IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.859 OF 2016

The Pr. Commissioner of Income Tax-19 .. Appellant

v/s.

The Executor of Estate of Late Smt. Manjula A. Shah .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 31.7.2015.

2. Following question has been presented for our consideration:-

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue by accepting the sale consideration at Rs.2,51,00,000/-, accepted by the Revenue in order u/s 269 UL(3) in place of Rs.4,63,73,500/- considered by the Assessing Officer on the basis of valuation made by the Stamp Duty Authority?"

3. Brief facts are that the respondent assessee for Assessment Year 2005-06 had filed the return of income declaring total income of Rs.1,63,86,880/-. The return was taken in scrutiny. It was noticed that the assessee had entered into a Memorandum of Understanding ("MOU" for short) with Mahavir Builders, agreeing to assign them development rights in respect of the immovable property for a consideration of Rs.2.51 crores (rounded off). This was done after obtaining necessary NOC under Section 269UL of the Income Tax Act, 1961 from the competent authority. This MOU however, could not be converted into a formal development agreement till September, 2004. At the time of execution of the agreement, the stamp duty authority

assessed the value of the property for the purpose of stamp duty collection at Rs.4,63,73,500/-. The Assessing Officer invoked Section 50C the Act and computed capital gain on the basis of stamp duty valuation of the property in question.

4. The assessee carried the matter in appeal. The CIT(A) allowed the appeal in part. In relation to the dispute on hand, the commissioner accepted the assessee's two primary contentions. Firstly, that the MOU was executed in the year 2001 after obtaining no objection from the Revenue authorities, whereas the formal development agreement was executed in September, 2004 which was on the same terms and conditions as the MOU.

The stamp duty authority had assessed the value of the property on the date of the execution of development agreement. The assessee also contended that the valuation made by the stamp duty officer was on larger piece of land, admeasuring 7644 sq. meters whereas the assessee had sold only 3872 sq. mters out of such larger area. The CIT(A) accepted both these contentions and allowed the appeal of the assessee, upon which the Revenue approached the Tribunal. Tribunal by the impugned judgment dismissed the Revenue's appeal, making following observations:-

> "2.1 We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the estate was the owner of the property known as Vijay Mahal located at Malad. The assessee entered into a MOU with Mahavir Builders providing them with development rights in respect of property for a consideration of Rs.2,51,00,000/-. The appropriate authority (Income Tax Department) gave no objection to grant of development rights at the agreed consideration of Rs.2,51,00,000/- u/s 269UL(3) dated 12.06.2001. The said MOU was converted into a formal development agreement in September, 2004 on the same terms and conditions. The stamp duty authorities stamped / assessed the value at Rs.4,63,73,500/-. The Assessing Officer invoked section 50C of the Act on the basis of valuation made by the stamp duty authorities. The claim of the

assessee was that the fair market value should have been taken which has been accepted by the Department u/s 269UL(3) of the Act. Reliance was placed upon the decision in Meghraj Vaid 114 TTJ 841(Jodh.) and National Thermal Power Corporation 229 ITR 383 and Jute Corporation of India 187 ITR 688 (SC).

2.2 If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, we find that there is no dispute to the fact that the transaction price as mentioned in the agreement is Rs.2,51,00,000/- for the land measuring 4630 sq.yards. It is also a fact that the Department in order u/s 269UL(3) of the Act accepted the same value. The assessee sold / given development right of the same property which was owned by it. The assessee was unable to sale more than the land which was not owned by the assessee. The assessee can be taxed only on the gain which is oozing out from the sale consideration, thus, no adverse inference can be drawn while invoking the provision of section 50C of the Act. No evidence has been produced by the Revenue at any stage that the assessee actually received the value which was adopted by the stamp valuation authority. Even the development agreement clearly mention the area and the assessee is not the owner of the TDR, thus, cannot be saddled with the value adopted by the stamp duty purposes as the assessee is only the owner of 3872 sq.mts. for which he received the consideration of Rs.2,51,00,000/-, thus, the capital gain has to be computed on the amount which the assessee actually received, consequently, we are in agreement with the finding of the ld. Commissioner of Income Tax (Appeals) that on the basis of deeming provision of section 50C, no addition can be made. We affirm the stand of the ld. Commissioner of Income Tax (Appeals), thus, appeal of the Revenue is dismissed."

5. From the record, it can thus be seen that there were two significant factors why the CIT(A) and the Tribunal did not adopt the valuation of the stamp authority for the purpose of collecting capital gain tax in the hands of the assessee. Firstly, there was a gap of nearly 3 years between the date of execution of the MOU and the execution of a formal development agreement. Obviously, the valuation made by the stamp authority was as on the date of the execution of the development agreement. Secondly and more importantly, the stamp valuation of Rs.4.63 crores was for a larger area of 7644 sq. meters where the assessee had assigned the development rights only with respect to 3872 sq. meters.

6. Under the circumstances, we do not find that the Tribunal has committed any error. No question of law arises.

7. The tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**