

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI O. P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 5904/DEL/2016
(Assessment Year : 2011-12)**

Razia Abu Khatri, C/o. Ravi Gupta, Advocate, E 6A, Kailash Colony, New Delhi – 110 048. (PAN : AAHPK 6681 Q) (APPELLANT)	Vs	ITO, Ward – 22(4), New Delhi (RESPONDENT)
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Appellant by	Shri P. C. Yadav, Advocate
Respondent by	Shri Satish Kr Gupta, Sr. D.R

Date of Hearing	18.02.2020
Date of Pronouncement	24.02.2020

ORDER

PER O. P. KANT, ACCOUNTANT MEMBER

This appeal by the assessee is directed against order dated 30/08/2016 passed by the Learned Commissioner of Income Tax (Appeals)-10, New Delhi [in short the CIT(A)] for Assessment Year 2011-12 raising following grounds:

1. *“That on facts and circumstances of the case, the order passed by the Ld. CIT(Appeal) is bad both in the eyes of law and on facts.*
2. *That the Ld CIT(A) has erred in law and on facts in upholding the invoking of the provisions of section 50C, when the same are not applicable on the facts of the case.*
3. *That the Ld CIT(A) has erred in law and on facts in confirming the addition of Rs.86,50,710/- made by the AO, by invoking the provisions of section 50C.*
4. *That the Ld CIT(A) has erred in law and on facts in confirming the addition of Rs.86,50,710/- made by the AO, by invoking the provisions of section 50C ignoring the fact that the properties sold were occupied by large number of tenants and the transaction of sale has taken place at prevailing market price as per the Valuation Report of the Registered Valuar.*
5. *That the Ld CIT(A) has erred in law and on facts in confirming the addition of Rs.86,50,710/- made by the AO, by invoking the provisions of section 50C without making a reference to DVO in spite of the specific request by the appellant.*
6. *That the Ld CIT(A) has erred in law and on facts in not allowing exemption u/s 54 for amounts invested in new residential house property.*
7. *That the impugned appellant order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.*
8. *That the appellant craves leave to add/alter and/all grounds of appeal before or at the time of hearing of the Appeal.”*

2. Briefly stated facts of the case are that the assessee filed return of income on 13/12/2011 declaring total income of ₹ 1,21,830/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (in short ‘the Act’) was issued and complied with. The assessment under section 143(3) of the Act has been completed on 13/03/2014 after making

addition of ₹ 86,50,710/- under section 50C of the Act for long-term capital gain on sale of the property. The assessee could not succeed before the Ld. CIT(A). Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced above.

3. The Ground No. 1 of the appeal is general in nature. The Ground Nos. 2 to 5 of the appeal relates to addition of ₹ 86,50,710/- made by the Assessing Officer towards long-term capital gain on sale of the properties. The ground No. 6 relates to claim of deduction under section 54 of the Act by the assessee, which has not been admitted by the lower authorities.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record.

5. In the case, the assessee has sold 4 properties (1/4th share in each property) in the previous year corresponding to the assessment year under consideration, however no income from capital gain was declared in the return of income. The Assessing Officer from database of the Income-tax department, noticed that assessee has entered into immovable asset transactions amounting to ₹ 6,04,51,100/-. On the basis of sale deeds filed by the assessee, the Learned Assessing

Officer has summarised sale transactions in a table, which is extracted as under:

S. No.	Description of Properties	Indexed Cost as declared in the computation of income	Circle Rate as per Sale Deed for paying stamp duty in respect of portion of property sold	Sale Consideration as mentioned in the Sale deed in respect of portion of property sold
1	Safoora Bai Building	Rs.8,68,995/-	Rs.1,09,27,500/-	Rs.29,16,268/-
2	Madina Manzil	Rs.36,40,045/-	Rs.1,97,02,000/-	Rs.1,45,17,300/-
3	Khatija Bai	Rs.10,62,890/-	Rs.1,33,12,500/-	Rs.47,31,600/-
4	Khatri Mansion	Rs.28,22,860/-	Rs.2,42,40,000/-	Rs.1,05,60,000/-

6. According to the Assessing Officer, sale value for the purpose of the stamp duty i.e. circle rate being higher than the sale consideration recorded in the sale deed, provisions of the section 50C of the Act are applicable in the case of the assessee and the long-term capital gain was to be computed accordingly. The assessee contended that the Circle Rate is for vacant building whereas in the case of the assessee buildings were occupied by the tenants. This contention of the assessee was rejected by the Assessing Officer. The assessee requested by letter dated 11/03/2014 to refer the valuation of the properties to the District Pollution Officer, but this contention was also rejected by the Assessing Officer on the ground that it was not maintainable because, the Sub-Registrar of

