

**IN THE INCOME TAX APPELLATE TRIBUNALKOLKATA BENCH '(SMC)', KOLKATA  
[BEFORE SHRI P.M.JAGTAP, VICE PRESIDENT (KZ)]  
[THROUGH VIRTUAL COURT]**

**I.T.A. No. 120/Kol/2021  
Assessment Year: 2013-14**

**Tawfiqur Rahman.....Appellant**  
**39A, Old Ballygunge 2<sup>nd</sup> Land,**  
**Kolkata – 700 019.**  
**[PAN: AMHPR 8245 H]**

**Vs**

**ITO, Ward – 30(3), Kolkata.....Respondent**

**Appearances by:**

*Shri K.M. Roy, CA appearing on behalf of the Assessee.*

*Shri JayantaKhanra, JCIT, Sr. DR appearing on behalf of the Revenue.*

Date of concluding the hearing : August 03, 2021

Date of pronouncing the order : August 27, 2021

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), Kolkata - 8(National Faceless Appeal Centre, Delhi) dated 03.03.2021 and the solitary issue involved therein relates to the addition of Rs. 10,84,330/- made by the AO and confirmed by the Ld. CIT(A) on account of Long Term Capital Gain.

2. The assessee in the present case is an individual who was one of the four joint co-owners of their inherited property i.e. land at Bansdroni, 24 Parganas (South) having 22.2% shares. The said property was sold during the year under consideration for a total consideration of Rs. 2,50,000/-, the assessee's share being Rs. 55,545/-. As per the information received by the AO, the value of the

said property for the purpose of stamp duty was Rs. 48,84,368/- and the same was liable to be considered as deemed sales value as per section 50C of the Income Tax Act for the purpose of computing the capital gain. Since the share of the assessee in the said sales value was Rs. 10,84,330/- and there was no return of income filed by the assessee for the year under consideration declaring the capital gain arising from the sale of property, the assessment proceedings u/s 147 were initiated by the AO and the notice u/s 148 was issued by him to the assessee on 30.03.2017. No return of income was filed by the assessee in response to the said notice issued by the AO u/s 148 as well as the subsequent notice issued u/s 142(1) of the Act. During the course of assessment proceedings, the assessee himself appeared before the AO and submitted that the share of sale consideration being only Rs. 55,545/-, there was no capital gain chargeable to tax in his hands for the year under consideration. The submission of the assessee was not found acceptable by the AO and adopting the stamp duty valuation as the deemed sale consideration of the property, the AO brought to tax Rs. 10,84,330/- being the assessee's share in such deemed sale consideration in the hands of the assessee under the head long term capital gain in the assessment completed u/s 144/147 of the Act vide order dated 28.12.2017.

3. Against the order passed by the AO u/s 144/147, an appeal was preferred by the assessee before the Ld. CIT(A). During the course of assessment proceedings before the Ld. CIT(A), a written submission was filed by the assessee stating that agreement to sale the property having been entered into on 05.10.2010, the fair market value of the property as on 05.10.2010 ought to have been considered by the AO

as deemed sale consideration as per the 1<sup>st</sup> Proviso to section 50C and the AO, therefore, was not correct in considering the fair market value as on the date of conveyance deed i.e. 12.10.2012 as deemed sale consideration. It was contended that the fair market value of the property as determined by the DVO as on 05.10.2010 was Rs. 13,50,850/- and the assessee's share in such deemed sale consideration should be taken into consideration for the purpose of computing the long term capital gain. It was further contended that there was no benefit given by the AO in the form of deduction on account of indexed cost of acquisition while computing the capital gain. It was also brought to the notice of the Ld. CIT(A) by the assessee that in the case of Tamjidur Rahman, brother of the assessee and one of the joint co-owners of the property, the case of the assessee was accepted by the Ld. CIT(A) and the AO was directed to re-compute the capital gain considering the proportionate share of the assessee in the fair market value of the property as on 05.10.2010 at Rs. 13,50,850/- as deemed sale consideration.

4. The submissions made on behalf of the assessee as above did not find favour with the Ld. CIT(A). According to him, the 1<sup>st</sup> Proviso to section 50C having been inserted in the statute with effect from 01.04.2017, the same was not applicable in the case of the assessee involving assessment year 2013-14. He accordingly rejected the contention of the assessee and confirmed the addition of Rs. 10,84,330/- made by the AO on account of long term capital gain. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has contended that since the sale consideration for the property was agreed and decided as per the agreement to sale executed on 05.10.2010, the fair market value of the property as on 05.10.2010 should be taken into consideration as deemed sale consideration for the purpose of computing the long term capital gain as per the 1<sup>st</sup> Proviso to section 50C of the Act and not the fair market value as on registration of the conveyance deed i.e. 12.10.2010 as adopted by the AO. As submitted by him, a similar claim made by the brother of the assessee viz. Tamjidur Rahman, one of the joint co-owners of the property was accepted by the Ld. CIT(A) and the AO was accordingly directed to take into consideration the proportionate share of the assessee in the fair market value of the property as on 05.10.2010 at Rs. 13,50,850/- for the purpose of computing the long term capital gain. It is observed that the Ld. CIT(A) vide his impugned order however did not agree with the view taken by his colleague in the case of Tamjidur Rahman on the ground that the 1<sup>st</sup> Proviso to section 50C having been inserted in the statute with effect from 01.04.2017 was not applicable in assessee's case involving assessment year 2013-14. In this regard, the learned counsel for the assessee has relied on the decision of Hon'ble Madras High Court in the case of CIT vs Vummudi Amarendran reported in 429 ITR 97 wherein it was held that the amendment made in section 50C by inserting 1<sup>st</sup> Proviso with effect from 01.04.2017 is applicable retrospectively with effect from the date on which section 50C was introduced. Keeping in view that this decision of the Hon'ble Madras High Court, we hold that the benefit of the 1<sup>st</sup> Proviso to section 50C is available to

the assessee. We accordingly direct the AO to re-compute the capital gain chargeable to tax in the hands of the assessee by taking the proportionate share of the assessee in fair market value of the property as on 05.10.2010 as determined by the DVO at Rs. 13,50,850/- as deemed sale consideration. The AO is also directed to allow deduction on account of the indexed cost of acquisition of the property while computing the capital gain in accordance with law.

**6. In the result, the appeal of the assessee is partly allowed.**

Order Pronounced in the Open Court on 27<sup>th</sup> August, 2021.

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

Dated: ;27/08/2021  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Tawfiqur Rahman, 39A, Old Ballygunge 2<sup>nd</sup> Lane, Kolkata – 700 019.
2. ITO, Ward – 30(3), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary/DDO  
ITAT Kolkata Benches, Kolkata