



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.50/Rpr/2015

Assessment Year : 2009-2010

Income Tax Officer, Ward 2(3), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur	Vs.	Megharaj Prajapati, 14/1424, House, New Shanti Nagar, Raipur
PAN/GIR No. AEQPP 5658 H		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri Ajit Kumar Laskar, DR

Date of Hearing : 18/01/ 2018
Date of Pronouncement : 18 /01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the revenue against the order of the CIT(A)-Raipur, dated 22.1.2015 for the assessment year 2009-2010.

2. The revenue has raised the following ground of appeal:

“ Whether on the facts and circumstances of the case, the CIT(A) has been justified in holding that the estimated fair market value of the property was Rs.90,57,200/- (half share in the case of the assessee i.e at Rs.45,28,600/-) for the purpose of calculation of deemed capital gain u/s. 50C of the Income tax Act, 1961 whereas the assessee has paid stamp duties of Rs.172,71 lakhs as revalued by the registering authorities.”

3. Brief facts of the case are that the assessee is an individual deriving income from civil contract work and interest income. The Assessing Officer found that the assessee has sold immovable property valued at Rs.66,50,000/- against total land of 0.380 hectare sold jointly with Shri Champalal Prajapati on 22.10.2008. The Dy. Registrar had adopted the value of the property at Rs.1,72,71,000/- as per norms of the State Government and that as per the provisions of sub-section (1) of Section 50C of the Act. Since the assessee has not disputed before the State Government, the Assessing Officer has taken value of sale consideration at ½ share of Rs.1,72,71,000/- and after allowing indexed cost of acquisition determined the taxable long term capital gain at Rs.85,16,365/-.

4. On appeal, the CIT(A) allowed the appeal of the assessee.

5. At the time of hearing, Id D.R. submitted that the assessee has paid stamp duty on Rs.172.71 lakhs as revalued by the registering authorities. Hence, the Assessing officer was justified in treating the sale consideration of Rs.86,35,500/- and the CIT(A) erred in adopting Rs.45,28,600/- for the purpose of calculation of deemed capital gain u/s. 50C of the Act.

6. We have heard the submission of Id D.R, perused the orders of lower authorities and materials available on record. We find that similar issue had come up for consideration in the case of Shri Champalal Prajapati in ITA

No.370/RPR/2014, who was the co-owner of the property and was paid 50% of the consideration. In our order of even date, we have restored the issue to the file of the Assessing Officer to decide the issue afresh as per law. In view of above, we deem fit it proper to remit the matter back to the file of the Assessing Officer to decide the disputed issue afresh as per law and after giving opportunity to the assessee.

7. In the result, appeal filed by the revenue is allowed for statistical purposes.

Order pronounced on 18 /01/2018.

Sd/-

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 18 /01/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : Income Tax Officer, Ward 2(3), Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur
2.	The respondent : Megharaj Prajapati, 14/1424, House, New Shanti Nagar, Raipur
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur