

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Shri A. T. Varkey, JM & Shri Girish Agrawal, AM]**I.T.A. No. 65/Kol/2022**
Assessment Year: 2019-20

Sushil Kumar Agrawal (PAN: ADAPA9658D)	Vs.	Income-tax Officer, Wd-36(1), Kolkata
Appellant		Respondent

Date of Hearing	06.04.2022
Date of Pronouncement	06.04.2022
For the Appellant	Shri Jagmohan Thard, AR
For the Respondent	Shri Biswanath Das, Addl. CIT

ORDER**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 07.12.2021 for AY 2019-20.

2. This appeal of assessee is time barred by 361 days. After hearing the rival parties and considering the Covid-19 pandemic situation, we condone the delay and admit the appeal for hearing.

3. The main grievance of the assessee is against the action of the CPC while issuing the intimation order u/s. 143(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and to have made adjustment in respect of the long term capital gain [LTCG] from immovable property shown by the assessee in the return of income. According to the Ld. AR, the CPC while processing the return of income u/s. 143(1)(a) of the Act have to strictly adhere to jurisdiction prescribed u/s. 143(1)(a) of the Act of sub-clauses (i) to (vi) which empowers the CPC to make adjustments after giving notice to the assessee. Clause (ii) allows the CPC to make adjustment if it is found that the claim of the assessee is incorrect and that it is apparent from the information given in the return. According to the Ld. AR, this issue of adjustment of LTCG on the sale of immovable property by no stretch of imagination can fall in clause (ii) since it cannot be a mistake apparent on the return of

income, therefore, clause (ii) of sec. 143(1)(a) of the Act is not attracted and, therefore, adjustment made by CPC is without jurisdiction.

4. Per contra, the Ld. DR of the Revenue Shri Biswanath Das submitted that as per the first proviso to section 143(1)(a) of the Act the CPC had given notice to the assessee in respect of the apparent mistake in the LTCG claim, since the stamp valuation of the property was more than the sale consideration/amount shown by the assessee. Therefore, as per the deeming fiction u/s. 50C of the Act, the Circle Rate of the property should have been adopted, which the assessee did not adopt in this case while computing LTCG. Taking note of this discrepancy/difference between the stamp valuation authority and the sale consideration shown by the assessee in the return, the CPC has rightly issued notice to the assessee which has not been replied by him as noted by the Ld. CIT(A). Therefore, the Ld. CIT(A) in the impugned order directed the AO to verify the claim of the assessee. According to the Ld. DR, the impugned action of the Ld. CIT(A) suffers from no infirmity and therefore, should not be interfered with.

5. In his rejoinder, the Ld. AR submitted that the assessee has filed reply pursuant to the notice issued by the CPC that the actual sale consideration of the immovable property was less than the circle rate fixed by the Stamp Valuation Authority, because of this reason the assessee has computed LTCG taking the actual amount of sale consideration he received and not the circle rate. And, therefore, according to the Ld. AR, when it was pointed out that this issue (valuation) is a disputed question of fact and the Hon'ble Calcutta High Court in the case of Sushil Kumar Agarwal Vs. CIT 372 ITR 83 (Cal) has held that if the AO finds that there is a dispute regarding the actual sale consideration and that of the circle rate, the AO before adoption of the deemed value as per sec. 50C of the Act was duty bound to refer the matter to the DVO. Therefore, according to the Ld. AR, the department if it finds necessary should have issued notice u/s. 143(2) of the Act within the time prescribed for it or reopened the assessment u/s 147 of the Act and should have made addition only after due enquiry/DVO report and as per law and cannot make any adjustment by the CPC u/s. 143(1)(a) of the Act.

6. We have heard rival submissions and gone through the facts and circumstances of the case. We find that the assessee in the return of income has computed LTCG taking the actual amount of sale consideration he received and not the circle rate as per section 50 C of the Act. In the return he had shown the sale consideration of immovable property which was admittedly less than the circle rate fixed by the stamp valuation authority. Since as per section 50C of the Act, if the sale consideration of an immovable property is less than the circle rate, then the circle rate has to be adopted in place of the sale consideration for calculating the capital gain of the immovable property. So, while processing the return of income, the CPC noted that assessee even though has shown LTCG from sale of immovable property, has not adopted the value of property as per section 50C of the Act and, therefore, issued notice. The assessee pursuant to the notice submitted that he has shown in the return the actual value (sale consideration) received by him. Not satisfied, the CPC has made the adjustment which according to us, cannot be made by the CPC in the jurisdiction conferred upon it u/s. 143(1)(a) of the Act because once the assessee contested the fair market value of the property and has objected to the adoption of circle rate as per section 50C of the Act, then a question of fact raises; and once a question of fact raises there can be no adjustment made by the CPC without the AO enquiring about it. And in such a scenario, it has to be borne in mind that even when an AO during scrutiny assessment disputes the valuation of immovable property, he is duty bound to refer it to the DVO as held by the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal (supra). Therefore, we find that the adjustment should not have been made by the CPC u/s. 143(1)(a) of the Act and, therefore, the assessee succeeds and the impugned adjustment made by the CPC stands cancelled.

7. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated: 06.04.2022

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant– Shri Sushil Kumar Agrawal, 11, Pollock Street, 2nd floor, Room No. 9 (2H), Kolkata-700 001.
2. ITO, Ward-36(1), Kolkata.
3. CIT(A), NFAC, Delhi
4. CIT, Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail)..

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata