

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA**  
**BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM**

**आयकर अपीलसं./I.T.A No.1791/Kol/2018**  
**(निर्धारण वर्ष / Assessment Year: 2013-14)**

<b>Smt. Dulali Paul</b>	<b>Vs.</b>	<b>ITO, Ward – 2(3), Durgapur</b>
<b>Dangalpara, P.O. Suri, Dist. Birbhum – 731101.</b>		
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFYPP 9079 F</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Miraj D. Shah, AR  
Respondent by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 27/11/2019

घोषणाकीतारीख/Date of Pronouncement : /12/2019

**आदेश / ORDER**

**Per Shri S. S. Godara, JM**

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (A) - Durgapur dated 24.05.2018 passed in case no.20/CIT(A)/DGP/2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. It transpires during the course of hearing that the assessee has raised three substantive grounds in the instant appeal challenging correctness of both the lower authorities' action making long term capital gain addition after invoking section 50C of the Act qua difference between actual sale price and stamp price of capital assets involving sums of Rs. 1,70,00,000/- and Rs. 17317157/- respectively. Her second substantive ground is that both the lower authorities' have erred in law and on facts in taking indexed cost of acquisition as on 01.04.1981 as Rs. 1,46,305/- than that claimed at her behest as well as DVO's report amounting to Rs.

1088077/- and Rs. 18,86,072/-; respectively. The assessee's third and last substantive grievance seeks to reverse both the lower authorities' action partly accepted section 54F deduction claim of Rs. 64,35,000/- to the extent of Rs. 50,80,721/- only.

The Learned counsel is fair enough in not pressing for assessee's third and last substantive ground.

3. We now advert to the assessee's former two substantive grounds. There is no dispute about the assessee to have sold her capital asset in the nature of a plot of land measuring 17 bighas on 18.02.2013 for Rs. 1.70 crores. Its stamp duty value came to be Rs. 1,73,17,157/-. The Assessing Officer invoked section 50C of the Act to add the above stated differential value amounting to Rs. 3,17,157/- lac in his assessment order dated 21.03.2016. The CIT(A) has affirmed the Assessing Officers's action. The assessee's only argument during the course of hearing is that the impugned disallowance is very well within the tolerance margin of 5% as per section 50C 3<sup>rd</sup> proviso inserted by the Finance Act, 2018 w.e.f. 01.04.2019. The Revenue's case is that this statutory proviso applies from within prospective effect only. We find no merit in Revenue's foregoing argument since this tribunal's co-ordinate bench's decision in ITA No. 2351/Kol/2017 Chandra Prakash Jhunjhunwala vs DCIT 09.08.2019 holds the above proviso to be applicable with retrospective effect being declaratory and curative in nature. We go by the very reasoning herein as well to accept the assessee's first and foremost substantive grievance.

4. Next comes the second issue of cost of acquisition for the purpose of indexation of the assessee's capital asset as on 01.04.1981. The assessee, the DVO and the State Land Acquisition Collector state the same to be Rs. 10,88,077/-, Rs. 18,86,072/- and Rs. 1,46,305/- respectively. The Revenue's case as per both the lower authorities' findings is that the State Land Acquisition Collector's report has been rightly adopted as correct for the purpose of the impugned indexation since the former two price(s) do not satisfy the relevant parameters of location of

property, area sold as well as all the other factors. We see no reason to accept the Revenue's argument. Section 50C makes it clear that apart from making reference to the DVO for determining fair market value of a capital asset sold, there is no other option with the Assessing Officer. Case law CIT vs Indra Swaroop Bhatnagar (2012) 349 ITR 210 (All.) also holds that a DVO's report's in section 50C proceedings is very much binding on the Assessing Officer. We accordingly are of the view that both the lower authorities' has erred in law as well as on facts in adopting the said Land Acquisition Officers's report stating cost of acquisition of the assessee's capital asset at Rs. 1,46,305/- only. We, therefore, direct the Assessing Officer to go by the DVO's report only and finalised necessary computation as per law. This second substantive ground is allowed in above terms.

5. This assessee's appeal is partly allowed in above terms.

Order is pronounced in the open court on 31.12.2019.

Sd/-  
**(J. Sudhakar Reddy)**  
ACCOUNTANT MEMBER

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

कोलकाता /Kolkata;

दिनांक/ Date: 31/12/2019

(Biswajit, Sr.PS)

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Appellant - Smt. Dulali Paul.
  2. The Respondent- ITO, Ward-2(3), Durgapur.
  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