

ON SCOPE OF STAMP VALUE /CIRCLE RATE PROVISIONS (DEEMING EFFECT): SELECT CASE LAWS GIST

SEC 43CA AND SEC 50C AND SEC 56

Hon'ble Delhi high court in case of GOVT OF NCT OF DELHI COLLECTORS OF STAMPS Appellant vs versus CTA APPARELS PVT LTD Respondent Date of Decision: 15th November, 2019

“(viii) Much has been argued out by the counsel for appellant that circle rate can be the sole basis of the determination of the value and unless the respondent (original petitioner) dislodges the valuation as per circle rate, there exists a presumption that the circle rate would be the basis to determine the valuation for the purpose of the Act. We are not in agreement with the contentions of the appellant for the reasons that:

(a) Circle rate at the best can be one of the factors for determination of the valuation and nothing beyond that;

(b) Circle rate is nothing, but, a guidance given by the higher ranking Administrative Officer to the subordinate officer whenever any instrument comes up for registration under the Act. On the basis of this circle rate, the Registering Authority can, at best mechanically determine the valuation of the instrument, **but**, whenever the dispute arises, the exact market valuation, ought to be arrived at, by the Collector as mandated by Section 47A of the Act.

Circle rate cannot be mechanically followed by Collector, as a sole factor, to determine market value of the property in question.

(c) Reference in this regard may be made to the decision in **R. Sai Bharathi vs. J. Jayalalitha, (2004) 3 SCC 9**, wherein it was held as under:

“22. The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. This position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. The said Explanation reads as follows:

Explanation - The „guidelines register“ supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under Section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents.”

23. This Explanation also will have to be read in conjunction with Explanation to Section 47-A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which reads:

“Explanation.—For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority or the High Court, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange gift, release of benami right or settlement.”

24. This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value, undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of, if at all available in respect of

an area in which the property transferred lies. In any event, therefore, if for the purpose of the Stamp Act guideline value alone is not a factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other.”

(Emphasis supplied)

(g) The valuation of the property in question depends upon the varieties of factors like:

- The area of the plot in question or the property in question;
- The use of the property in question;
- Nature of property in question like new property and ten years old property.
- The width of the road upon which the property is situated;
- The nature of the adjacent properties;
- The nature of use of the adjacent properties, e.g., if an adjacent property is of a commercial nature, then the sale consideration fetched is bound to be different and if the adjacent property is a public convenience constructed by the Government, then the sale consideration fetched by the property in question can be entirely different.
- The existing market factors varies time to time, **whereas**, the circle rates are usually prescribed on a much prior point of time.

The urgency of the sale by the owner of the property and if it is a distress sale.

- The need of the purchase of the property as, e.g., if the adjacent property owner wants to purchase at any cost the neighbouring property, the price the owner will fetch will be higher

Reference may be made to the decision in ***Thakur Kuldeep Singh v. Union of India, (2010) 3 SCC 794***, relevant paragraphs whereof are reproduced hereunder:

“21. We accept that in view of the purpose for which the “circle rates” have been notified by the Ministry of Urban Affairs and Employment, market value of a plot cannot be determined solely on the basis of the circle rates. On the other hand, it cannot be ignored in toto. If other materials are available, government rates can also be considered as corroborative evidence. The nature of the land plays an important role. Likewise, market conditions prevailing as on the date of notification are also relevant. Sale price in respect of a small piece of land cannot be the basis for determination of market value of a large stretch of land.

