

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

**BEFORE
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No. 188/Del/2022
Asstt. Year : 2019-20

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| Sudesh Sachdev, 147, Ground Floor, Lodhi Road Jorbagh, New Delhi 100 003 PAN ABLPS5027M | Vs. | DCIT, Central Circle- 15 Delhi. |
| (Appellant) | | (Respondent) |

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| Assessee by: | Shri Pratap Gupta, |
| Department by : | Shri Om Prakash, Sr. DR |
| Date of Hearing | 25.08.2022 |
| Date of pronouncement | 16.11.2022 |

ORDER

This is an appeal by the assessee against order dated 25.11.2021 of learned Commissioner of Income Tax (Appeals), 26, New Delhi for the assessment year 2019-20.

2. In ground No. 1 and 2 the assessee challenged the addition made on account of enhancement of capital gain under section 50C of the Income Tax Act 1961.

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed his return

of income on 22.08.2019 declaring income of Rs. 17,42,000/-.

While processing the return of income filed by the assessee under section 143(1) of the Act, the Centralised Processing Centre (CPC) Bangalore found that in the year under consideration, the assessee had sold an immovable property. It was found that the stamp valuation authority determined the value of the property in excess of the declared sale consideration. Accordingly, invoking the provisions of section 50C(1) of the Income Tax Act, 1961, the CPC made adjustment of Rs. 5,07,000/- to the income of the assessee, being the difference between the declared sale consideration and the value determined by the stamp valuation authority for stamp duty purpose. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals) however the addition was sustained.

4. I have considered rival submissions and perused the material on record. Undisputedly, while processing the return of income filed by the assessee under section 143(1) of the Act, the addition has been made by way of adjustment applying the provision of section 50C(1) of the Act. Contesting the addition, the primary contention of the assessee before me is to the effect that the addition made under section 50C(1) of the Act can not fall

within the ambit of adjustment provided under section 143(1)(a) of the Act. On careful examination of section 143(1) of the Act, it is noticed that the following adjustments can be made while processing the return under the said provision:-

“6. No doubt, in the present case adjustment has been made under sub-clause (ii) to section 143(1)(a). The expression “incorrect claim apparent from any information in the return” has been explained under Explanation to section 143(1)(a) of the Act and reads as under:

“Explanation.—For the purposes of this sub-section,—

- (a) “an incorrect claim apparent from any information in the return” shall mean a claim, on the basis of an entry, in the return,—*
- (i) of an item, which is inconsistent with another entry of the same or some other item in such return;*
 - (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or*
 - (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;”*

5. On a conjoint reading of section 143(1)(a)(ii) along with Explanation it becomes very much clear that the addition under section 50C(1) cannot be in the nature of incorrect claim as provided in Explanation to section 143(1)(a)(ii) of the Act. This is so because, section 50C has to be read as a whole and cannot be restricted to sub-section (1) alone. It is fairly well settled, a deeming provision has to be taken to its logical end. Undoubtedly,

section 50C is a deeming provision. Though, sub-section (1) of section 50C provides for substituting the stamp duty value as deemed sale consideration in place of the declared sale consideration, however, sub-section (2) carves out an exception by providing that if the assessee objects to the stamp duty value, the valuation has to be referred to the Department Valuation Officer (DVO) and in case the value determined by the DVO is lower than the stamp duty value, the value determined by DVO has to be considered for computing capital gain in terms with sub-section (3) of section 50C. Therefore, sub-section (1) to section 50C cannot be considered in isolation. By making an adjustment of the nature contemplated under subsection (1) to section 50C, that too, by CPC, the Department takes away a valuable statutory right given to the assessee to object to the value determined by stamp valuation authority.

6. Therefore, such type of adjustment, in my considered opinion, cannot be made under section 143(1)(a) of the Act. This is so because, at the stage of processing of return under section 143(1)(a), if such an adjustment is made, the assessee does not get an opportunity to object, as per section 50C(2) of the Act. More so, when conditions of the 1st and 2nd proviso to section 143(1)(a) are not complied. Therefore, I hold that the addition made by CPC under section 50C(1) of the Act by way of adjustment under section 143(1)(a)(ii) is unsustainable. Accordingly, I delete the addition.

7. Ground No. 3 relates to disallowance of benefit of brought forward losses of earlier years. Having considered rival submissions, it is observed that assessee's claim of set off and carry forward of loss was rejected by learned Commissioner (Appeals), since, he did not find merit in assessee's ground contesting the addition made under section 50C(1) of the Act. While deciding ground No. 1 and 2 of assessee's appeal I have deleted the addition made under section 50C(1) of the Act. Therefore, the reasoning of learned Commissioner (Appeals) in disallowing assessee's claim of loss has become redundant. Hence, Assessing Officer is directed to allow assessee's claim of loss in accordance with law.

8. In the result appeal is allowed as indicated above.

**Order pronounced in the open court on 16th
November, 2022.**

Sd/-

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 16/11/2022

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

ASSISTANT REGISTRAR
ITAT, New Delhi

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| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
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