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IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

**BEFORE SHRID. KARUNAKARA RAO, AMAND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आ य कर □ □ □ □ □. / ITA No.1657/PUN/2018
□ □ □ □ □ व ष □ / Assessment Year : 2014-15

Jagdish Dhanajirao Jadhav, 117,
St. Patrick’s Town, Pune Solapur
Road, Wanowarie, Haveli,
Pune-411 013. PAN:
AAPPJ9143C

.....□ □ □ □ □ □ □ □ /Appellant

□ □ □ □ /
V/s.

The Income Tax Officer,
Ward-2(5), Pune.

.....□ □ □ □ □ □ □ □ /
Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Alok Malviya

□ □ □ □ □ □ □ □ □ □ □ □ □ □ /Date of Hearing : 25.02.2020
□ □ □ □ □ □ □ □ □ □ □ □ □ □ /Date of Pronouncement : 26.02.2020

□ □ □ □ / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)-
3, Pune dated 13.08.2018 for the assessment year 2014-15 as per the following grounds of
appeal on record:

*“1.The learned CIT(A)-3, Pune erred in law and on facts in sustaining part of
the addition made u/s.50C of the ITA, 1961 by the learned AO, for the
balance long term capital gain (i.e. Rs.1,93,25,207 less indexed cost of*

acquisition) for transfer of half share in ancestral land situated at Bapod, Vadodara.

2. The learned I-T authorities erred in law and on facts, in not appreciating that appellant has already transferred the his half share in ancestral land situated at Bapod, Vadodara on 21/4/2007, considering:

- a. Notarised agreement to sale*
- b. Notarised power of Attorney*
- c. Handing over possession*

The learned I-T authorities ought to have appreciated that, appellant, considering receipt of full consideration and considering the above stated events, has, in pith and substance, transferred the property in AY 2008-09 and not in AY 2014-15. Learned I-T authorities erred in holding that transfer u/s.2(47) of the ITA, 1961 took place upon execution of sale-deed dated 7/3/2014.

3. The learned CIT(A)-3, Pune and the learned AO erred in law and on facts, in not considering the Ready Reckoner Value of Rs.20,11,310/- as on 21/04/2007 as full value of consideration (instead of stamp duty value as of 7/3/2014) for the purpose of section 50C of the ITA, 1961. The learned I-T Authorities ought to have appreciated that, the first proviso to section 50C of the ITA, 1961; is applicable retrospectively.

4. The learned CIT(A)-3, Pune and the learned AO erred in law and on facts in adopting Stamp Duty Valuation of Rs.3,86,50,414/- as full value of consideration for transfer of land situated at Bapod, Vadodara; instead of Rs.79,29,177/- being the actual sales consideration; without referring the matter to the Departmental Valuation Officer (DVO) as prescribed in Section 50C of the ITA, 1961.

5. Appellant craves leave to add/modify/amend/delete all/any of the grounds of appeal.”

2. The brief facts in the case are that the assessee is an individual engaged in the business of sale of construction material and labour contract in the name of M/s. Kamal Dhanu Industries, filed it's return of income on 20/08/2014 declaring total income of Rs.7,38,170/- for A.Y. 2014-15. The case was selected for limited scrutiny under CASS with the reason "Sale consideration of the property in ITR is less than the sale Consideration of property reported in AIR" and, accordingly, a notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as „the Act“), was issued on 01/09/2015 by the Assessing Officer and the same was duly served upon the assessee on 11/09/2005. The Ld.AR of the assessee stated that during the year 2013-14

assessee along with his brother had sold an immovable property amounting to Rs.77,29,177/- whose consideration was received in F.Y. 2007-08 & 2008-

09. The valuation of the property as per stamp valuation authority was Rs.4,63,79,591/-. The Assessing Officer applied sec 50C of the Act. The difference of the consideration received and the stamp valuation authority; value was Rs.3,86,50,414/-. As the assessee was owner of half portion of the property, half of the amount i.e. $Rs.3,86,50,414/2 = Rs.1,93,25,207/-$ (as said land property belongs to one of his brothers also and in this regard the assessee stated that half of the difference amount should be added to in the hands of his brother) was added to the income of the assessee.

3. The Ld. Counsel for the assessee submitted that **Ground No.1 and 5** are general in nature and hence, no adjudication is required. After hearing the submissions of the Ld. AR, no adjudication is required on the Ground No.1 and 5.