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23. It is clear from the above decisions and discussion that merely on the basis of “circle rate”, market value for acquired lands cannot be fixed but, at the same time, as observed earlier, the locality and the prevailing circumstances are relevant for determining the real value of the land. We have adverted to the assertion of the claimants about the proximity and various other attending circumstances. It is seen from the evidence of PW 2, power-of-attorney holder of the appellants that the acquired plot was located in the midst of commercial properties, had commercial potentiality and for similar properties, the rates in the locality were not less than Rs

6000 per square metre. He tendered evidence and placed documents Exts. PW 2/1 to PW 2/11 which include Eicher city map. PW 2 has also highlighted that the plot was located within the developed commercial hub of Karol Bagh having all facilities. (Emphasis supplied)

(i) Reference may also be made to the case of **Ranvir Singh & Anr. vs. Union of India, (2005) 12 SCC 59**, wherein it is held as under:

“34. Sale price in respect of a small piece of land, it is well settled, cannot be the basis for determination of a market value of a large stretch of land. In *Ram Phool [(2003) 10 SCC 166, 167]* this Court held that an isolated deed of sale showing a very high price cannot be the sale basis for determining the market value. The said decision was rendered in relation to a land situated at Village Poothkalan which is adjacent to the lands in question. Even the claimants, it is interesting to note, had exhibited sale deeds in respect of the land situated at Village Poothkalan for proving their claim.” (Emphasis supplied)

Hon'ble Delhi high court in case of PCIT vs SMT AMITA GARG AND ORS. (LEGAL HEIRS OF LATE SH.RAKESH KUMAR GARG & ORS

ITA 432/2023(04.04.2024)

“13. On this aspect, it is pertinent to refer to the decision of this Court in the case of **The Commissioner of Income Tax Delhi-II v. Khoobsurat Resorts Pvt. Ltd.** [2012 SCC OnLine Del 5640], wherein, while relying on the decision of the Hon'ble Supreme Court in **Bengal Immunity Co. Ltd v. State of Bihar** [AIR 1955 SC 661] and the Madras High Court in the case of **K.R. Palanisamy v. Union of India** [2008 SCC OnLine Mad 1071], it was held that the mandate of law stipulated under Section 50C of the Act is relevant solely for uncovering the undisclosed income of a seller, aimed at determining the accurate capital gains. It was held that this particular provision must be interpreted restrictively, considering its specific scope and purpose. Any attempt to broaden the application of this fictional or presumptive provision to matters beyond its intended scope is unacceptable in law.

“.....The fiction created by virtue of Section 50C applies only in respect of escaped income of a seller, for the determination of the true capital gain. Such a special provision has to be construed narrowly, having regard to the subject matter, and the extension of the fiction or presumption in respect of any matter not covered by it is unauthorized by the law....”

14. As it is manifest from the discussion noted above, the ambit of Section 50C of the Act is limited to cover the bundle of cases, whereby, the income has escaped due to the consideration received in lieu of the transfer of a capital asset being less than the value adopted by any authority of the State government for payment of stamp duty under the Indian Stamp Act, 1899.”

HELD “

“In the facts of the present case, the transaction in question was based on account of the share purchase agreement. However, the addition was made by the AO with a view that the capital gains shall be chargeable as if the land was transferred and not the shares. However, since transaction in question does not relate to the consideration received for transfer of the capital asset, which is the fundamental prerequisite to trigger the invocation of Section 50C of the Act, the view taken by the AO is untenable”

Hon'ble Madras high court in case of CIT vs Vumuddi Amarendran 429 ITR 97

“7. Before we proceed to consider as to whether proviso inserted in **Section 50C** of the Act has to be read retrospective or prospective, we need to point out that the Assessing Officer did not doubt the bonafides of the