Mumbai, Maharashtra being a government authority, no need arise for valuation from the District Valuation Officer. The Assessing Officer relied on the judgement of the Hon'ble Madras High Court in the case of Ambattur Clothing Co. Ltd. Vs Assistant Commissioner of Income-Tax (2009) 221 CTR 0196 (Mad) wherein it is held that section 50C of the Act makes it obligatory on the part of the Assessing Officer to treat the value adopted by the stamp valuation authority as deemed sale consideration received/accrued as a result of the transfer. The Assessing Officer invoked section 50C of the Act and computed the long-term capital gain as under:

	Safoora Bai Building	Madina Manzil	Khatija Bai	Khatri Mansion
Sale Consideration as per Circle Rate mentioned in the Sale Deed (share of Assessee ¼)	Rs.27,31,875/-	Rs.49,25,500/-	Rs.33,28,125/-	Rs.60,60,000/-
Less : Indexed Cost of acquisition as shown in Revised Computation	Rs.8,68,995/-	Rs.36,40,045/-	Rs.10,62,890/-	Rs.28,22,860/-
LTCG	Rs.18,62,880/-	Rs.12,85,455/-	Rs.22,65,235/-	Rs.32,37,140/-

7. The Ld. CIT(A) upheld the above addition in dispute.

8. Before us, the Learned Counsel of the assessee referred to Ground No. 5 of the appeal and submitted

that under section 50C(2) of the Act, assessee has option to request for valuation of the property by the District Valuation Officer (DVO), in case the sale value declared by him is less than the sale value as the stamp valuation authority. According to him once the assessee exercise this option, it is mandatory for the Assessing Officer to refer the property for valuation to the DVO. He submitted that not making such a reference to the DVO, the Assessing Officer has been barred from invoking section 50C of the Act. In support of his contention the Learned Counsel has relied on the decision of the Coordinate bench of the Tribunal in ITA No. 4166/Del/2013 in the case of M/s Aditya Narain Verma (HUF) for Assessment Year 2009-10. The relevant finding of the Tribunal (supra) is reproduced as under:

“4.1 On the very perusal of the provisions laid down under section 50C of the Act reproduced hereinabove, we fully concur with the finding of the ld. CIT (Appeals) that when the assessee in the present case had claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty. The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation. Thus, non-compliance of the provisions laid down under sub section (2) by the Assessing Officer cannot be held valid and justified.

The Hon'ble jurisdictional High Court of Allahabad in the case of Shashi Kant Garg (supra) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. Similar view has been expressed by the other decisions cited by the Id. AR in this regard hereinabove. The first appellant order on the issue is thus upheld. The grounds are accordingly rejected."

9. We find that in the instant case, the Assessing Officer in the assessment order has specifically mentioned that such a request for making reference to the DVO was not maintainable. The relevant finding of the Assessing Officer is reproduced as under:

"Further, the request of the assessee vide last line of letter dated 11th March, 2014 w.r.t. transfer to District Valuation Officer is not maintainable since when a Government Authority, i.e., The Sub-Registrar of Mumbai, Maharashtra is declaring the value of a property then how a need arises to get it valued from the District Valuation Officer."

10. In view of the above, respectfully following the decision of the Coordinate bench, we are of the opinion that the Assessing Officer is barred from invoking provision of section 50C of the Act for computation of the long-term capital gain on the sale transactions carried out by the assessee. The Assessing Officer is required to compute the long-term capital gain on the sale consideration declared by the assessee in the sale deed in respect of the portion of the property sold by the assessee. Accordingly, we restore the issue of

computation of the long-term capital gain on sale of the properties to the Learned Assessing Officer with the direction to compute the long-term capital gain keeping in view of our finding above. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The Ground No. 5 of the appeal accordingly allowed. Since we have already rejected invocation of section 50C of the Act, the other Ground No. 2 to 4 of the appeal are rendered merely academic and hence we are not adjudicating upon.