4. The Ld. Counsel for the assessee submitted that he is not pressing **Ground No.2**. In view of the submission of the Ld. AR, **Ground No.2 is dismissed as not pressed.**

5. With regard to **Ground No. 3 and 4**, the Ld. Counsel for the assessee submitted that this issue has been decided in favour of the assessee by the Co-ordinate Bench of the Tribunal, Pune in ITA No.1503/PUN/2015 for the assessment year 2011-12 order dated 25.01.2019 wherein, the Tribunal held as follows:

“15. Adverting to the facts of the instant case, we find that section 50C(1), before amendment by the Finance Act, 2016, contemplated the

adoption of stamp value in respect of land or building or both transferred by an assessee as full value of consideration with reference to the date of transfer or the execution of sale deed. This was without consideration of a situation in which agreement to sell may have been entered into much prior to the date of registration of sale deed. By this amendment carried out w.e.f. 01-04-2017 by insertion of the above two provisos, the legislature has clarified that in a situation where agreement to sell is entered into at a date anterior to the date of registration of sale deed and certain consideration is received at the time of entering into agreement to sell through a banking channel, the stamp value, for the purposes of transfer, should be considered with reference to the date on which the agreement to sell was entered and not a later date on which registered sale deed is made. It is manifest that with insertion of the proviso, the Parliament has toned down the provision contained in sub-section (1) by which stamp value on the date of registration of sale deed is considered as full value of consideration notwithstanding the fact that the agreement to sell was executed much earlier, in which sale consideration was determined and a part of which was also received through banking channel. When we consider the first proviso to section 50C in the light of the ratio decidendi of the Constitution Bench judgment of the Hon'ble Summit Court in Vatika Township (supra), it becomes vivid that the proviso to section 50C(1) is retrospective. The benefit which is sought to be conferred through this provision is without inflicting detriment on some other person or on the public generally. It further emerges that the idea behind this proviso is to grant a benefit in the circumstances noted herein only. Going by the observations of the Hon'ble Supreme Court in para 33 of Vatika Township Pvt. Ltd. (supra), we have no hesitation in holding that proviso to section 50C (1) is retrospective in nature and applies to the assessment year under consideration as well. It is so for the reason that the relief given through this amendment is to certain persons without inflicting a corresponding detriment on some other person or on the public generally. Further, it is overt from the Memorandum explaining the provisions of the Finance Bill 2016 that the object of the amendment is also to confer such a relief or benefit. Going by the ratio in the case of Vatika Township (supra), we have no doubt whatsoever in our mind that the insertion made through the above provisos w.e.f. 01-04-2017 is retrospective and applies to the assessment year under consideration also.

16. *At this stage, it is significant to note that the benefit of first proviso would be allowed only if the condition as stipulated in second proviso is satisfied. In other words, the stamp value on the date of agreement to sell shall be considered as full value of consideration only if the amount of consideration or part of such consideration was received by the assessee through banking channel on or before the date of agreement for transfer.*

17. *Reverting to the facts of the instant case, we find from para 7.3.3. on page 11 of the impugned order that the assessee received a sum of Rs.11,000/- through cheque no. 99308 on 09-04-2001, which is prior to the date of agreement to sell, that is, 31.5.2002. This evidences that the assessee genuinely entered into an agreement to sell with the Developer on 31-05-2002 and received a sum of Rs.11,000/-, which constitutes receipt of a 'part' of consideration before the date of agreement. Not only that, the assessee received further sums of Rs.2 lakh on 23-10-2002; Rs. 5 lakh on 16-04-2003 and Rs.7 lakh before 11-01-2007. All these receipts were through banking channel. A factual finding recorded by the*

ld. CIT(A) in the impugned order to this extent has not been controverted on behalf of the Revenue.

18. When we conjointly read the two provisos to section 50C(1), it emerges that the assessee entered into an agreement to sell on 31-05-2002; received part payments; and finally executed registered conveyance deed on 28-07-2010. Having satisfied the mandate of second proviso and further going by the first proviso to section 50C(1), the stamp value for the purpose of computation of capital gain at the time of sale in the year 2010 should be considered with reference to the date of agreement, namely, 31-05-2002. We order accordingly.”

On perusal of the above findings of the Tribunal, it is evident that the benefit of first proviso would be allowed only if the condition as stipulated in second proviso is satisfied. In other words, the stamp value on the date of agreement to sell shall be considered as full value of consideration only if the amount of consideration or part of such consideration was received by the assessee through banking channel on or before the date of agreement for transfer. This issue, therefore, needs detailed factual verification.

6. Having said that we find, the applicability of the first proviso to Section 50C(1) retrospectively should be determined by the Assessing Officer, therefore, we are of the considered view that the matter needs to be restored to the file of Assessing Officer for adjudication as stated hereinabove. Therefore, we set aside the order of the Ld. CIT(Appeals) and restore the matter to the file of Assessing Officer. We order accordingly. Thus, **Ground No. 3 and 4 raised in appeal by the assessee are allowed for statistical purposes.**

		Date	
1	Draft dictated on	25.02.2020	Sr.PS/PS
2	Draft placed before author	25.02.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		