transaction done by the assessee, since the Assessing Officer accepted the fact that the assessee had entered into an Agreement for Sale of the property <http://www.judis.nic.in> in question vide Agreement for Sale dated 04.08.2012, wherein agreed sale consideration was Rs.19 Crores and the assessee had received Rs.6 Crores by way of account payee cheque on the date of signing the Agreement. This fact was noted by the CIT(A) and held that the Agreement cannot be treated to be ante-dated as the assessee had received Rs.6 crores as advance on the date of Agreement through banking channel. The only reason for the Assessing Officer to adopt higher value is based upon the guideline value fixed by the State Government. The question would be as to what is the effect of the guideline value fixed by the Government and the purpose behind fixing the same. This aspect was clearly explained in the case of *J.Jayalalitha*. It has been pointed out that the guideline value has relevance only in the context of [Section 47A](#) of the Indian Stamp Act (as amended by Tamil Nadu Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by the authorities under the [Stamp Act](#) for the purpose of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area to ascertain the true or correct market value. It is open to the Registering <http://www.judis.nic.in> Authority as well as the person seeking registration to prove the actual market value of the property. The authorities cannot regard the guideline valuation as the last word on the subject of market value but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. It was further pointed out that this position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968; this explanation also will have to be read in conjunction with explanation to [Section 47\(A\)](#) of the Indian Stamp Act (as amended by the Tamil Nadu Act 24/1967). It was further pointed out that undue emphasis on the guideline value without referred to the setting in which it is to be viewed will obscure the issue for consideration. Further it was held that in any event, if for the purpose of the [Stamp Act](#), guideline value alone is not a factor to determine the value of the property, its worth will not be any higher in the context of assessing the true market value of the properties in question to ascertain whether the transaction has resulted in any offense so as to give a pecuniary advantage to one party or other.

8. Thus, the Assessing Officer could not have based his conclusion solely based on the guideline value which has been held to be only a prima <http://www.judis.nic.in> facie rate prevailing in the area to ascertain the true or correct market value and it is not the last word on the subject of market value but only a factor to be taken note of. As pointed out earlier, the genuinity of the transaction done by the assessee was not doubted and the receipt of advance was through banking channel by way of a demand draft.

9. Therefore, in our considered view the Assessing Officer could not have based his finding solely relying upon the guideline value especially when the Assessing Officer is not a person who is computing stamp duty under the provisions of [Indian Stamp Act](#) on the Deed of conveyance”

Hon'ble Madras high court in case of S.P.Balasubramaniam vs ACIT 399 ITR 191

“The provisions of [section 50C](#) have been inserted to provide for a situation where there is an understatement of sale/purchase consideration as compared to the guideline value. The substitution of the guideline value for the alleged understated sale consideration is not absolute but subject to the provisions of [section 50C\(2\)](#) which provide a window of opportunity to the assessee to establish why the deeming provision is not applicable and why and on what basis the actual consideration paid is to be determined. The purpose of such opportunity is evidently to ensure that the real and actual consideration paid is determined and brought to tax and such opportunity has to be extended in all situations where there is a dispute relating to the determination of consideration.”

Hon'ble Madras high court in case of CIT vs Padmavathy 2020 SCCONLINE Mad 25294

“16. The only reason for setting aside the scrutiny assessment was on the ground that the guide line value of the property, at the relevant time, was higher than the sale consideration reflected in the registered document. The question would be as to what is the effect of the guideline value fixed by the State Government. There are long line of decisions of the Hon'ble Supreme Court holding that guideline value is only an indicator and the same is fixed by the

State Government for the purposes of calculating stamp duty on a deal of conveyance. Therefore, merely because the guideline was higher than the sale consideration shown in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue.”

Hon’ble Madras high court in case of CIT vs Jagdeeshan Sateeshan Lavanya 2020 SCCONLINE MAD 15348

“On appeal before the Tribunal, the Tribunal in our considered view took a correct decision by examining the factual aspects in its entirety and also noted the legal position as to the effect of guideline value fixed by the Government. The settled legal position is that the guideline value has been fixed by the Government for the purpose of computing the Stamp Duty payable on an instrument and the guideline value would not reflect the market value of the property. In support thereof several decision has been referred. As pointed out, the Tribunal has rightly noted the legal position and considering the entire facts found that the additions made by the PCIT and the order passed under Section 263 of the Act is unsustainable.”

