

Sec. 50C couldn't be applied if no circle rate was prescribed by stamp valuation authorities: ITAT

Summary – The Delhi ITAT in a recent case of Jastinder Singh Vedi, (the Assessee) held that In case of registered sale of house, value assessed by stamp valuation authority, if higher, is to be adopted as sale consideration while for unregistered sale, value declared by assessee is to be accepted

Facts

- The assessee and his wife were co-owners of a residential house. They sold the said property for a sale consideration of Rs. 22 lakhs. In his income return the assessee declared a long-term capital loss of Rs. 1.40 lakhs pertaining to sale of his share in the property.
- The Assessing Officer found that sale consideration declared for the property in the return of income was very low as compared to prevailing market rate in the locality on the date of sale. He, therefore, referred matter to the valuation officer for determination of the fair market value of the property. The Valuation Officer determined value at Rs. 68.06 lakhs that included cost of land. The Assessing Officer determined the assessee's share of sale consideration and made addition under the head 'long-term capital gain'.
- On appeal, the Commissioner (Appeals) adopted the prevailing market value and determined the assessee's share which was less than value adopted by the Assessing Officer.
- On second appeal, before the Tribunal:

Held

- In section 48, it is specified that income under the head 'capital gains' shall be computed by deducting from the full value of consideration received or accruing as a result of transfer of the capital asset, the amount of expenditure incurred in connection with transfer and cost of acquisition of the asset including cost of any employment of the asset. Thus, for the purpose of computation of capital gains 'full value of the consideration' received/accrued as a result of transfer of the capital asset is required to be considered. However, in case of specific capital asset like land or building, section 50C has been introduced with effect from 1-4-2003. According to which, in case of land or building or both, if the consideration received or accruing as a result of the transfer of capital asset is less than the value adopted or assessed or assessable by any authority of the State Government, i.e., stamp valuation authority for the purpose of payment of stamp duty then the valuation adopted or assessed or assessable shall be deemed to be full value of consideration received accruing as a result of such transfer. The word 'assessable' has been introduced with effect from 1-10-2009 and prior to that value adopted or assessed by stamp valuation authority was required to be deemed the full value of consideration. Further, in sub-section (2) of section 50C, if the assessee claims before the Assessing Officer that the value adopted or assessed or assessable by the stamp valuation

authority, exceeds the fair market value of the property on the date of transfer and the value adopted, assessed or assessable by the stamp valuation authority has not been disputed by the assessee before any authority, Court or High Court, then in such circumstances, there is a provision that the Assessing Officer may refer the valuation of the capital asset to Valuation Officer.

- When the Assessing Officer had not shown that the assessee received any consideration other than the consideration mentioned in the sale agreement, reference made to DVO under section 55A was without jurisdiction. In the instant case, it is evident that the Assessing Officer did not invoke the provision of section 50C and referred the matter to the Valuation Officer without observing the procedures laid in section 50C(2). The Commissioner (Appeals) referred the section 50C but held that it was not applicable in the case of the assessee, being no circle rate prescribed for the area.
- The full value of consideration mentioned in section 48 may be replaced by the value assessed or adopted by the stamp value authorities or fair market value only if section 50C applies in this case and which depends on the fact whether the sale transaction was registered by the stamp valuation authorities. In other words, if the property in question has been sold through registered sale deed and the value adopted or assessed by the stamp valuation authority is higher than the value declared by the assessee in the return of income, the provisions of section 50C are clearly applicable. If the sale transaction in question is not registered with stamp value authorities, then full value of consideration has to be accepted as declared by the assessee. Since this issue has not been properly verified by the Commissioner (Appeals) while holding that the provisions of section 50C are not applicable in the case, in the circumstances, it is appropriate to restore the issue to the file of the Assessing Officer to examine the applicability of section 50C with regard to transfer of the property in question and decide the issue afresh in accordance with law.