

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.6350/DEL/2018
Assessment Year: 2010-11

Roshan Lal Aggarwal, 2165, Gali Hanuman Parshan, Masjid Khajoor, New Delhi.	vs.	ITO, Ward-46(5), New Delhi.
TAN/PAN: AADPA 1938Q		
(Appellant)		(Respondent)

Appellant by:	Shri Satish Khosla, Adv.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	23	07	2019
Date of pronouncement:	16	10	2019

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against the impugned order dated 21.08.2018 passed by Commissioner of Income Tax (Appeals)-XVI, New Delhi for the quantum of assessment passed u/s.143(3)/147 for the Assessment Year 2010-11. The sole grounds raised in the appeal reads as under:

"1. That ld. CIT (A) -16, New Delhi erred in confirming the order passed by the Assessing Officer for the addition of Rs.12,47,607/-. Out of it Rs.7,74,000/- confirming addition under Section 50C of the Income Tax Act and of Rs.4,73,607/- disallow on account of Cost/Cost Index."

2. The facts in brief are that on the basis of information received in the office of the ld. Assessing Officer that assessee had sold immovable property located at Noida for Rs.92,88,020/- on 02.12.2009 and from the return of income downloaded from AST system, it was not discernible whether the capital gain from the sale of said property has been offered for taxation or not. Based on this information, the assessee's case was reopened u/s.147 and accordingly notice u/s.148 was issued on 31.08.2017. Ld. Assessing Officer from the perusal of the transfer deed made between the assessee and M/s. Consummate Engineering Services Pvt. Ltd. noted that assessee had sold his plot bearing no.67, B-Block, Sector-67, Noida, District-Gautam Budh Nagar, Uttar Pradesh for Rs.85,14,000/-, whereas in the transfer deed the value of the property as per circle rate was Rs.92,88,000/-. The assessee was required to explain as to why the provision of Section 50C should not be invoked. In response, the assessee submitted that he has taken the lease hold rights in plot from Noida Authority for 90 years and the said lease hold rights has been transferred to the purchaser. It was also submitted that provision of Section 50C is also not applicable on transfer of lease hold right and in support various decision of the Tribunal were also cited and relied upon. However, the Assessing Officer held that in view of the provision of Section 50C the value adopted by Stamp Valuation Authority of Rs.92,88,000/- for the purpose of calculation of stamp duty

should be taken as full value of consideration for the purpose of calculation of capital gain.

3. Ld. Assessing Officer also asked the assessee to furnish supporting documents/evidences for claim of deduction as cost of property and cost of improvement. In response, the assessee submitted the details regarding cost and improvement of the property. However, the ld. Assessing Officer had disallowed sum of Rs.82,680/- on the ground that no proof of payment was made. And for the amount of claim of interest of Rs.3,72,925/-, Assessing Officer observed that the same was interest paid on loan taken against other property of the assessee which according to him has been utilized for the business purpose, therefore, same cannot be allowed.

4. Ld. CIT(A) decided the appeal against the assessee after following decision of ITAT Lucknow Bench in the case of ITO vs. Shri Hari Om Gupta in ITA No.222/LKW/2013 order dated 11.04.2014; and decision of ITAT Delhi Bench in ITO vs. Sh. Chander Shekhar in ITA no.430/Del/ 2013, order dated 05/06/2017.

5. After hearing both the parties and on perusal of the impugned order, we find that the main addition of Rs.7,74,000/- is on account of difference in sale consideration as per sale deed and value for stamp duty payment of the property after invoking the deeming provision of Section 50C. It is an undisputed fact that assessee had

acquired lease hold right on a plot from Noida Authority and has sold the lease rights on the same property for Rs.85,14,000/-. However, the stamp duty determined by the Stamp Valuation Authority was at Rs. 92,88,000/-. The deeming provision of Section 50C is applicable where assessee receives the consideration as a result of a transfer of capital asset being land or building or both for a value less than the value adopted or assessed by Stamp Valuation Authority, then the value so determined for the purpose of stamp duty is deemed to be consideration received on a transfer of a capital asset. The price of lease hold land depends upon the period of free hold land and is generally less than the price of free hold land, because it can be transferred to the purchaser for a limited period and thereafter the land is transferred to the issuing authority either for takeover or for renew the same after charging lease amount for future period at the Land Premium Rate applicable at that time. In the following the decisions of the Tribunal:-

- i. Shri Atul G. Puranik Vs. ITO, Bombay, ITAT No.3051 Mum/2010 order dated 13.10.2011,
- ii. Sh. Farid and gulmohamed vs. Income Tax Officer ITA No.5136/Mum/2014 A.Y. 2010-11, vide order dated 16.03.2016,
- iii. Dy. Commissioner of Income Tax vs. Tajendersingh ITAT Kolkata IT No.1459/KOL/2011;

it has been held that the deeming provision of Section 50C cannot be made applicable to lease hold rights in land.

