

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'E', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And  
Shri O.P. Kant, Accountant Member**

**ITA No. 4928/Del/2016  
Assessment Year: 2012-13**

Nawal Kishore Khandelwal, C/o Raj Kumar & Associates, CAs, L-7A(LGF), South Ext. Part-2, New Delhi. PAN- AAAPK3353Q <b>(Appellant)</b>	<b>vs.</b>	ACIT, Circle 47(1), New Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Raj Kumar, C.A. & Sh. Sumit Goel, C.A.
<b>Respondent by</b>	Sh. F.R. Meena, Sr. DR

<b>Date of Hearing</b>	04.11.2019
<b>Date of Pronouncement</b>	15.11.2019

**ORDER**

**Per O.P. Kant, A.M.**

This appeal by the assessee is directed against order dated 08/08/2016 passed by the Ld. Commissioner of Income-tax(Appeals)-16, New Delhi [in short the Ld. The CIT(A)] for assessment year 2012-13 raising following grounds:

- 1. That under the facts and circumstances, both the lower authorities erred in law as well as on facts in adopting deemed sale value of Karol Bagh property U/s. 50C at Rs. 1,84,45,416/- as per circle rate applicable as on 30.11.2011 against correctly claimed at Rs. 1,10,00,000/- U/s. 50C as per the circle rates applicable as on 05.08.2011 (which is also the actual*

*and apparent sale consideration), thus, erred in making an addition of Rs.74,45,416/- as short term capital gain (STCG).*

*2. That without prejudice, the declared sale value at Rs.1,10,00,000/- could not had been disturbed without referring to valuation officer as provided U/s. 50C(2) r/w. Sec. 50C (3), hence, the deemed sale value adopted at Rs. 1,84,45,416/- is un - sustainable in law.*

*3. That without prejudice, in the absence of any cogent material on record for justifying the FMV at Rs. 1,84,45,416/-, the declared and apparent sale consideration of Rs. 1,10,00,000/- could not had been disturbed.”*

2. Briefly stated, facts of the case are that the assessee sold a property by way of registered sale deed dated 30/11/2011 and shown short term capital gain amounting to Rs.43,37,964/-in the return of income filed on 20/07/2012, which was part of the total income of Rs.60,47,487/- declared by the assessee. The case of the assessee was selected for a scrutiny assessment. During the scrutiny assessment, the Assessing Officer found that assessee had taken sale consideration of Rs.1,10,00,000/-for the purpose of computation of capital gain as against the value of Rs.1,84,45,416/-taken by the stamp duty authorities for registration of the sale deed. According to the Assessing Officer, in view of provisions of section 50C of the Act, the assessee was required to compute short term capital gain on valuation of the property by stamp value authorities. Accordingly, he made addition Rs.74,45,416/-for the difference of value of Rs.1,84,45,416/-considered by the stamp valuation authorities and the

sale consideration of Rs.1,10,00,000/-declared by the assessee. The assessee filed appeal before the Ld. CIT(A) and filed detailed submissions. The Ld. CIT(A) summarises submission of the assessee as under:

- a) That the deed was made with the broker Aman Ghai on 30.07.2011. The appellant has not been able to provide any evidence of any such deal and the involvement of Sh. Aman Ghai. Normally when the deals are made through broker an agreement to sell is executed alongwith the payment of token money (bayana).
- b) The consideration of Rs.1,10,00,000/- on 02.08.2011, possession NoC.
- c) Possession is claimed to have been handed over on 05.08.2011. However, the Assessing Officer in his order has quoted from the sale deed on page 9 point No. 3 as under:

**“The vendors has handed over the physical vacant possession of the said property to the vendee on the execution of the sale deed” on 19.11.2011 (date of execution of this deed on 30/11/2011. This clearly shows that the possession was given to the assessee on 30/11/2011 i.e., after the new circle rate came to the effect.”**

Therefore, the plea of the Ld. AR that the possession was made over on 05.08.2011 is rejected.

- d) The deal was closed on 05/08/2011. In the light of discussion in point No. (c) this contention is also rejected.
- e) Stamp paper for Rs.6,60,000/- @6% of Rs.1.10 Crore were purchased on 02/11/2011 whereas the circle rate was revised on 15/11/2011.”

3. Thus, before the ld. CIT(A) no copy of any sale agreement prior to the registered sale deed was submitted. The other contentions of date of purchase of stamp papers prior to date of registered sale deed and sickness of the assessee as a reason for not getting the property registered at the time of receipt of payment, were rejected by the Learned CIT(A). The learned CIT(A)

held that the assessee failed to establish existence of any contractual obligation to sell the property at the agreed price of Rs.1,10,00,000/-. In view of the observations, he upheld the addition made by the Assessing Officer.

4. Before us, Ld. counsel of the assessee filed two paper books (APB), both having pages 1-40. In the APB-II, the assessee filed copy of an agreement dated 28/07/2011. According to the agreement, this property was sold on 28/07/2011 by the assessee against full and final payment of Rs.1,10,00,000/- to be paid. The assessee referred to page 19 of APB-I, which is a copy of bank statement of the assessee. According to bank statement payment of Rs.1,10,00,000/- has been received on 2/08/2011 by way of clearing of cheque No. 751845. The Ld. counsel also referred to page 24 of APB-I, which is a copy of possession letter issued by the assessee to purchaser, according to which possession was delivered to the purchaser on 05/08/2011. In view of the above facts, the Ld. counsel of the assessee referred to first proviso to section 50C of the Act, according to which, where the date of agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value so adopted or assessed or assessable by the stamp valuation authorities on the date of the agreement may be taken for the purpose of the computing full value of consideration for such transfer.

The Ld. counsel submitted that though the said proviso has been inserted by the Finance Act 2016 ,w.e.f. 01/04/2017 , the Tribunal in following decisions has construed the proviso as clarificatory in nature and can be applied on pending matters.

- (i). Amit Bansal vs. ACIT, 174 ITD 349 (Delhi Tribunal)
- (ii). Rahul G. Patel vs. DCIT 173 ITD 1 (Ahd. Tribunal)
- (iii). Dharamshibhai Sonani vs. ACIT, 161 ITD 627 (Ahd. Trib)
- (iv). Smt. Chalasani Naga Ratna Kmari vs. ITO, 79 taxmann.com 104 (Vishakhapatnam-Trib)
- (v). ITO vs. Aastha Goel 67 ITR Trib. (S.N.) 49 (Delhi-Trib)

5. The LD DR, on hand, submitted that no agreement for the sale of the property prior to date of the registration was filed before the Learned CIT(A). This agreement is being filed first-time before the Tribunal, which being in the nature of an additional evidence, the Assessing Officer need to be given the opportunity to comment on the authenticity or genuineness of the agreement.

6. We have heard rival submissions of the parties and perused the relevant material on record including the paper books filed by the assessee. In terms of section 50C of the Act, in cases where the consideration received on transfer of the capital asset being land or building, is less than the value adopted, assessed or assessable by stamp valuation authority for the purpose of the payment of a stamp duty in respect of such transfer, then the value so adopted, assessed or

assessable shall for the purpose of computing capital gain be deemed as full value of consideration received as a result of transfer. In the case of the assessee Stamp Valuation Authorities valued the property for the purpose of a stamp duty at Rs.1,84,50,000/-, therefore invoking the section 50C, the Assessing Officer took the amount of full value consideration at Rs.1,84,50,000/- as against value of Rs.1,10,00,000/- declared by the assessee as actual sale consideration. It is also evident that before the Learned CIT(A) assessee has not made any claim of existence of any such agreement dated 28/07/2011, a copy of which has been produced before us for the first time. Taking benefit of the existence of the agreement, the assessee has sought to invoke proviso to section 50C, which reads as under:

**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.

7. As the copy of agreement has been produced before us for the first time, in the interest of substantial justice, we admit the same as additional evidence and restore the matter to the learned Assessing Officer afresh for deciding applicability of the proviso to section 50C of the Act in accordance with law. The assessee is directed to produce original copy of the agreement before the Assessing Officer who may carry out inquiries as deemed fit for verifying

genuineness or authenticity of the agreement. The Assessing Officer may, if required, verify the date of purchase of stamp used for the agreement purchase date from the register of the stamp vendor or attestation of the agreement from the register of Notary Public, who has attested the agreement or may examine the purchaser of the property and witness(es) who has signed on the copy of the agreement. It will be the responsibility of the assessee to produce all the necessary document or witnesses for carrying out necessary inquiries for verification of the genuineness or authenticity of the agreement. Upon verification, if the Assessing Officer finds that the agreement is a genuine one, he may decide applicability of first proviso to section 50C of the in accordance with law. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The Assessing Officer shall pass a speaking order incorporating result of inquiries if any conducted by him. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for the statistical properties.

Order pronounced in the open court on 15/11/2019.

Sd/-  
**(Bhavnesht Saini)**  
**Accountant Member**

Sd/-  
**(O.P. Kant)**  
**Judicial member**

Dated: 15<sup>th</sup> Nov., 2019

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