Hon’ble Madras high court in case of Jagannathan Sailaja Chitta vs ITO 417 ITR 61

“10. Section 50C of the Act, as it now stands after its amendment by Finance Act, 2018, with effect from 01.04.2019, adding Third Proviso to Section 50C (1), is quoted below for ready reference...

11. The Delhi High Court, in the case of CIT v. Khoobsurat Resorts (P.) Ltd., referred to above, dealing with a similar question held in our respectful opinion rightly and we fully agree with the same, that the provisions of Section 50C of the Act only enable the Revenue to adopt the Guidance Value declared by the State for payment of stamp duty, as the Fair Market Value under Section 48 of the Act. But, that Guidance Value cannot, ipso facto, be taken as the valuation for the purpose of computing Capital Gains Tax liability in the hands of the assessee/seller..

The relevant Paragraph 15 of the said judgment is quoted below for ready reference :

“15. This Court is of the opinion that the express provision of Section 50-C enabling the revenue to treat the value declared by an assessee for payment of stamp duty, **ipso facto, cannot be a legitimate ground for concluding that there was undervaluation, in the acquisition of immovable property.** If Parliamentary intention was to enable such a finding, a provision akin to Section 50-C would have been included in the statute book, to assess income on the basis of a similar fiction in the case of the assessee who acquires such an asset. No doubt, the declaration of a higher cost for acquisition for stamp duty **might be the starting point for an inquiry in that regard**; that inquiry might extend to analyzing sale or transfer deeds executed in respect of similar or neighbouring properties, contemporaneously at the time of the transaction. **Yet, the finding cannot start and conclude with the fact that such stamp duty value or basis is higher than the consideration mentioned in the deed The compulsion for such higher value, is the mandate of the Stamp Act, and provisions which levy stamp duty at pre-determined or notified dates. In the present case, the revenue did not rely on any objective fact or circumstances; consequently, the Court holds that there is no infirmity in the approach of the lower authorities and the Tribunal, granting relief to the assessee. This question is accordingly answered in favour of the assessee, and against the revenue.”**

13. Why 'Guidance Value' under Section 50C (1) of the Act should not be taken as a Gospel Truth and why Section 50C (2) provided for reference to DVO in case an objection is raised by Assessee has another reason too. The 'Guidance Value' fixed for stamp duty purposes is fixed by the authority concerned, taking into account the location, current market price of property in particular area etc., as a standard measure to iron out the differences of personal factors, such as, sale in distress for meeting financial emergency, sale to related parties and a host of such other factors. But, in Income Tax Act, the concept of levy of tax on "real income" exists. Therefore, Capital Gains Tax can also be levied on 'real' capital gains and not on the presumptive capital gains. The need to determine a Fair Market Value upon a fact finding exercise is a sine qua non.”

Hon’ble Madras high court in case of Shri J.Nithyanandan VS ITO T.C.A.No.959 of 2018 (13.10.2020)

Substantial Questions of Law are answered in favour of the assessee.

“1. Whether the adoption of stamp duty value fixed by the DRO (Stamps) on July 2011 at the instance of the purchaser of the immovable property is correct pertaining to the transaction of sale of property in June 2009 for the purpose of levy of capital gains tax in terms of Section 2(47) read with Section 45 read with Section 50C of the Act? 2. Whether the interpretation of Section 50C of the Act is correct on the factual matrix of the case while overlooking the scope of sub-section (2) to the said section both by the Valuation Cell and the Respondent/the Assessing Officer while adopting the value determined by the DRO (Stamps) in July 2011 as the sale consideration for the property transferred in June 2009 for the purpose of levy of capital gains tax? 3. Whether the stamp duty value/guideline value as on the date of presentation of the sale document for registration is relevant for the provisions of Section 50C of the Act and not the enhanced value determined under the Stamp Duty Laws subsequently?”