6. However, the Ld. CIT (A) has referred to the decision of ITAT Lucknow Bench in the case of ITO vs. Shri Hari Om Gupta (supra), which in fact is in the favour of the assessee holding that provisions of section 50 C cannot be made applicable on transfer of lease hold rights in land by following catena of other decisions of the Tribunal. Another decision relied upon by the Ld. CIT(A) is in the case of ITO vs. Chander Shekhar in ITA No. 430/Del/2013 order dated 05.06.2017. From the plain reading of the judgment it is seen that, the finding was based on peculiar facts of the case and issue was also entirely different, this is evident from following passage of the judgment in the concluding para:-

“On going through the aforesaid findings of the Ld.CIT(A), we find that the assessee was allotted a residential plot on 19.01.2004 in Sector-105, Noida through lottery on payment of allotment money of Rs. 1,30,000/-. The total purchase price of the plot was Rs. 16,75,000/-. The assessee on 28.02.2004 entered into an Agreement to sell in respect of this plot with M/s Rosebud Construction Pvt. Ltd through its Director Sh. Rajeev Sharma. The assessee received an amount of Rs. 1,30,000/- from the company in lieu of agreeing to sell this plot to the company. The balance amount to be paid for the acquisition of the plot i.e. Rs. 15,45,000/- was agreed to be paid by the Company directly to the Noida Authority. The AO has held that the transfer of property took place in the year under consideration on 01.10.2008 and further no detail of the purchase price of the property was filed by the assessee, hence, the AO adopted the whole value of Stamp Valuation Authority value at Rs. 99,20,000/- as the capital gains resulting from the transfer of the property. However, the Ld. CIT(A) has observed that the assessee's name in the deed of Transfer of lease

hold rights was mentioned only because the original allotment was in his name, hence, the assessee did not have ownership of the said property during the year under consideration and therefore, there is no question of transaction of sale of the said property during the year under consideration and capital gains is not accrued. However, in our considered view, the Capital Gains should be taken into account only after deducted the price of the plot from the value of the property i.e. Rs. 99,20,000 (-) Minus Rs. 16,75,000/- i.e. the cost of the plot (to be paid to the Noida Authority) = Rs. 82,45,000/-. Accordingly, we set aside the issue in dispute to the file of the AO with the direction to compute the capital gains on the difference of the Stamp duty amount and price of the impugned property after applying the relevant provisions of the Act. Accordingly, the order of the Ld. CIT (A) is reversed.”

7. Thus, the aforesaid decision does not take a contrary view, while the other decisions as relied upon by the assessee before the Ld. CIT (A) and also before us, clearly uphold the proposition that deeming provision of section 50C cannot be applied in cases of transfer of leasehold rights in land, therefore the stamp duty valuation cannot be adopted or replaced by actual consideration received. Accordingly, we hold that the addition on account of difference of Rs.7,74,000/- cannot be made and accordingly same is directed to be deleted.

8. In so far as other disallowances are concerned, we find that the assessee has given complete details of interest paid to PNB Housing Loan for the period from 01.04.2007 to 01.06.2010 with bank statement filed during the assessment

proceedings and even in earlier assessment years similar interest was paid. Out of which, interest of Rs.3,72,000/- was claimed to be on account of fund used for plot on purchase/ premium paid for acquiring leasehold rights. Assessing Officer without verifying the said averment has held that the same was used for the business purpose. Further Ld. CIT (A) has held that assessee has been unable to prove the same. If the assessee has taken a loan and part of the said loan has been used for the property in consideration then the same needs to be allowed. However, how much loan has been used for acquiring this property has not been brought on record, therefore, in the interest of justice, we feel that this matter should be restored back to the file of the Assessing Officer and assessee shall establish and substantiate that the borrowed funds on which interest paid has been claimed was utilized for the acquisition of the property. With this direction, matter is restored back to the file of the Assessing Officer.

9. As far as the payment of Rs.82,680/- on account of improvement, it is seen that the Assessing Officer has made the disallowance on the ground that no documentary evidence has been filed and same finding is perpetuated in the finding of the Ld. CIT(A). Thus, without there being any proper rebuttal of the said finding, no interference is called for, therefore, the same is confirmed.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 16th October, 2019.

Sd/-
[PRASHANT MAHARISHI]
[ACCOUNTANT MEMBER]

DATED: 16th October, 2019

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER