

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH : KOLKATA

[Before Hon'ble Shri J. Sudhakar Reddy, AM & Shri S.S. Godara, JM]

I.T.A No. 363/Kol/2018

Assessment Year : 2014-15

Mohammad Gulzar
[PAN: AMSPG 8467 F]
(Appellant)

-vs- ITO, Ward-25(3), Kolkata
(Respondent)

For the Appellant : Shri M. D. Shah, Id. AR

For the Respondent : Shri S.Halder, Sr. DR

Date of Hearing : 18.12.2018

Date of Pronouncement : 28.12.2018

ORDER

Per S.S. Godara, JM

1. This assessee's appeal for assessment year 2014-15 arises against the CIT(A)-7, Kolkata's order dated 21.12.2017 passed in case no. 109/CIT(A)-7/Kol/Ward-25(3)/16-17, involving proceeding u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act').

Heard both the parties. Case file perused.

2. The assessee's twin substantive grounds raised in the instant appeal challenge both the lower authorities action making section 56(2)(vi) and section 43CA addition(s) of Rs. 47,55,787/- and Rs. 29,61,278/-; respectively totaling to Rs. 77,17,065/-. We find at the outset that neither of the lower authority had made any statutory reference to the DVO u/s 50C(2) r.w.s 56(2)(vi) of the Act before making the impugned addition. The Revenue's vehement contention before us during the course of hearing is that the

assessee had never sought such a reference before the lower authorities. We find no merit in accepting Revenue's instant argument. Hon'ble jurisdictional high court decision in Sunil Kumar Agarwal vs. CIT (2014) 372 ITR 83 (Cal) held that the impugned non-objection or not raising such a plea at taxpayer's behest forms no ground for the Assessing Officer for not making statutory reference u/s 50C of the Act. We make it clear that there is no dispute between the parties about application of section 50C(2) reference in section 56(2)(vi) proceedings. We therefore restore assessee's twin grievance back to the Assessing Officer for afresh adjudication as per law. Suffice to say, adequate opportunity of hearing would be granted to the taxpayer in consequential proceedings.

3. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the Court on 28.12.2018

Sd/-

[J. Sudhakar Reddy]
 Accountant Member

Sd/-

[S.S.Godara]
 Judicial Member

Dated : 28.12.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Mohammad Gulzar, C/o, D.J. Shah & Co., Kalyan Bhawan, 2, Elgin Road, Kolkata-700020.
2. ITO, Ward-25(3), Aayakar Bhawan Dakshin, 2, Gariahat Road, South, Kolkata-700068.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Assistant Registrar
 ITAT, Kolkata Benches