
(2016) 10 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 16233 of 2010

Kanaiyalal Dhansukhlal Sopariwala

APPELLANT

Vs

District Valuation Officer

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Income Tax Act, 1961 — Section 133, Section 142A, Section 50C

Citation : (2017) 391 ITR 56

Hon'ble Judges : Akil Kureshi and A.J. Shastri, JJ.

Bench : Division Bench

Advocate : Mr. Sudhir M. Mehta, Advocate. Rule Served, for the Respondent Nos. 1 and 2; Mr. Manish J. Shah, Advocate, for the Petitioner No. 1

Final Decision : Dismissed

Judgement

Akil Kureshi, J. (Oral) - The petitioner has challenged the action of the respondent No.2 ? Additional Commissioner of Income-tax, the petitioner's Assessing Officer of making a reference to the District Valuation Officer (for short "DVO") seeking his report on the valuation of the three agricultural lands the petitioner sold during the Financial Year 2007-08. The petitioner's challenge arises in following background :

1.1 The petitioner is an individual. For the Assessment Year 2008-09, the petitioner had filed the return of income in which the petitioner had disclosed capital gain of Rs. 1.41 crores (rounded off) on sale of 3 agricultural lands situated at villages Khadsad, Bhimrad and Kawas all of District ? Surat. While scrutinising such assessment, the Assessing Officer desired to obtain the valuation of such properties, for which purpose he made a reference to the DVO. On 26.10.2010, the Assessing Officer wrote to the DVO calling for his valuation report on the estimated fair market value of the properties sold by the petitioner. In the caption to this letter, he referred to Section 50C(2) of the Income-Tax Act, 1961 (for short "the Act"). In the said letter, he conveyed to the DVO as under :

"2. Under the power conferred by the IT Act, 1961, under Section 131(d) on the undersigned you are hereby issued commission to value the property mentioned below for the purpose of estimation of fair market value of the property. The above named person has sold the properties specifications of which are as per Annex-A attached herewith.

3. You are requested to send your valuation report to the undersigned in duplicate urgently preferably within 30 days of receipt of this letter. This is time barring matter, as the assessment under section 143(3) of the IT Act for the assessment Year 2008-09 is pending and the same is barred by limitation by 31.12.2010."

1.2 The District Valuation Officer therefore, on 29.10.2010 wrote to the petitioner calling for certain basic information about the land in question. The petitioner thereupon wrote to the District Valuation Officer on 8.11.2010 pointing out to him that there is no provision for substituting the fair market value of the property for the purposes of computing capital gains in terms of Section 50C of the Act and the exercise of valuation is wholly redundant.

1.3 On 26.11.2010, the Assessing Officer wrote to the District Valuation Officer with a copy to the petitioner and conveyed as under :

" Please refer to this office letter of even No. dated 26.10.2010 for valuation of property for estimating fair market value of the property belonging to Shri Shantilal D. Sopariwala, 2/3710, Main Road, Navsari Bazar, Surat.

2. In the above referred letter, the Section was inadvertently mentioned as under section 50C(2) instead of correct section of 55A of the Income Tax Act.

3. You are requested to send your valuation report to the undersigned in duplicate urgently preferably within 15 days of receipt of this letter. This is time barring matter, as the assessment under section 143(3) of the Income Act for the assessment year 2008-09 is pending and the same is barred by limitation by 31.12.2010."

1.4 The petitioner thereupon wrote to the Assessing Officer on 1.12.2010 and yet again opposed the reference to the District Valuation placing strong reliance on Section 50C of the Act. He contended that the exercise of obtaining valuation report would be infructuous since the capital gain cannot be computed on the basis of the valuation report of the District Valuation Officer. He pointed out that the capital gain was assessed on the basis of Jantri rates prevailing at the time of sale.

1.5 On 9.12.2010, the Assessing Officer wrote to the petitioner in which he at considerable length pointed out why, according to him, the price reflected in the sale deeds of the properties was extremely low as compared to the prevailing market price. He pointed out that in case of agricultural land at village Bhimrad, Taluka ? Choryasi, District - Surat, which was sold by the petitioner on 29.3.2008, the sale consideration worked out to Rs.654 per sq. mtrs. The

documents of auction sale conducted by Surat Urban Development Authority (SUDA) in the same area during the same period reflected the price range of Rs.750/- to Rs.2300/- per sq. mtrs. Regarding agricultural land of village Khadsad, Taluka ? Kamrej, District ? Surat which the petitioner had sold on 15.1.2008, the sale price worked out to Rs.39.47 per sq. mtrs. The Surat Urban Development Authority auction documents for the said area during the same period reflected price range of Rs.1000/- to Rs.1500/- per sq. mtrs. Likewise, in case of the agricultural land at village Segva, Taluka ? Kamrej, District ? Surat sold by the petitioner on 14.10.2007, sale price as per the sale deed was Rs.22.81 per sq. mtrs as against Surat Urban Development Authority documents which showed the price range of Rs.500/- to Rs.750/- per sq. mtrs. He also pointed out that the Jantri price in Surat had not been revised since the year 1999 and came to be revised only after 9 years on 1.4.2008 i.e. barely few months after the petitioner's sale deeds. There was a margin of Rs.900/- to Rs.1600/- between the petitioner's sale price and the fresh Jantri rates. According to him, the entire appreciation could not have been achieved in last few months. Along with his letter, he had also annexed supporting documents received from Surat Urban Development Authority In this letter, the Assessing Officer also pointed out to the assessee that as on 31.3.2008 he was holding 9 different immovable properties, majority of them being agricultural lands. According to him therefore, it would appear that the sale transactions in question were done only with a motive of earning profit. In the earlier years, no agricultural activities were carried out by the petitioner and he was holding the properties only with an intention of making profit. These lands were acquired only in recent times and were within the periphery of municipal limits of city of Surat. Such lands were surrounded by developed industrial zone. Thus, the intention of holding the property was to book the profit and not to carry out any agricultural activities. He therefore formed a prima facie belief that looking to the frequency of property transactions, holding period of these plots of land, history of transactions in properties and absence of any agricultural activity on these properties, would indicate that the assessee was holding these plots as stock-in-trade and not for investment. He called upon the assessee to show cause why the capital receipts of Rs.1.57 crores (rounded off) should not be treated as business receipts and the profit earned from such land transactions should not be treated as business income.

1.6 On 10.12.2010, the Assessing Officer once again wrote to the District Valuation officer and conveyed as under :

"This is in continuation of this office letter No.SRT/Addl.CIT/R-2/SDS/2010-11 dated 26.11.2010.

2. Under the power conferred by the IT Act,1961, under section 131(d) on the undersigned, you are hereby issued commission to value the property mentioned below for the purpose of estimation of fair market value of the property. The above named person has sold and purchased various properties specifications of

which are as per Annex-A attached herewith.

3. You are requested to send your valuation report to the undersigned in duplicate urgently preferably within 15 days of receipt of this letter. This is time barring matter, as the assessment under section 143(3) of the Income Tax Act for the Assessment Year 2008-09 is pending and the same is barred by limitation by 31.12.2010."

1.7. Along with the said letter, he had enclosed an annexure in which he had indicated that his opinion was based looking to the locality of the areas of the land, the amount as adopted by the assessee is very low compared to the actual fair market value.

2. In the present petition, the petitioner has challenged the said communications under which the Assessing Officer has asked the District Valuations Officer to supply the valuation of the properties sold by the petitioner. Learned counsel, Mr. M.J. Shah for the petitioner vehemently contended that a reference to the District Valuations Officer made by the Assessing Officer was wholly incompetent. He submitted that Section 50C of the Act would not permit the Assessing Officer to substitute any other figure for the actual sale consideration except in terms of sub-section (2) of Section 50C of the Act which has reference to the Jantri rates. In the present case, since the petitioner had offered capital gain on such Jantri rates, reference to the District Valuations Officer is wholly incompetent. He further submitted that valuation under Section 50A of the Act can be made only for the purpose of computation of capital gain and no other. Even if the Assessing Officer is desirous of taxing the sale receipts as business income, it is not open for the Assessing Officer to call for the District Valuations Officer's report. In this context, learned counsel relied on a decision of the Division Bench of this Court in case of *Me & Mummy Hospital v. Assistant Commissioner of Income-Tax* reported in [2014] 45 Taxmann.com 248. Learned counsel lastly contended that the Assessing Officer had under a letter dated 9.12.2010 called upon the assessee to show cause why the entire sale consideration of Rs.1.57 crores towards the sale of the lands in question should not be treated as business receipts. In that view of the matter, the District Valuation Officer's report would be wholly inconsequential.

3. On the other hand, learned counsel, Mr. Sudhir Mehta for the department opposed the petition contending that the assessment proceedings are on-going. The Assessing Officer has ample power to call for the DVO's report. Section 55A of the Act would not be confined to computation of capital gain and can be utilized for other purposes. The Assessing Officer has formed a prima facie belief that the sale of land would not qualify for capital gain but, the receipts thereof can be taxed as business income. At this stage even before completion of the assessment, such issue cannot be examined by the Court. Learned counsel relied on a decision of learned Single Judge of the Madras High Court in case of *C.T. Laxmandas v. Assistant Commissioner of Income-tax & Anr.*, reported in [1994] 208 ITR 859.

4. Section 50C of the Act pertains to special provisions for full value of consideration in certain cases which reads as under :

"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 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 (f) of sub-section (1) and sub-sections (6) and (7) of section 23A, subsection (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."

5. In terms of sub-section (1) of Section 50C of the Act, where the consideration received or accruing as a result of transfer of a capital asset, being land or

building or both, is less than the value adopted, assessed or assessable by the State Stamp Valuation Authority in respect of transfer of such property, such value would be by deeming fiction considered to be a full value of consideration received or accruing as a result of such capital asset. Under sub-section (2) of Section 50C of the Act, however, it would be open for the assessee to dispute the valuation adopted, assessed or assessable by the stamp valuation authority, upon which the Assessing Officer may refer the valuation of capital asset to a Valuation Officer. As per sub-section (3) of Section 50C of the Act, if the value ascertained as mentioned in sub-section (2) exceeds the value adopted, assessed or assessable by the stamp valuation authority, such valuation of the authority would prevail. In other words, for the purpose of capital gains it would be lesser of the two valuations that adopted by the State Valuation Authority or one suggested by the Valuation Officer which would prevail. In this context therefore, learned counsel for the petitioner would be correct in pointing out that the valuation of the DVO even if obtained, cannot replace the valuation by the State Stamp Valuation Authority referred to in Section 50C of the Act for the purposes of charging capital gain tax to the assessee. While making a reference to the District Valuation Officer therefore, if the Assessing Officer merely had the element of assessing correct capital gain tax, the reference would be wholly meaningless and therefore, impermissible.

6. The Assessing Officer, however, had ideas other than to examine the receipts from sale of capital asset as long term capital receipt. He elaborated such concept in his detailed communication dated 9.12.2010 made to the assessee. In such communication, as noted he referred to various factors based on which he formed a prima facie belief that the assessee did not hold the lands in question by way of investment but, was engaged in the business of buying and selling land for the purpose of making profit. He pointed out that the assessee was as on 31.3.2008 holding as many as 9 different immovable assets, 7 out of them were agricultural lands. Many of these properties were acquired only in recent times. Though they were technically agricultural lands, they were situated within the periphery of municipal limits of city of Surat and were surrounded by developed industrial zone. No agricultural activities were carried on in recent years. According to him therefore, looking the properties held by the assessee, frequency of the property transactions, holding period of these plots of land, history of transactions in the property and absence of any agricultural activity on such properties would indicate that they had been held by the assessee as stock-in-trade and not as investment with primary motive of making profit. He therefore proposed to tax the receipts out of the sale of said properties as the assessee's business income.

7. In this very communication, in the context of the variance between reflected sale consideration in the sale deeds and the prima facie indication of the prevailing market rates, he pointed out that the agricultural lands at Bhimrad was sold at a rate of Rs. 654/- per sq. mtrs., whereas the Surat Urban Development conducted auction of the land in the same area during the same

period, had fetched sale price in the range of Rs. 750/- to Rs. 2300/- per sq. mtrs. In case of agricultural lands at Khadsad village, this comparative figures worked out at Rs. 39.47/- per sq. mtrs. of sale price versus Rs.1000/- to Rs. 1500/- per sq. mtrs. during Surat Urban Development Authority auction. In case of Segva land, the comparison was Rs.22.81 per sq. mtrs. of sale price v. Rs. 500/- to Rs. 750/- per sq. mtrs. during Surat Urban Development Authority auction. He further pointed out that Jantri rates, to which the assessee was referring to were not revised since the year 1999. The same came to be revised only after a gap of 9 years w.e.f. 1.4.2008. The land in question was sold between October,2007 and March,2008, thus, barely few months prior to the revision in the Jantri rates, according to which there was a margin of about Rs. 900/- to Rs. 1600/- per sq. mtrs. He contended that such an appreciation in the market rate cannot be attributed to the last few months.

8. Thus, according to the Assessing Officer, there was a considerable variation between the sale consideration reflected in the sale deeds executed by the assessee for the said 3 properties and the prevailing market rates. He, in short, seriously questioned the correctness of the reflected sale consideration.

9. In this background one would have to examine the legality of the reference made by the Assessing Officer to the District Valuation Officer.

10. The learned Single Judge of Madras High Court in case of C.T. Laxmandas (Supra) held that there was no reason to confine the powers under Section 55A of the Act to the limited purpose pertaining to capital gains. The learned Judge was of the opinion that such powers can be exercised even dehors the question of assessment of capital gains.

