

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (SMC), KOLKATA

[Before Shri P.M. Jagtap, Hon'ble Vice - President]

I.T.A. No. 1446/Kol/2018  
Assessment Year : 2012-13

*Badri Narayan Modi*.....*Appellant*  
*P-65, Vivekananda Nagar,*  
*Abhoy Guha Road, Liluah,*  
*Howrah - 711 204.*  
*[Pan : AFIPN 4034 JJ]*

*ACIT Circle 46*.....*Respondent*  
*3, Government Place,*  
*Kolkata - 700 001.*

**Appearances by:**

*Shri Miraj D Shah, AR appearing on behalf of the Assessee.*

*Shri Pinaki Mukherjee, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : October 15, 2018

Date of pronouncing the order : October 31, 2018

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 14, Kolkata dated 03.05.2018 and the solitary issue involved therein relates to the addition of Rs. 5,17,198/- made by the AO and confirmed by the Ld. CIT(A) on account of long term capital gain.

2. The assessee in the present case is an individual who filed his return of income for the year under consideration on 31.03.2013 declaring a total income of Rs. 23,46,060/-. During the year under consideration, the assessee had sold an immovable property and capital gain arising therefrom was declared in the return of income. From the working of the capital gain as furnished by the assessee, the Assessing Officer noticed that the sale consideration was taken by the assessee at Rs. 65,55,030/- while the stamp duty valuation of the

property as on the date of conveyance was 70,72,228/-. He accordingly invoked section 50C and recomputed capital gain by adopting the sale consideration of Rs. 70,72,228/- which resulted in the addition of Rs. 5,17,198/-

3. The addition made by the A.O. on account of long term capital gain by invoking the provision of section 50C was challenged by the assessee in the appeal filed before the Ld. CIT(A). During the course of hearing before the Ld. CIT(A), reliance was placed by the assessee on the first proviso to section 50C to contend that the agreement to sale the property having been entered into on 16.09.2010, the AO was not justified in adopting the stamp duty valuation as on 07.07.2011 as the sale consideration for the purpose of computing the long term capital gain. The Ld. CIT(A) did not find merit in this contention of the assessee and confirmed the addition made by the AO for the following reasons given in his impugned order:

*"I observe that there was an agreement of sale on 16.09.2010 between the appellant as the vendor in the first part and six other parties as purchasers as in the second part for selling a piece and parcel of land admeasuring one bigha and two chittacks. In pursurance of this agreement the appellant received 50% of the total consideration being Rs.65,55,030/- as earnest money and executed two deeds of sale namely deeds no.11546 and 11547 of 2010. However, with respect to the remaining 50% sale deed was executed on 07.07.2011 vide two deeds namely 08610 and 08611 of 2011 (ARA II, Kolkata). I further observe that entire amount in respect of these deeds for the 50% of the property has been received vide cheques on the following dates:*

<i>S l. N o .</i>	<i>Date</i>	<i>Instrument number</i>	<i>Amou nt</i>
<i>1</i>	<i>15.06.2</i>	<i>0214201003</i>	<i>13,11,</i>

	011	1030	006
2	15.06.2 011	0214201002 2920	6,55,5 03
3	15.06.2 011	0214201004 210	13,11, 006
4	16.06.2 011	32321/IDB	10,92, 505
5	16.06.2 011	717828/VY	10,92, 505
6	29.06.2 011	984724/BA	10,92, 505

*Thus, I observe that even though there was an agreement on 16.09.2010 to sell 50% of the property within 1 year, no amount was received in the preceding year that is the year of sale agreement with respect to the sale deed executed in the instant year under consideration. The entire amounts of the receipts are on 15.06.2011 to 29.06.2011 as detailed above. Here it is noteworthy to mention that all the sums received in the preceding year was with respect to 50% of the property sold vide deeds 11546 and 11547 of 2010 (ARA II, Kolkata). It is also relevant to mention that the sale agreement was not absolute and it is provided in the sale agreement that in case of the failure on the part of the purchasers to pay the balance amount that extent of the entire agreement will be seized, void, rescind, cancelled. Thus, I come to the conclusion that even though there was agreement on 16.09.2010 with respect to the 50% of the property to be sold in the next ensuing year in pursuance of the agreement, by the very wordings, the agreement was not binding on both the parties and no sum was ever paid as advance with respect to later sale deeds as is evident from the receipt of the money in the aforementioned table. It is worth mentioning further that even if the appellant's arguments of applicability of proviso to section 50C of the I.T. Act, 1961 is considered for arguments sake irrespective of the prospective nature of the insertion of the proviso, by virtue of second proviso, the first proviso is applicable only in cases where the entire or part of the sum has been received on or before the date of agreement for transfer by way of account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account. Therefore, in the instant case as no amount was received in respect of the deed of transfer executed in the instant year either on or before the date of agreement for such transfer as is evidenced from the table of cheque receipts in respect of the 50% of the property in question, I come to the unequivocal conclusion that first*

*proviso to Section 50C of the IT Act, 1961 is not applicable in the appellant's case. In view of this, the adoption of the stamp-duty value of the property on the date of sale deed as full value of consideration by the Assessing Officer is legally justifiable as per the sanction and mandates of the Section 50C of the IT Act, 1961 and need not be tempered with. The undersigned is not inclined to interfere with the order of the Assessing Officer in this regard. Appellant's ground fails."*

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the initial agreement for sale of his immovable property having been entered into on 16.09.2010, the action of the AO in adopting the stamp duty valuation as sale consideration as on the date of conveyance deed executed on 07.07.2011 was challenged by the assessee by relying on the 1<sup>st</sup> proviso to section 50C. The said proviso along with the 2<sup>nd</sup> proviso of section 50C, being relevant in the present context, is reproduced hereunder:

*"**Provided** that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*

***Provided further** that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer."*

It is observed that the Ld. CIT(A) however held the 1<sup>st</sup> proviso to section 50C as inapplicable in the case of the assessee on the basis

that the amount of consideration or a part thereof had not been received by the assessee by way of account payee cheque before the date of execution of initial agreement for sale executed on 16.09.2010. As pointed out by the learned counsel for the assessee from the impugned order of the Ld. CIT(A), the assessee had received 50% of the total consideration in pursuance of the agreement of sale executed on 16.09.2010 and this position was accepted by the Ld. CIT(A) himself in his impugned order. The condition stipulated in the 2<sup>nd</sup> proviso to section 50C thus was duly satisfied by the assessee and I find merit in the contention of the learned counsel for the assessee that he was entitled for the benefit given in the first proviso to section 50C inserted in the statute with effect from 1<sup>st</sup> day of April, 2017, which has been held to be applicable retrospectively inter alia by the Ahmedabad Bench of this Tribunal in the case of Dharamshibhai Sonani vs ACIT (ITA 1237/Ahd/2013 dated 30.09.2016). I accordingly delete the addition made by the AO and confirmed by the Ld. CIT(A) on account of long term capital gain by invoking the provision of section 50C and allow this appeal of the assessee.

**5. In the result, the appeal of the assessee is allowed.**

Order Pronounced in the Open Court on 31<sup>st</sup> October, 2018.

Sd/-

(P.M. Jagtap)  
Vice - President

**Dated: 31/10/2018**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Badri Narayan Modi, P-65, Vivekananda Nagar, Abhoy Guha Road, Liluah, Howrah – 711 204.
2. ACIT, Circle 46, 3, Government Place, Kolkata – 700 001.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata