

INCOME TAX: Where AO made addition of capital gain to assessee's income by invoking provisions of section 50C, in view of fact that at time of entering into agreement to sell assessee had received certain amount by account payee cheque, assessee's plea that DLC rate existed on date of agreement was to be adopted to compute capital gain, was to be accepted and since, as per DLC rates, declared sale consideration was in accordance with section 50C, impugned addition was to be deleted

■ ■ ■

[2019] 110 taxmann.com 31 (Jaipur - Trib.)

IN THE ITAT JAIPUR BENCH (SMC)

Om Prakash Gupta

v.

Assistant Commissioner of Income-tax, Jaipur*

RAMESH C. SHARMA, ACCOUNTANT MEMBER

IT APPEAL NO. 358 (JP.) OF 2017

[ASSESSMENT YEAR 2013-14]

AUGUST 7, 2019

Section 50C of the Income-tax Act, 1961 - Capital gains - Special provision for computation of full value of consideration (Applicability of DLC rates) - Assessment year 2013-14 - During relevant year, assessee declared capital gain arising from sale of land - Assessing Officer noted that stamp duty value adopted by Registrar was higher than sale consideration declared by assessee - He thus invoked provisions of section 50C and made addition to declared capital gains - In appellate proceedings, assessee contended that DLC rate on date of agreement had to be adopted if amount of consideration or a part thereof was paid by an account payee cheque - Whether in view of fact that at time of entering into agreement to sell, assessee had received certain amount by account payee cheque, assessee's plea that DLC rate existed on date of agreement was to be adopted to compute capital gain, was to be accepted - Held, yes - Whether since it was undisputed that if DLC rate existed on date of agreement was adopted, declared consideration of sale was in accordance with section 50C, impugned addition made by Assessing Officer was to be deleted - Held, yes [Paras 2.6 and 2.6.1][In favour of assessee]

S.R. Sharma, CA for the Appellant. Smt. Anuradha, JCIT-DR for the Respondent.

ORDER

Ramesh C. Sharma, Accountant Member. - This is an appeal filed by the assessee against the order of the Id. CIT(A)-4, Jaipur dated 22-03-2017 for the Assessment Year 2013-140, in the matter of section 143(3) r.w.s. 153B(1)(b) of the I.T. Act, 1961.

2.1 In this appeal, the assessee is aggrieved for addition of Rs. 6,46,573/- made by the AO after invoking the provisions of section 50C of the Act.

2.2 Brief facts of the case are that during the Assessment Year under consideration the assessee had sold a plot of land on 12-04-2012 to M/s. Priyakshi Build Tech Pvt. Ltd on which capital gains of

Rs.14,860/- was declared by the assessee. The AO found that the assessee took full value of consideration of Rs. 33,84,590/- as per computation of income for the purpose of Section 50C of the Act. The AO found that stamp duty value adopted by the Registrar was amounting to Rs.40,31,163/-. The AO invoked the provision of section 50C of the Act and thus made the addition of Rs. 6,46,573/- in the declared capital gains.

2.3 By impugned order, the Id. CIT(A) has confirmed the action of the AO against which the assessee is in appeal before this Bench.

2.4 During the course of hearing, the Id.AR of the assessee argued that the open plots of land bearing No. 214 measuring 185.78 sq. meter and 204.51 sq. mtr (466.84 sq. yards) were allotted by the Cooperative Society but no physical possession was handed over to the assessee. The physical possession was with the original owners (Kashtkars) and as such said land was a disputed one. Looking to the above facts, the assessee agreed to sell the said plots on 17-12-2011 to M/s. Priyakshi Build Tech. Pvt. Ltd for a sum of Rs. 33,84,590/- under an agreement to sell of even dated executed in between above said parties duly attested by a Notary. Out of the said total sale consideration a sum of Rs. 2.00 lacs were received by account payee cheque No 028438 dated 17-12-2011 drawn on Allahabad Bank, Vidhyadhar Nagar Branch, Jaipur. Out of the balance sale consideration, a sum of Rs. 11,67,100/- was payable to the Kashtkars who were holding physical possession and Rs. 20,17,490/- to the assessee. The facts and submissions were verifiable from the agreement to sell filed before the AO. Thus the assessee agreed to sell the said disputed land on 17-12-2011. It was also verifiable from the agreement to sell that registration of the sale deed was subject to issuance of patta/ lease deed from the Jaipur Development Authority. The said patta was issued on 14-02-2012 and the registration of Sale Deed was made on 12-04-2012. As per these facts, it is apparent that the assessee agreed to sell the above said plots of land at the prevailing market rate on 17-12-2011 and as such the stamp duty value of the said property should be considered as on the said date i.e. 17-12-2011. The stamp duty rate on the said date i.e. 17-12-2011 was at Rs. 6880/- per sq. yard. A copy of the DLC rate chart issued by the Rajasthan State Govt. Sub-Registrar, Amer in support of above facts was filed before the AO. As per said rate the total sale value works out to Rs. 32,11,859/- as against the actual sale consideration of Rs. 33,84,590/- i.e the sale consideration received by the assessee is more than the DLC rate and the assessee correctly / legally adopted the said value for computation of capital gains. The AO has not controverted these facts submitted by the assessee, hence these are taken as correct facts.