11. The Division Bench of the Andhra Pradesh High Court, in case of Daulatram and Ors. v. Income-tax Officer and Anr., reported in [1990] 181 ITR 119 AP., had taken a similar view holding that the powers under Section 55A of the Act can be exercised to find out the market value of capital assets for the purpose of Chapter IV which pertains to computation of total income. Though Section 55A of the Act falls under chapter "capital gains", the intention of the Legislature was to apply such provision for the purpose of entire chapter.

12. Similar question came up before the Full Bench of Punjab and Haryana High Court in case of Jindal Strips Ltd. v. Income-tax Officer, Central Circle-2, New Delhi and Anr., reported in [1979] 116 ITR 825, in which it was held that Section 55A of the Act would apply only to the capital gains. However, the Income-tax Officer can refer to the powers under sub-section (6) of Section 133 of the Act for valuation and mere mention of a wrong section in the requisition sent to the Valuation Officer would not vitiate the valuation.

13. As was correctly pointed out by learned counsel, Shri Shah, similar issue came up for consideration before the Supreme Court in case of Smt. Amiya Bala Paul v. Commissioner of Income-Tax, reported in [2003] 262 ITR 407 SC. The facts in the said case were that the assessee built up a house in a suburb of

Calcutta during the years 1981 to 1983. In the return for the Assessment Year 1982-83, she disclosed that she had invested an amount of Rs.1.75 lacs for the construction of the house. In the return for the subsequent year 1983-84, she disclosed that she had invested further amount of Rs.1.70 lacs in construction of the house. The Assessing Officer did not accept such declaration and referred the question of construction cost to the District Valuation Officer under Section 55A of the Act. On the basis of the report of the District Valuation Officer, the Assessing Officer made additions in the Assessment Year 1983-84 and also reopened the assessment for the Assessment Year 1982-83. In this context, the question came up before the Supreme Court, could the Assessing Officer have referred the question of cost of construction to the Valuation Officer? Referring to the provisions contained in Section 55A of the Act as also sub-section (3) of Section 133 and sub-section (2) of Section 142 of the Act, the Supreme Court held that in the case on hand, the reference under Section 55A of the Act was not competent. It was observed as under :

"Besides section 55A having expressly set out the circumstances under and the purposes for which a reference could be made to a Valuation Officer, there is no question of the Assessing Officer invoking the general powers of enquiry to make a reference in different circumstances and for other purposes. [See Padam Sen v. State of U.P.: AIR 1961 SC 218 para 8; Arjun Singh v. Mohindra Kumar: AIR 1964 SC 993. (para 19)]. It is noteworthy that Section 55 A was introduced in the Act by the Taxation Laws (Amendment) Act, 1972 when Section 131 (1), 133 (6) and 142 (2) were already on the statute book. Learned counsel for the appellant has correctly submitted that if the power to refer any dispute to a Valuation Officer were already available in Sections 131 (1), 133 (6) and 142 (2), there was no need to specifically empower the Assessing Officer to do so in certain circumstances under Section 55A."

14. As an aftermath of judgment of the Supreme Court in case of Smt.Amiya Bala Paul (Supra), the Union Legislature introduced Section 142A in the Act by the Finance Act of 2004 but, with retrospective effect from 15.11.1972. This provision itself since inception has undergone amendments. In the present form, Section 142A of the Act reads as under :

"142A. Estimation of value of assets by Valuation Officer. - (1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957(27 of

1957).

(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or subsection (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Explanation. - In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealthtax Act, 1957(27 of 1957).]"

15. In sub-section (1) of Section 142A of the Act itself, the Assessing Officer has the power, for the purposes of assessment or reassessment, to make a reference to the Valuation Officer to estimate the value, including fair market value, of any asset, property or investment, who would submit such a report to him. Sub-section (2) of Section 142A of the Act further clarifies that the Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

16. Before expressing our thoughts further on the action of the Assessing Officer, we may also refer to Section 133 of the Act and particularly clause (6) thereof. The said provision envisages the power to call for information and that the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) may, for the purposes of this Act, as per clause (6), require any person including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals) etc., giving information in relation to such points or matters as, in the opinion of the Assessing Officers, will be useful for, or relevant to, any inquiry or proceeding under this Act. In other words, such powers could be exercised even when the assessment is not pending. The constitutional validity of such provisions was challenged before the Kerala High Court on the ground that it breaches right to privacy which is part of the fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India. The Division Bench of the Kerala High Court in case of