11. The Ground No. 6 of the appeal relates to claim of deduction under section 54 of the Act.

12. We have heard rival submission of the parties on the issue in dispute and perused the relevant materials on record.

13. We find that the assessee in the course of assessment proceeding filed a claim for deduction under section 54 against long-term capital gain for payment made to M/s Neel Kamal Realtor towards investment made in residential flat at Mumbai. The Learned Assessing Officer did not consider the request of the assessee for allowing deduction under section 54 of the Act. Before the Ld. CIT(A) the assessee again made request for allowing the said claim of deduction. The Ld. CIT(A) called for a remand report from the Assessing

Officer. The Assessing Officer objected the deduction on two grounds. Firstly, according to him the assessee had filed return under section 139(4) of the Act i.e. after the due date and further deduction was claimed through letter. According to him the only recourse left for the assessee was to file a revised return, which he didn't /could not do since the return was filed under section 139(4) of the Act and thus the Assessing Officer cannot entertain the claim in view of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs CIT 284 ITR 323 (SC). Secondly, the Assessing Officer verified by way of issue of notice under section 133(6) of the Act from M/s Neel Kamal Realtor and Builder Private Limited and found that allotment letter was issued on 05/04/2010 for allotment of the flat to the assessee, but the agreement was not yet registered and a payment of ₹ 2,38,13,125/- was paid by the assessee. In view of the Assessing Officer, neither the possession letter was issued nor entire consideration was paid and in absence of any registered sale deed, it was not verifiable whether the new asset was transferred to the assessee within a period of three years of its purchase which is one of the condition for deduction u/s 54 of the Act. The Ld. CIT(A) held that the Assessing Officer was not authorized to accept the claim of the deduction, if not made in the income tax return otherwise then by filing a revised

return. The Learned CIT(A) also held that the assessee has not fulfilled the condition of section 54 of the Act that the assessee has purchased another residential house within one year before or two years after the date on which transfer took place or constructed the same within three years after the date of such transfer.

14. Before us, the Learned Counsel of the assessee has submitted that the Ld. CIT(A) is not barred from admitting any claim of the assessee, otherwise then made in the return of income, if same is in accordance with law. The Counsel submitted that in the case of CIT Vs Rajesh Jalan 286 ITR 274 (Gau), the Hon'ble Gauhati High Court has held that claim of deduction under section 54 can be made in the return filed under section 139(4) of the Act. The Learned Counsel further submitted that the assessee has made following payments to the developer:

- a. "Payment of Rs.1,00,00,000/- on 25th March 2010 (A.Y 2010-11)
- b. Payment of Rs.1,21,38,750/- on 1st April 2010 (A.Y 2011-12)
- c. Payment of Rs.16,74,375/- on 28.05.2010 – (A.Y. 2011-12)
- d. All above payments were made via banking channel. Total of above payments would be - 2,38,13,125/- (which is approximately 100% of

the payments) – Accepted by the AO in remand proceedings.”

15. In view of the above payments, the Learned Counsel submitted that the assessee had already paid the entire payment for the purchase of flat and hence, the assessee was de-facto owner of the property. The Learned Counsel in this regard relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. R. L. Sood 245 ITR 727 (Del) and CIT Vs R. Krishna 363 ITR 69 (Del) wherein it is held that when the assessee has made substantial payments of the property purchase, then the assessee become owner of the property and merely because registered sale deed is exhibited at a later stage, the assessee cannot be denied the benefit of section 54 of the Act.

16. The Learned Counsel submitted that the assessee fulfill all the required conditions of the section 54 of the Act and therefore matter maybe restored back to the Learned Assessing Officer for allowing the claim in accordance with law.

17. In view of the arguments of the Learned Counsel of the assessee, we are of the opinion that claim of the assessee for deduction under section 54 is admissible if the assessee is found to satisfy all the conditions laid down under section 54 of the Act. Accordingly, we restore

the issue in dispute to the file of the Learned Assessing Officer for considering the claim of the assessee for deduction under section 54 in accordance with the law. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard to the assessee. Accordingly the Ground No. 6 of the appeal is allowed for statistical purposes.

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

Order pronounced in the Open Court on 24th February, 2020

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(O. P. KANT)
ACCOUNTANT MEMBER**

Dated: 24/02/2020

Priti/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation (Order drafted through Dragon software):	21.02.2019
Date on which the typed draft is placed before the dictating Member	24.02.2019
Date on which the typed draft is placed before the Other Member	24.02.2019
Date on which the approved draft comes to the Sr. PS/PS	24.02.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	24.02.2019
Date on which the fair order comes back to the Sr. PS/PS	24.02.2019
Date on which the final order is uploaded on the website of ITAT	24.02.2019
Date on which the file goes to the Bench Clerk	24.02.2019
Date on which the file goes to the Head Clerk	