2.4.1 The Id.AR Shri S.R. Sharma, CA further argued that DLC rate on the date of agreement should be adopted if the amount of consideration or a part thereof is paid by an account payee cheque. As per Section 50C first and second proviso by Finance Act, 2016, though the same is stated to be w.e.f. 1-04-2017 but being clarificatory provision applies retrospectively. He further submitted that a similar provisions as that of said proviso to section 50C exists in section 43CA introduced by Finance Act, 2013 w.e.f. 1-4-2014 and in proviso to section 56(2)(vii) inserted by Finance (No. 2) Act, 2009 w.e.f. 1-10-2009 which provisions are also to achieve the same objects as that of Section 50C. Accordingly it was vehemently argued that the intention of legislature is to adopt DLC rate prevailing as on date of agreement subject to compliance of condition that amount of consideration or a part thereof is paid by account payee cheque.

2.5 On the other hand, the Id. DR contended that the AO has correctly adopted the sale consideration on the basis of value adopted for the purpose of stamp duty on the date of registration of sale deed by invoking the provision of section 50C of the Act in place of amount actually received by the assessee. There is no infirmity in the order of the AO, in so far, it was a case of search wherein incriminating document was found to this effect.

2.6 I have heard the rival contentions and gone through the orders of the authorities below and found

from record that in the instant case the AO has adopted sale consideration of plot sold at Rs. 40,31,163/- on the basis of value thereof adopted for the purpose of stamp duty on the date of sale by invoking provision of section 50C of the I.T. Act, 1961 instead of Rs. 33,84,590/- actually received by the assessee and thereby made an addition of Rs. 6,46,573/- to the income of the assessee as income from long term capital gain. I also found that the plots were allotted by the Cooperative Society but no physical possession was handed over to the assessee . I found that physical possession was with the owner and as such the land was disputed one . Because of the disputed land, the assessee agreed to sell the said plots on 17-12-2011 for a sum of Rs. 33,84,590/- under agreement to sell. As per agreement to sell, out of total sale consideration, a sum of Rs. 2.00 lacs was received by the assessee by account payee cheque dated 17-12-2011. Out of the balance consideration, a sum of Rs. 11,67,100/- was payable to Kasthars who were holding physical possession and remaining Rs. 20,17,490/- to the assessee. All these facts are verifiable from the agreement to sell filed by the assessee before the AO. Thus the assessee agreed to sell the disputed land on 17-12-2011. I also found that registration of this land was subject to issuance of Patta/Lease Deed from Jaipur Development Authority. The said patta was issued on 14-02-2012 and that the assessee agreed to sale the above said plots of land at the prevailing market rate on 17-12-2011 and as such the stamp duty value of the said property should be considered as on the said date i.e. 17-12-2011. The stamp duty rate on the said date i.e. 17-12-2011 was Rs. 6880/- per sq. yard. A copy of the DLC rate chart issued by the Rajasthan State Govt. Sub-Registrar- Amer in support of above facts was filed before AO. As per said rate the total sale value works out to Rs. 32,11,859/- as against the actual sale consideration of Rs. 33,84,590/- i.e. the sale consideration received by the assessee is more than the DLC rate and the assessee correctly adopted the said value for computation of capital gain. The AO has not controverted these facts. The intention of the legislature as brought by proviso to Section 50C by Finance Act, 2016 was clarificatory provisions, according to which legislature intended that DLC rate on the date of agreement should be adopted if the amount of consideration or a part thereof is paid by account payee cheque. Section 50C first and second proviso were inserted by Finance Act, 2016, though the amendment is stated to be w.e.f. 01-04-2017 but being clarificatory provision applies retrospectively. I found that similar provisions as that of said proviso to section 50C exists in section 43CA introduced by Finance Act, 2013 w.e.f. 1-4-2014 and in proviso to section 56(2)(vii) inserted by Finance (No. 2) Act, 2009 w.e.f. 1-10-2009 which provisions are also to achieve the same objects as that of Section 50C. Thus it is manifest that the intention of legislature is to adopt DLC rate prevailing as on date of agreement subject to compliance of condition that amount of consideration or a part thereof is paid by account payee cheque. If the DLC rate existed on the date of agreement is adopted, the declared consideration of sale is in accordance with Section 50C.

2.6.1 In the facts and circumstances of the case, it is not in dispute that at the time of entering into agreement to sell on 17-12-2011, the assessee received Rs. 2.00 lacs by account payee cheque dated 17-12-2011 drawn on Allahabd Bank, Vidhyadhar Nagar Branch, Jaipur. Thus I do not find any merit for the value taken by the AO as on registration of the agreement dated 12-04-2012. Accordingly, the AO is directed to delete the addition so made by the AO. Thus the solitary ground of the assessee is allowed.

3. In the result, the appeal of the assessee is allowed.

Sunil

*In favour of assessee.