

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**I.T.A .No.-6085/Del/2018  
(ASSESSMENT YEAR-2009-10)**

Gopal Krishan Dubey (Prop. M/s G.P. Exports) A-33, Sector-10, Noida, Uttar Pradesh. <b>PAN No. AAXPD2991A</b>  <b>(APPELLANT)</b>	vs	ITO Ward 1(4) Noida.  <b>(RESPONDENT)</b>
<b>Appellant by</b>	<b>Shri R.R. Maurya, Adv.</b>	
<b>Respondent by</b>	<b>Shri S.L. Anuragi, Sr. DR</b>	

**ORDER**

This appeal filed by the Assessee is directed against the order dated 31.05.2018 of the Ld. CIT(Appeals)-1, Noida relevant to assessment year 2009-10 on the following grounds of appeal: -

1. *“That the order of the Ld. CIT(A) is bad in law and against the statutory provisions.*
2. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in sustaining the addition of Rs. 8,27,735/- on account of Short Term Capital Gain made by the AO by invoking provisions of section u/s 50C of the Act.*
3. *In the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in upholding the order passed by the AO that provisions of section 50C are applicable to the right transferred in lease hold property.*

4. *The appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of appeal.”*

2. The brief facts of the case are that as per AIR information, the assessee sold immovable property during the FY 2008-09. For verification of the said transaction notice u/s. 133(6) of the Income Tax Act, 1961 (in short "Act") was issued on 12.6.2015 and 16.10.2015. In response to this office notices assessee did not submit any reply. Since, the assessee could not furnish any reply of the same, action under section 147 of the Act was initiated after getting approval from the Pr. CIT, Noida which was accorded on 15.3.2016 and accordingly notice u/s. 148 of the Act was issued on 21.3.2016. Subsequently, notices under section 142(1) of the Act alongwith queries were issued. In compliance of notice u/s. 148 of the Act and subsequent notices u/s. 142(1) of the Act AR of the assessee appeared and furnished copy of ITR filed on 30.9.2009 and submitted that the same may be treated as ITR filed in response to notice u/s. 148 of the Act dated 21.3.2016. AR of the assessee attended the assessment proceedings from time to time and furnished replies alongwith supporting documents in response to queries made. AO observed that during the year under consideration assessee sold an immovable property 332, Block-G, Sector-63, Noida having plot area 250 sq. mtrs. and 69.98 sq. mtrs. covered area. Capital arisen on sale of this property was not declared by the assessee

in his original ITR filed. During assessment proceedings, assessee's counsel has furnished computation of short term capital gain arisen on sale of the property in question at Rs. 8,27,735/- and offered the same for taxation. Assessee has submitted that he has transferred the right of the property on 11.7.2008 i.e. on the date of receipt of total consideration and considered the circle rate prevalent on this date for calculation of short term capital gain as per the provisions of Section 50C. Later vide submission dated 09.12.2016, Ld. counsel for the assessee, quoting certain case laws, has stated as the property in question was leasehold property, the provision of section 50C of the I.T. Act, 1961 is not applicable and has computed short term capital gain considering actual sale consideration of Rs. 14,80,000/- not the value for stamp duty purpose on the date of actual transfer of right of the property and computed short term capital gain on sale of the property at a loss of Rs. 41,560/-. Hence, the AO added the short term capital amount of Rs. 8,27,735/- in the hands of the assessee by completing the assessment at Rs. 10,96,970/- u/s. 147/143(3) of the Act vide order dated 12.12.2016. Aggrieved by the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 31.5.2018 has dismissed the appeal of the assessee. Against the impugned order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee has stated that Ld. CIT(A) was not justified in sustaining the addition of Rs. 8,27,735/- on account of Short Term Capital Gain made by the AO by invoking provisions of section 50C of the Act. He further submitted that lower authorities have wrongly observed that the provisions of Section 50C are applicable to the right transferred in lease hold property. He further submitted that the provision of section 50C are not applicable in the case of leasehold properties as has been pronounced in the number of cases by Hon'ble Courts. In support of his contention, he filed 02 Paper Book, one is containing pages 1089 in which he has attached the copy of income tax return alongwith computation for AY 2009-10; balance sheet and profit and loss account for the year ending 31.3.2009; assessee submission dated 11.11.2016 before the ITO alongwith the following documents i.e. copy of allotment letter dated 6.10.2016 issued by Noida Authority in respect of Plot No. G-332, Sector-63, Noida with Demand Letter; Lease deed dated 21.3.2007 between Noida Authority And Gopal Krishna Dubey; possession letter dated 5.4.2007; agreement of sell dated 11.7.2008 between Gopal Krishna Dubey and Om Prakash; Transfer Memorandum dated 14.11.2018 (Noida Authority's permission for transfer); Transfer deed dated 4.12.2008 between Gopal Krishna Dubey and Om Prakash; assessee submission dated 28.11.2016 before ITO; assessee submission dated 6.12.2016 before ITO; assessee

submission dated 09.12.2016 before ITO; Form NO. 35 and Statement of Facts and Grounds of appeal before CIT(A). In another Paper Book which is containing pages 1-57 in which he has attached the copy of decision dated ACIT, Circle 28(1), vs. Shri Kishan Dass ITA No. 915/De;/2012 (AY 2008-09) order dated 7.6.20013 (Trib.); ITO vs, Shri Chander Shekar ITA No. 430/D/2013 AY 2009-10 dated 4.3.20019; CIT vs. Green Field Hotels and Estates (P) Ltd. 389 ITR 68 (Bom.) (HCV); ITO vs. Hariom Gupta 45 ITR (Trib) 137 Lucknowl (Tri.); Atul G Puranik 132 ITD 499 (Mum( (Tri.); Kanecast P. Ltd. vs. ITO 68 SOT 199 (Pune) (Tri.); Mrs. Rekha Agrawal vs. ITO 79 Taxmann.com 290 (Jaipr) (Tri.); and Baniara Eng. Pvt. Ltd. vs. ITO ITA No. 635/Kol/2018 order dated 4.7.2018 (Tri.).

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records especially the impugned order. I find that only dispute involved in this case is the adoption of the circle rate value of the immovable property disposed by the assessee during the relevant previous year and the consequential short term capital gains arising to the assessee which has been held to be taxable by the AO. In the present case the assessee has accepted the valuation of the capital asset transferred by the assessee has attained finality. However, under the provisions of Indian

Evidence Act, 1872 the said admitted position of the assessee become proved fact. Therefore, the Ld. CIT(A) consistently held that wherever the assessee has accepted the valuation of the capital asset transferred by the assessee as determined by the concerned revenue authorities under the provisions of the Indian Stamp Act, 1899 and the said acceptance has become final and hence, the said assessee cannot go back on its admitted position and accepted valuation of the capital asset before the authorities acting under the provisions of the I.T. Act, 1961. However, the case laws cited by the Ld. counsel for the assessee are on distinguished facts, hence, not applicable in the instant case. In view of above discussions, I am of the considered opinion that Ld. CIT(A) has rightly confirmed the addition in dispute, which does not need any interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Assessee.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 25-04-2019.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date: 25/04/2019

**SRBhatnagar**

**Copy forwarded to: -**

1.Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches