

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "Friday E": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 7992/Del/2019
(Assessment Year: 2010-11)

Meena Kumari, B-66, Rampuri, Chander Nagar, Near Surya Nagar, Ghaziabad PAN: AEFPK6899A	Vs.	ITO, Ward-1(4), Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Shri Sameer Kapoor, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	18/10/2019
Date of pronouncement	13/01/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order against the order of the ld CIT(A), Ghaziabad dated 09.09.209 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-
 - “1. *Whether the ld CIT(A) has erred in law and facts of the case in deciding the appeal without granting an opportunity to the assessee.*
 2. *Whether the ld CIT(A) has erred in law and facts of the case in confirming the sales consideration for the property sold to be Rs. 2,77,20,000/- as considered by the ld AO for computation of capital gains.*
 3. *Whether the ld CIT(A) has erred in law and facts of the case in restricting the exemption u/s 54F to Rs. 46,12,500/-.”*
3. In this appeal the assessee has filed an application for granting of early hearing as the learned CIT(A) has dismissed the appeal of the assessee for alleged nonappearance before him. Now the assessee is feeling immense pressure for payment of outstanding tax and levy of penalty, therefore the assessee requested for early hearing of the matter.
4. The brief facts of the case shows that assessee is an individual who is assessed u/s 147 read with section 143 (3) of the Income Tax Act, 1961 by order dated 22/12/2017 passed by the Income Tax Officer, Ward 1(4),

Ghaziabad assessing income of the assessee at Rs. 24897890/- against the returned income of the assessee at Rs. 165350/-.

5. The brief fact shows that the information was received that the assessee has sold immovable property for sale consideration of Rs. 2,77,20,000/- during Financial Year 2009-10 relevant to assessment year 2010-11 and therefore notice u/s 147 was issued on 30/3/2017. Assessee submitted that the original return filed on 30/03/2011 may be considered as the return filed in response to the notice u/s 148 of the Income Tax Act.
6. During the course of assessment proceedings the AO found that assessee has sold the property No. 194C situated at Gram Chikamberpur, Tehsil Loni, District Ghaziabad on 29/05/2009 to M/s Bonanza Distributors Pvt Ltd for the sale consideration of Rs. 8,200,000/- and stamp duty of Rs. 19,40,500/- was paid on the value assessed by the stamp duty valuation authority who assessed the value of the property at Rs. 2,77,20,000/-. As per page number 2 of the assessment order it is found that the assessee disagreed with the valuation of the stamp valuation authority in which that the fair valuation may be done on the basis of the property is geographical situation and its surrounding. It was pointed by the assessee that there is no connecting road, it is very far from the main road and situates near railway line, it is situated on the side of stincking Ganda Nala and messy jam packed surroundings of transport area. Therefore, it was stated that though the valuation of the stamp value authorities is Rs. 2,77,20,000/-, however , the actual transaction value of the property is only Rs. 8,200,000/-. The learned Assessing Officer after that proceeded to apply provisions of section 50C of the Act and computed the capital gain in the hands of the assessee adopting the sale consideration as per provisions of section 50C of the Income Tax Act. The AO computed the sale consideration at Rs. 27720000/- and the purchase cost of the property was indexed Rs. 2681213/- and capital gain was worked out at Rs. 27038787/-. The deduction u/s 50 4F of the act was computed at Rs. 2306250/- and lent long-term capital gain chargeable to tax was assessed at Rs. 24732537/-. Accordingly, the assessment was passed u/s 143 (3) of the Income Tax Act. The assessee preferred an appeal before the learned CIT(A) Ghaziabad passed an order on 09/09/2019 where none remain present before him.

The learned CIT(A) 1st in para No. 4 dismissed the appeal of the assessee for nonprosecution as on 07/08/2019 and on 27/08/2019 none appeared before him. Further, while para No. 6 of the order the he proceeded to assess the issue on the merits confirming the application of section 50C of the Income Tax Act.

7. Looking at the facts of the case, the application of the early hearing of the assessee has been disposed of by hearing the case of the assessee on the merits itself as per convenience of both the parties. Both the parties agreed to that and therefore the matter was heard on the merits.
8. The learned authorised representative referred to page No. 2 of the order of the learned Assessing Officer and stated that assessee has objected to the valuation adopted by the learned Assessing Officer applying provisions of section 50C of the Income Tax Act. He submitted that the property is transacted at the value disclosed in the sale deed and stamp duty valuation shown by the Assessing Officer is higher for many reasons as stated in the reply of the assessee. He therefore submitted that when the assessee has objected to the valuation according to the stamp duty rates for working out the capital, it is mandatory for the Assessing Officer to refer the matter to the valuation cell. In this case despite objecting to the valuation by the assessee according to the stamp duty value for determining the sale consideration, the learned Assessing Officer has proceeded to compute the capital gain adopting the circle rate. He therefore submitted that action of the learned Assessing Officer is not in accordance with the law.
9. The learned Departmental Representative vehemently supported the orders of the lower authorities.
10. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly in this case the stamp duty value of the property sold by the assessee is Rs. 2,77,20,000/- against the sale consideration shown by the assessee of Rs. 8,200,000/-. Before the Assessing Officer the assessee has submitted that she disagrees with the valuation of the stem valuation authority and viz that fair valuation must be done on the basis of the property's geography can situation and its surroundings. She pointed out that some of the drawbacks of the property are that there is no connecting road, property is situated very far from main

road and is near railway line, it is situated on the side of stinking water sewage and is surrounded by the messy and jampacked transport area. The learned assessing officer without referring to the matter to the valuation officer, proceeded to assess the capital gain in the hands of the assessee considering the circle value as the sale consideration applying the provisions of section 50C of the Act. The learned CIT(A) confirming the action of the learned Assessing Officer. According to the provisions of section 50C (2) of where the assessee claims before the Assessing Officer that the value adopted or assessed by the stem valuation authority exceeds the fair market value of the property is on the date of the transfer the assessing officer is duty-bound to refer the valuation of the capital asset to the valuation officer and such valuation shall be considered as a sale consideration. In the present case it is not disputed that the assessee has objected before the assessing officer about the valuation adopted by the stem valuation authorities stating that its market value is far less because of certain reason. The AO without making any reference to the valuation officer proceeded to make the competition of the capital gain adopting the stamp duty valuation as sale consideration. This is in contravention of the provisions of section 50C of the income tax act. The learned CIT(A) also confirmed the action of learned AO without looking at the provisions of the law. Therefore in the interest of the justice the whole issue is set aside to the file of the learned assessing officer with a direction to refer the matter to the valuation cell for determining the sale consideration in accordance with the provisions of section 50C of the act and then compute the capital gain on the sale of the property. The AO is also directed to provide adequate opportunity of hearing to the assessee. In the result ground Nos. 1 and 2 of the appeal of the assessee are allowed with above directions.

11. Ground No. 3 is with respect to restricting the exemption under section 54F to Rs. 4612500/-. The assessee has submitted an agreement to sale dated 01/09/2009 where the assessee has purchased the property along with other party. Therefore the learned assessing officer presumed that the assessee has only 0.5% share in the above property. The sale consideration for the purchase of the above property is Rs. 922500/- therefore, he took Rs. 4612500/- as the investment made by the assessee for purchase of new

house property. Thus he granted deduction under section 54F of Rs. 2306250/-. Assessee in the computation of the total income has shown investment in new asset under section 54F of Rs. 7081248/-. The claim of the assessee is that she has paid Rs. 7,000,000/- to saving bank account and balance sum in cash. The other corner has merely invested Rs. 1843752/- for purchase of the above property. The claim of the assessee is that the issue adopted by the learned assessing officer is disproportionate compared to the amount invested by the assessee. As we have already set aside the issue of computation of capital gain on sale of property back to the file of the learned assessing officer, we also direct the assessee to show before the assessing officer that assessee has invested Rs. 7,000,000/- for purchase of new property and a share in the above property is not 0.5% but according to the ratio of investment made in the above property. Neither the CIT(A), nor the assessing officer has considered this argument of the assessee. Therefore in the interest of justice we also set aside this ground of appeal back to the file of the learned assessing officer with a direction to the assessee to show the amount invested by her in acquisition of new capital asset which is eligible for deduction under section 54F of the act. The AO may consider the argument of the assessee and decide the issue afresh on the merits of the case. In the result ground number 3 of the appeal of the assessee is allowed with above direction.

12. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13/01/2020.

-Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/01/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi