
(2011) 09 AHC CK 0337
In the Allahabad High Court
Case No : Income Tax Appeal No. 97 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Dr. Indra Swaroop Bhatnagar

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Income Tax Act, 1961 — Section 260A, 48, 50C, 50C(2), 55A
Wealth Tax Act, 1957 — Section 16A, 2, 23A, 24, 34AA

Citation : (2012) 349 ITR 210

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : D.D. Chopra, for the Appellant; Amit Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Satish Chandra, J.—This appeal has been filed by the Department-appellant u/s 260A of the income tax Act, 1961, against the judgment and order dated December 31, 2007, passed by the income tax Appellate Tribunal, Lucknow, in I.T.A. No. 1232/Luc/2006 for the assessment year, 2003-04.

This appeal was admitted by a Bench of this court on June 30, 2008, on the following substantial questions of law:

1. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in law in holding that valuation done by the Departmental Valuer was to be adopted ?
2. Whether, on the facts and in the circumstances of the case, the fair market value of a property within the meaning of section 50C of the Act is to be taken as that fixed by the stamp duty authority or that valued by the Departmental Valuer ?
3. Whether, on the facts and in the circumstances of the case, for ascertaining the fair market value the value on the date of actual transfer/possession is to be

considered or the value on the date of agreement to sell when the agreement has not been a registered one ?

2. The brief facts of the case are that on December 10, 2001, the respondent-assessee entered into an agreement with M/s. Nova Hospital (P.) Ltd. for sale in respect of plot No. 1, Vikas Khand, Gomti Nagar, Lucknow, for a consideration of Rs. 51,75,000. The sale deed was registered on April 27, 2002, and the stamp authorities levied the stamp duty on a value of Rs. 1,38,00,000 as per the circle rate. The Assessing Officer invoked the provisions of section 50C for substitution the recorded sale consideration of Rs. 51,75,000 to Rs. 1,38,00,000 being the valuation done by the stamp valuation authorities. The assessee took a plea of section 50C(2) of the income tax Act and claimed that the value adopted by the stamp duty authorities exceeded the fair market value as on the date of the transfer. The assessee also submitted a report of the assessee's registered valuer who valued the property at Rs. 48,37,500 as on the date of transfer. However, the Assessing Officer was not satisfied and he rejected the report submitted by the assessee's valuer and finally referred the matter to the Departmental Valuation Officer (hereinafter referred to as the D.V.O.) to obtain the fair market value. The D.V.O. valued the property in question at Rs. 58,50,000, but the Assessing Officer has rejected the D.V.O. report and adopted the valuation made by the stamp valuation authorities as full value of the consideration received and accordingly calculated the capital gains.

3. Being aggrieved, the assessee has filed the appeal before the first appellate authority, who observed that the Assessing Officer obtained the valuation made by the D.V.O. and in view of the ratio laid down in the case of Commissioner of Wealth-tax Vs. Dr. H. Rahman, as well as the Cental Board of Direct Taxes Circular No. 8 of 2002, dated August 27, 2002 (see [2002] 258 ITR 13), and the same is final. So, the Assessing Officer was directed to adopt the value of sale consideration which was estimated by the D.V.O. Being aggrieved, the Department filed second appeal before the Tribunal, who, vide the impugned order, uphold the order of the first appellate authority. Still not being satisfied, the Department has filed the present appeal.

4. In this backdrop, Sri D.D. Chopra, learned counsel for the appellant, justified the order of the Assessing Officer. On the other hand, Sri Akarsh Garg, learned counsel for the respondent-assessee, justified the impugned order.

5. We have heard both the parties at length and gone through the material available on records. From which, it appears that the sole dispute between the parties relates to:

whether the valuation done by the stamp valuation authorities would be taken as sale consideration as done by the Assessing Officer ? or

whether the valuation done by the D.V.O. would be substituted as sale consideration ?

For ready reference section 50C is reproduced here as under:

50C. (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 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 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 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 1.--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).

Explanation 2.--For the purposes of this section, the expression "assessable" 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.

(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 sub-section (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.

(emphasis Here printed in italics. added)

6. It may be mentioned that the section was inserted by the Finance Act, 2002, with effect from April 1, 2003, and is applicable to the assessee's case for the

assessment year under consideration, i.e., 2003-04. The section was introduced with a view to tackle unaccounted income by the practice of understatement of consideration in acquisition of property. The Central Board of Direct Taxes Circular No. 8 of 2002, dated August 27, 2002, explains that (page 39 of 258 ITR (St.)):

The Finance Act, 2002, has inserted the new section 50C in the income tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property.

7. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration, and capital gains shall be computed accordingly u/s 48 of the income tax Act.

8. It is further provided that where the assessee claims that the value adopted or assessed for stamp duty purposes exceeds the fair market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the income tax Act.

9. The above preposition of law has been upheld in the case of Commissioner of Wealth-tax Vs. Dr. H. Rahman, while interpreting the provision of section 50C. In this section, the provisions of the Wealth-tax Act are applicable. This hon''ble court observed that (page 308):

A reading of the sub-section shows that the Wealth-tax Officer has no option but to proceed to complete the assessment in conformity with the assessment of the Valuation Officer in so far as the valuation of the asset in question is concerned. This is also the view taken by a Division Bench of this court in M.C. Khunnah Vs. Union of India (UOI) and Others, .

10. In view of the above discussions and by considering the totality of the facts and circumstances of the case, it is crystal clear that generally, when the Assessing Officer has obtained the D.V.O. report then the same is binding. Therefore, we find no reason to interfere with the impugned order passed by the Tribunal, it is hereby upheld with the reasons mentioned therein.

11. Thus, the answer to the substantial questions of law is in favour of the assessee and against the Department. In the result, appeal is dismissed.