

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A-SMC" KOLKATA*

Before Shri Sanjay Garg, Judicial Member

आयकर अपील सं.य/ ITA No. 412/Kol/2020 Assessment Year:2014-15

Bhaktiram Bhalotia C/o Subash Agarwal & Associates, Advocates, Sidha Gibson, 1 Gibson Lane, Suite 2113, 2 nd Fl., Kolkata-700 069. [PAN No.ADIPB5895P]	<u>बनाम /</u> <u>V/s.</u>	ACIT, Cir-3 (1) Asansol Sahana Apartment, Lower Chelidanga, Asansol- 713304, (W.B).
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Mr. Subash Agarwal, Advocate, AR
प्रत्यर्थी की ओर से/By Respondent	Mr. Jayanta Khanra, JCIT, Sr.DR
सुनवाई की तारीख/Date of Hearing	09-02-2021
घोषणा की तारीख/Date of Pronouncement	09-02-2021

आदेश /O R D E R

The present appeal has been preferred by the assessee against the order dated 03-02-202 of the Commissioner of Income-tax (Appeals), Kolkata [hereinafter referred to as 'CIT(A)'].

2. The assessee has raised the following grounds of appeal:-

1(a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in granting part relief and not full relief in respect of addition of Rs. 17,83,536/- made by the AO on account of difference between the sale value of flats as per agreements for sale and the stamp duty value by invoking the provisions of section 43CA.

1(b) For that the Ld. CIT(A) wrongly confirmed the addition pertaining to seven parties out of nine parties to whom flats were sold by the assessee.

2. For that the Ld. CIT(A) ought to have directed the AO to refer or himself referred the matter of the seven parties in question to the Departmental Valuation Officer (DVO) when a specific request was made before him for the said purpose.

3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.

3. At the outset, it is noticed that the appeal filed by the assessee is time barred by 64 days. A separate application for condonation of said delay has been filed, wherein reasons for delay in filing this appeal have been mentioned that due to Covid-19 pandemic situation and complete lock down the assessee was unable to file this appeal before the Tribunal in time. Considering the above reasons mentioned therein (in the condonation of application) the delay in filing this appeal is hereby condoned.

4. The Ld. Counsel for the assessee has submitted that the assessee during the assessment year under consideration has sold his 9 (nine) properties to different parties/purchasers. The Ld. Assessing Officer (in short, 'Ld. AO') made the impugned additions u/s. 43CA of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') on account of differences found in sale price adopted by the Stamp Duty Authority as against the sale price declared by the assessee. The Ld. Counsel further has submitted that the Ld. CIT(A) has already given relief to the assessee in respect of two parties appearing at Sl. Nos. 3 & 5 (Sri Rathindra Nath Singha & Sri Asim Kumar Maitra) available in the chart given by the Ld. AO in the assessment order at page-2. The list of remaining 7 (seven) parties/purchasers to whom the flats/properties were sold is as under:-

S. No.	Deed No.	Name of the Purchaser	Market Value	Sale Value	Difference Amount
1	I-5202	Shri Amal Kumar Saha S/o Late Bhabani Ghosh & Smt. Mithu Ghosh	21,03,300/-	19,00,000/-	2,03,300/-
2	I-5578	Pradip Kumar Ghosh S/o Late Bhabani Ghosh & Smt. Mithu Ghosh	15,92,865/-	13,04,100/-	2,88,765/-
3	I-5724	Smt. Supriti	15,99,190/-	14,01,000/-	1,98,190/-

		Chasraborty W/o Late Prasanta Chasraborty			
4.	I-4969	Sri Tara Sadhan Chakraborty S/o Late Bireshwar Chakraborty & Smt. Kalyani Chakraborty	18,19,116/-	16,61,692/-	1,57,424/-
5.	I-1276	Sri Dilip Topadar S/o Late Anil Topadar & Smt. Mohua Topadar	15,92,865/-	12,57,525/-	3,35,340/-
6.	I-659	SriRamkrishna Bhattacharya S/o Sri Ramprasad Bhattacharya & Smt. Pampa Bhattacharya	17,40,350/-	15,03,963/-	2,36,387/-
7.	I-1344	Smt. Arpita Mondal W/o Sri Tapas Majhi	21,03,300/-	18,84,360/-	2,18,940/-
TOTAL Amount			1,25,50,986/-	1,09,12,640/-	16,38,246/-

5. The Ld. Counsel for the assessee has submitted that the Ld. AO has ignored the submissions of the assessee regarding the actual sale value received by the assessee. Even the prayer of the assessee to refer the impugned matter to the Departmental Valuation Officer to assess/ascertain the actual market value of the said properties has been ignored. The Ld. DR on the other hand has submitted that the Ld. AO has rightly made the addition on account of difference found between the sale price adopted by the Stamp Duty Authority and Sale Price declared by the assessee.

7. I have considered the rival contentions and gone through the record including the orders of the lower authorities. I find that the assessee since beginning has pleaded that the market value of the property is less. The case of the assessee is that he has disclosed the actual sale value received by him. The Ld. Counsel for the assessee has submitted that if the Ld. AO is not satisfied with the explanations/submissions of the assessee, he should have referred the matter to the D.V.O to ascertain/assess the actual value/market value of the property. The Ld. DR has also not objected to refer the matter involved in this appeal to the D.V.O for ascertaining the actual market value of the properties in question as on the date of execution of sale deed of these properties. In view of above the impugned order of the Ld. CIT(A) is set aside and

the matter is restored to the file of the Ld. AO with the direction to get the report of the Departmental Valuation Officer in respect of market value of the aforesaid properties at the time of execution/registration of sale deed and thereafter to decide/ adjudicate the issue considering the DVO's report as well as the submissions/evidences filed by the assessee in this regard. Needless to say that Ld. AO will allow the assessee adequate opportunity to present his case and thereafter, will decide the issue(s) afresh by way of passing a speaking order in accordance with law.

The appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced in open court at the close of the hearing on
Tuesday, 9th February, 2021.

Sd/-
(Sanjay Garg)
Judicial Member

Kolkata,
**PP/Sr.PS

दिनांक:- 09/02/2021 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant- Shri Bhaktiram Bhalotia C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1 Gibson Lane, Suite 213, 2nd Fl., Kolkata-700 069.
2. प्रत्यर्थी/Respondent-ACIT, Cir-3(1), Asansol Sahana Apartment, Lower Chelidanga, Asansol-713304.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/ By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,कोलकाता ।