The Tribunal missed to note a very important point that the sale consideration received by the assessee as Vendor of the property was at the rate of Rs.400/- per Square feet for the entire extent and the total sale consideration as reflected in the deed of conveyance is Rs.2,80,00,000/- This fact is not in dispute. Further, the Sub Registrar entertained the document for registration, did not accept the value computed at Rs.400/- per square feet for the purpose of calculating the Stamp duty payable under the Indian Stamp Act on the said deed of conveyance, but determined the value of the property at Rs.555/- per Square feet. Unfortunately, the Assessing Officer, while reopening the assessment, took note of this figure namely Rs.555/- per square feet and recomputed the total sale consideration. The re-computation of the total sale consideration based on the higher value fixed by the Sub Registrar is for the purposes of computing Stamp duty is wholly erroneous. It is not the case of the Assessing Officer that the assessee had <http://www.judis.nic.in> received the total sale consideration of Rs.3,79,90,860/-. Rather it is not in dispute that the sale consideration received as reflected in the deed of conveyance is only Rs.2,80,00,000/-. Thus, the Assessing Officer committed a serious error and this error stood perpetuated before the Commissioner of Income Tax (Appeals) as well as before the Tribunal.

REFER 432 itr 330 kar Hc on limited purview of sec 50c rights etc not covered

Calcutta high court in case of pcit vs the durhapur projects Ltd Vide order dated 24 Feb 2023: After considering the purpose behind sec 50C That the purpose for introducing the said provisions in the statute namely to curb the menace of unaccounted cash being infused in the real estate transaction Has held that sec 50c stamp value/ circle rate needs to be given restricted meaning and it would not apply to compulsory acquisition of land

Mumbai bench ITAT in case of Sir Mohd. Yusuf Trust, vs ACIT ITA No. 2243/Mum/2015 (Assessment Year 2011-12)

Date of Pronouncement : 08.03.2019

“15. Considering the above discussed legal position as held by superior courts in K. P. Varghese (supra) by Hon'ble Apex Court, Hon'ble Delhi High Court in CIT Vs Khoobsurat Resort (supra) and the coordinate bench of the Tribunal in Smt D. Anita (supra) and the undisputed fact that when the land under sale was having encumbrances the adoption of stamp valuation as a sale consideration by applying the provisions of section 50C was not justified by assessing officer, in absence of any evidence that the sale consideration was more than the value shown in the MOI. Therefore, we direct the assessing officer to work out the capital gain on the basis of consideration shown by the assessee.” Applied by Mumbai bench ITAT in case of White Rose Holdings (India) Pvt.Ltd vs ITO in ITA No.7395/Mum/2017 Date of Pronouncement :24.05.2019 (held “We are quite convince with the arguments of Ld. AR that the said property which is occupied by the tenants should be valued on the basis of capitalization rental method and not any other method. The case of the assessee supported by the decision of coordinate bench in the case of Mhd. Yusuf Trust vs ACIT ITA 2243/mum/2015 supra the operative part whereof is reproduced as under:...”)

Chennai bench ITAT in case of Mrs. Krithika Lingappan Vs ITO ITA No.2959/Chny/2018 (21.03.2019)

“10. When the property was sold under pressure and the circumstance which was narrated above, this Tribunal is of the considered opinion that adopting guideline value under Section 50C of the Act is not called for. Under normal circumstances, this Tribunal would have remitted back the matter to the file of the Assessing Officer for referring the

matter to the valuation officer. In this case, we are not doing so since the Assessing Officer himself accepted that the property was sold under pressure. This Tribunal is of the considered opinion that remitting back the matter to the file of the Assessing Officer for the purpose of making reference to the valuation officer would tantamount not only harassing the assessee further but also rubbing the salt on the wound again and again. This Tribunal is of the considered opinion that the fact and circumstances of the case and the circumstance the assessee executed the sale deed, the apparent sale consideration disclosed in the sale deed has to be considered as market value and the same has to be adopted for the purpose of computing capital gain. Hence, this Tribunal is unable to uphold the orders of both the authorities below. Accordingly, orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.”