deepti Arora and Mr. Ramesh Kumar was solely for transferring the land owned by the company. According to the AO, the transfer of shares served only as a channel or mode of transferring the land.

10. Considering the foregoing findings, the AO determined that the capital gains will have to be assessed as if the land was transferred rather than the shares. According to him, as per the provisions of Section 50C of the Act, when the sale consideration is lower than the value at which stamp duty is assessable by the Sub-Registrar, the capital gains are to be computed based on the stamp duty value. For determining the sale consideration in line with the prevailing circle rate for the relevant year, the AO calculated it at a minimum of INR

13,800/- per sq. yard, considering the land's area to be 4000 sq. meters. Consequently, the fair market value of the land was computed at a minimum of INR 6,60,19,200/-. Since the assessee owned 50 percent of this land, the sale consideration for capital gains computation for the assessee amounted to INR 3,30,09,600/-. Given that the assessee had already declared INR 1,09,00,000/- from this transaction, the differential amount of INR 2,21,09,600/- was included in the assessee's taxable income as long-term capital gains.

11. The ITAT, however, in the impugned order noted that Section 50C of the Act applies to the transfer of land or buildings in cases where they are registered with the appropriate authority by paying the stamp duty. However, in the present case, there was no evidence to assert that any stamp duty has been paid for the transfer of land, rather there was a mere transfer of shares in a company.

12. Further, while relying on the case of assesse's brother namely, Mr. Santosh Kumar Garg, who was 50 percent owner of the shares in ITA 2864/DEL/2013, the ITAT held that even if it is presumed that the transfer of shares of the said company can be equated to the transfer of the land, without any proof of additional funds exchanged, no adjustment is justified under Section 50C of the Act. Consequently, the ITAT deleted the additions. The relevant extract from the said order is reproduced hereinbelow: -

> "6.1 On perusing the above, it is observed that this the section is applicable for transfer of land or building which is registered with the registering authority by paying stamp duty. Section 50C could be invoked only if the sale consideration received is less than the value adopted by Stamp Valuation Authority of the State Government for the purpose of payment of stamp duty. However, there is no evidence that any stamp duty has been paid towards transfer of the plot of land as held by the AO and that the Stamp Valuation Authority adopted any particular value as sale consideration for payment of stamp duty in the present transaction.

In fact, in this case there is a mere transfer of shares of a company and no stamp duty appears to be payable towards plot of land. In the assessment order also it is nowhere stated that any state government authority has adopted a particular value at the time of payment of stamp duty by the parties to the said share purchase agreement. We further find that Section 50C has undergone amendment with effect from 01/10/2009. The word 'assessed or assessable' has been inserted in place of 'assessed ' appearing before that date. If the transaction were to have taken place after 01/10/2009, it would have been possible to take the value which could have been assessable by the stamp valuation authority even in cases where such value has not been assessed or adopted. Since the transaction, has taken place on 06/11/2008, the said amendment is not applicable for the current assessment year and therefore the AO cannot adopt on his own the circle rates. The procedure adopted by the AO in determining the capital gain from the said transaction is not tenable under the law as it stood applicable for the current assessment year. We are of the view that section 2(47)(vi) is applicable in the cases where the asset in question is like a group of houses owned by a company and each shareholder is allotted a house for his personal enjoyment similar to what is prevalent in housing cooperative societies. However, there is no necessity to adjudicate on this issue as even if it is assumed that transfer of shares of the said company amounted to transfer of plot of land, in the absence of any evidence of extra amount having been exchanged, no addition can be made invoking section 50C as noted in the previous paragraph. Therefore, addition made by the AO was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT (A) reject the ground raised by the Revenue.

7.In the result, the appeal filed, by the Department stands dismissed."

13. On this aspect, it is pertinent to refer to the decision of this Court in the case of **The Commissioner of Income Tax Delhi-II v. Khoobsurat Resorts Pvt. Ltd**. [2012 SCC OnLine Del 5640], wherein, while relying on the decision of the Hon'ble Supreme Court in **Bengal Immunity Co. Ltd v. State of Bihar** [AIR 1955 SC 661] and the Madras High Court in the case of **K.R. Palanisamy v. Union of India** [2008 SCC OnLine Mad 1071], it was held that the mandate of law stipulated under Section 50C of the Act is relevant solely for uncovering the undisclosed income of a seller, aimed at determining

the accurate capital gains. It was held that this particular provision must be interpreted restrictively, considering its specific scope and purpose. Any attempt to broaden the application of this fictional or presumptive provision to matters beyond its intended scope is unacceptable in law. The relevant paragraph is reproduced hereinbelow:-

> "13. It is apparent from the above provision that a presumption that the sale price is higher can be drawn, if the circumstances spelt out in Section 50-C are fulfilled. This provision was challenged before the Madras High Court, in K.R. Palanisamy v. Union of India, [2008] 306 ITR 61 (Mad). The Court repelled the challenge, but never the less held that:
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> > "Sub-sections (2) and (3) of Section 50C provides further safeguard to the assessee, in the sense that if the assessee claims before the assessing officer that the value adopted by the stamp duty authorities exceeds the fair market value and the value so adopted or assessed for the purpose of stamp duty has not been disputed in any appeal or revision before any authority, the Assessing Officer could refer the valuation of the capital asset to the Departmental Valuation Officer. On such reference, if the value determined by the Valuation Officer is more than the value adopted or assessed by the stamp duty authority, the Assessing Officer shall adopt the market value as determined by the Stamp duty authority. Thus, a complete fool proof safeguard has been given to the assessee to establish before the authorities concerned the real value. Thus, what is stated in Section 50C as a real value cannot be regarded as a notional or artificial value and such real value is determinable only after hearing the assessee as per the statutory provisions stated supra. There is no indication either in the provisions of Section 50C of Income-tax Act or Section 47A of the Stamp Act or rules made thereunder about the adoption of the guideline value. Hence, the contention that the Section 50C is arbitrary and violative of Article 14 cannot be accepted."
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> **The fiction created by virtue of Section 50C applies only in respect of escaped income of a seller, for the determination of the true capital gain. Such a special provision has to be construed narrowly, having regard to the subject matter, and the extension of the fiction or presumption in respect of any matter not covered by it is unauthorized by the law.** There is a body of judicial authority on this aspect (Garden Silk Mills Ltd v. Union of India AIR 2000 SC 33; Union of India v. Sampat Raj

Dugar AIR 1992 SC 1417). The principle was propounded pithily by the Supreme Court in Bengal Immunity Co. Ltd v. State of Bihar AIR 1955 SC 661 as follows: "a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.."

[Emphasis supplied]

14. As it is manifest from the discussion noted above, the ambit of Section 50C of the Act is limited to cover the bundle of cases, whereby, the income has escaped due to the consideration received in lieu of the transfer of a capital asset being less than the value adopted by any authority of the State government for payment of stamp duty under the Indian Stamp Act, 1899. In the facts of the present case, the transaction in question was based on account of the share purchase agreement. However, the addition was made by the AO with a view that the capital gains shall be chargeable as if the land was transferred and not the shares. However, since transaction in question does not relate to the consideration received for transfer of the capital asset, which is the fundamental prerequisite to trigger the invocation of Section 50C of the Act, the view taken by the AO is untenable.

15. We, therefore, find that the ITAT has rightly opined that under the facts of the present case, sustenance of addition under Section 50C of the Act would be completely unwarranted and unjustifiable. Thus, finding no substantial question of law, we hereby, dismiss the appeal. Pending application(s), if any, are also disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 04, 2024/MJ