

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI P.M. JAGTAP, V.P & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.486/Kol/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

Soma Dey 7, Motilal Sen Lane, Near Shastitala Mandir, Narkeldanga, Kol-700011.	Vs.	ITO, Ward-45(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BZVPD2029K		
(Appellant)	..	(Respondent)

Appellant by : None

Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **17/10/2019**

घोषणाकीतारीख/**Date of Pronouncement** : **23/10/2019**

आदेश / ORDER

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (A) - 13, Kolkata dated 30.11.2017 passed in Case No.226/CIT(A)-13/Kol/2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Case called twice. None appears at assessee's behest. The registry has already sent an RPAD notice(s) dt. 18.09.2019 for today's hearing. We therefore proceed ex parte against the assessee/appellant.

2. Case file suggests that the assessee's sole substantive grievance challenges correctness of both the lower authorities' action making long-term capital gains addition of Rs.55,74,290/- in respect of sale of the capital asset in issue after invoking sec. 50C of the Act. The CIT(A)'s detailed discussion affirming Assessing Officer's action to this effect reads as under:

“4. *Decision:-*

I have gone through the contention of the assessee, the order passed by the AO and the submissions made by the Appellant. The decision of this appeal is given as under:-

In this case the appellant has raised as many as 12 grounds of appeal which arose on account of application of section 50C of the Income Tax Act, 1961. The fact of the case is that there was sale of property by the appellant for Rs.16,00,000/- and the appellant was 50% shareholder of the aforesaid property situated at 1/2, Anandmohan Basu Road,(now renumbered and known as the premises no.468/1, Jessore Road, Kolkata -700074) to M/s Edward Traders Pvt. Ltd. The stamp duty adopted by the registration authority was of Rs.1,27,48,579/-. The AO adopted the value discussed as per s.50C of the Income Tax Act, 1961.

Perusal of fact shows that the aforesaid information was received through AIR, The aforesaid property was sold without mentioning any PAN. The AO perused the aforesaid fact and after recording reason reopened the case and assessment was passed after providing due opportunity to the appellant.

At appellate stage the appellant has argued that the AO has not referred the case for valuation cell. I have called for the assessment record of the appellant. Perusal of assessment record shows that the appellant has not made any challenge for the stamp valuation of property and asking it for referring to the valuation cell. No dispute has been created, no facts or sale instances has been given to the AO to form belief that the property valuation was very high. Perusal of assessment record shows that show-cause notice has also been issued to the appellant and no reply has been submitted. It is further seen that no instance of sale has been given by the appellant to prove that the actual value of the property was less than the stamp value. Keeping in view the aforesaid facts it is held that the application of s.50C has rightly been invoked by the AO.

As regards, the claim of the appellant that order has been passed u/s 143(3) which should have been passed u/s 147 read with s.143(3), in this regard it is pertinent to mention here that the objection raised by the appellant is not tenable due to the fact that it was simply typographical omission whereas in this notice u/s 148 is issued, there is reason to belief and reason has been recorded and after that notice u/s 143(2) and 142(1) has also been issued. The order passed is as per intent and object of the Income Tax Act, 1961. Keeping in view the aforesaid fact, the addition made by the AO is hereby upheld and grounds of appeal are dismissed.”

3. The above extracted lower appellate discussion makes it crystal clear that neither the Assessing Officer and nor the CIT(A) has made the statutory reference to the DVO u/s 50C(2) of the Act. Mr. Pal vehemently contended that the assessee had never made such a prayer before either the lower authorities and therefore, they have rightly made the impugned addition. We find no merit in Revenue’s instant argument in principle. Hon’ble jurisdictional high court’s decision in Sunil Kumar Agarwal vs CIT 372 ITR 83 (Cal) held long back that an assessee’s failure in raising such a reference plea is not fatal in income tax proceedings as the Assessing Officer has to make statutory reference to the DVO u/s 50C of the Act.

We therefore restore the instant sole issue of assessment of assessee's capital gains back to the Assessing Officer for a fresh adjudication as per law.

4. This assessee's appeal is accepted for statistical purposes.

Order is pronounced in the open court on 23.10.2019.

Sd/-
(P. M. Jagtap)
VICE-PRESIDENT

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: /10/2019

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - Soma Dey
2. The Respondent - ITO, Ward-45(2), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.