Pattambi Service Co-operative Bank Ltd. v. Union of India and Ors., reported in [2016] 387 ITR 299, while rejecting such a challenge, approved the decision of the learned Single Judge which was in challenge before it observing that right to privacy has to be viewed in the background of difficulty in collecting the necessary details. It was observed that even if the right to privacy is a fundamental right, it is subject to reasonable restrictions. It was further observed as under :

"10.? When a legislation, especially one in the fiscal realm is being examined by courts to check whether it infringes the right of individuals to privacy in own affairs, it has to be borne in mind that the larger public and economic interest of nation is to be balanced against such right to privacy. All decisions which have espoused the right to privacy have been cautious in pointing out that such rights would not extend to militate against right of the State to gather information under its fiscal administration."

17. The Statute thus recognises the power of the revenue authorities to call for information in certain cases subject to safeguards, even in cases where the assessment may not be pending. Such powers as observed by the Kerala High Court in case of Pattambi Service Co-operative Bank Ltd. (Supra), have been invested bearing in mind the larger public and economic interest and in furtherance to the right of the revenue to gather information under fiscal administration.

18. Reverting back to the facts of the case, as noted, as held and observed by the Supreme Court in case of Smt.Amiya Bala Paul (Supra), it may be that the reference to the District Valuation Officer in terms of Section 55A of the Act if strictly seen, for the purpose of valuation in the context of the capital gain may not be competent. However, post the said decision of the Supreme Court, Section 142A of the Act was inserted with retrospective effect substantially nullifying its effect and vesting the competent revenue authorities with the power to obtain valuation reports in the context of issues other than of capital gains computation also. In the present form, sub-section (2) of Section 142A of the Act provides that such valuation may be summoned even when the Assessing Officer may not have questioned the accounts of the assessee. This last issue is strictly not relevant for our purpose since the Assessing Officer has painstakingly and at length demonstrated why in his prima facie opinion the declaration of sale consideration does not reflect the correct rate. In short, he seriously disputed the veracity of the petitioner's declaration of the prices at which said 3 properties were sold. Merely because from time to time the Assessing Officer referred to wrong provision for exercising powers which he otherwise had, would not vitiate his action. Had this been a case of lack of powers, the issue would certainly rest on different parameters. However, when we find that the Assessing Officer had the powers to call for the District Valuation Officer's report, the exercise cannot be struck down for a mere reference of a wrong statutory provision as has been consistently held by the Supreme Court in series of judgments. Merely because

the Assessing Officer in one of the communications referred to the sale consideration as business income would not wash away the detailed analysis and materials he referred to in various letters indicating that the sale price shown was abysmally low compared to real market price. At a stage when the assessment is not yet complete, it would simply not be possible or proper in our part to intervene and interfere in the manner in which the assessment should be made. If ultimately the assessee is aggrieved by the order of assessment, he has remedy to file appeal. When the statute provides such remedies, as held by the Supreme Court in case of Commissioner of Income-tax and Ors. v. Chhabil Dass Agarwal, reported in [2013] 357 ITR 357, interference at this stage would not be proper.

19. The judgment of this Court in case of Me & Mummy Hospital (Supra) was rendered in different background. Section 142A of the Act which was under consideration, did not have sub-section (2) as it is contained in the present form. This apart, as noted, in this case the Assessing Officer has given ample reasons why he seriously disputed the assessee's declaration of sale consideration received as per the sale deeds.

20. In case of Commissioner of Income-tax, West Bengal v. Calcutta Discount Co. Ltd., reported in [1973] 91 ITR 8, relied upon by the counsel for the petitioner, brief facts were that the assessee had transferred shares held by it to its subsidiary not at market price but on book value. The Assessing Officer did not hold that the assessee company had made any secret profits out of the transaction or that the transaction was not bona fide. Despite which he taxed the assessee on the basis of market price on the basis that though the company had not made any profit, it must be deemed to have made profit and should be taxed accordingly. In this background, the Supreme Court has held as under :

"It is a well accepted principle of law that an assessee can so arrange his affairs as to minimise his tax burden. Hence, if the assessee in this case has arranged its affairs in such a manner as to reduce its tax liability by starting a subsidiary company and transferring its shares to that subsidiary company and thus forgoing part of its own profits and at the same time enabling its subsidiary to earn some profits, such a course is not impermissible under law."

21. Facts of our case are different. The Assessing Officer strongly disputes the correctness of the sale considerations reflected in the sale deeds. The assessment is yet to be made. The Assessing Officer must be allowed free hand, be allowed to complete the assessment in accordance with law.

22. In the result, the petition is dismissed.