

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
&  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-156/Del/2013  
(ASSESSMENT YEAR-2009-10)**

ITO, Ward 33(1), 16 <sup>th</sup> Floor, Tower E-2, Dr. S.P. Mukherjee Civic Center, New Delhi.	vs	Rajeev Goel, 11152/9, East Park Road, Karol Bagh, New Delhi. <b>AANPG9767H</b>
<b>Appellant by</b>	<b>Smt. Rasmita Jha, Sr. DR</b>	
<b>Respondent by</b>	<b>Shri Ved Jain, CA</b>	

<b>Date of Hearing</b>	<b>09.12.2015</b>
<b>Date of Pronouncement</b>	<b>11.02.2016</b>

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

The present appeal has been filed by the Revenue against the order of the ld. CIT(A)'s-XXVI, New Delhi vide his order dated 31/10/2012 for A.Y. 2009-10 on the following grounds:

1. *“On the facts and in the circumstances of the case, the ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 23,05,000/- made by the Assessing Officer u/s 69 of the I.T. Act on account of unexplained investment.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 5,00,000/- made by the Assessing*

*Officer u/s 69 of the I.T. Act on account of unexplained cash payment.*

3. *The facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in accepting the plea of the assessee that payment of Rs. 5,00,000/- was made on 30.08.2008 without appreciating the fact that both the parties had admitted before the registrar that payment of Rs. 5,00,000/- in cash had been made by the assessee before the date of registry and this very fact was also mentioned in the sale deed dated 26.08.2008.*
4. *The order of the ld. CIT(A) is erroneous and is not tenable on facts and in law.*
5. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2. Brief facts of the case are that:

The assessee is an individual and filed the return of income for the assessment year 2009-10 on 30/07/2009 and declared an income of Rs. 1,98,070/-. The case was processed u/s 143(1) and later on was selected for scrutiny under CASS. Statutory notices u/s 143(2) and 142(1) were issued and served upon the appellant. In response to the same, the AR of the assessee, attended the assessment proceedings and filed the necessary details that were called for and after examining the same, the Assessing Officer passed an order u/s 143(3) on 1/12/2011 assessing the taxable income at Rs. 30,03,065/-. The assessee during the year under consideration declared business income from job work of plastic moldings and showed a profit of Rs. 2,69,017/- on total receipts of Rs. 6,83,400/- which was about 39.36% of the total receipts. Necessary details

pertaining to the expenses incurred for job work were called by the Assessing Officer, which the appellant filed.

2.1. During the year, the assessee had purchased a flat built on second floor of plot no. 4/288, sector-6, Vaishali, Ghaziabad for a consideration of Rs. 25,00,000/-, through the sale deed dated 26/08/2008. The assessee furnished the copy of the sale deed and also the total investment made in purchase of this flat amounting to Rs. 28,36,500/- (Rs. 25,00,000/- plus stamp duty of Rs. 3,36,500/-) on being asked about the sources of such an investment by the Assessing Officer, the assessee explained the sources as under:

a. Cash	Rs. 5,00,000/-
b. PO dt. 23.8.08 drawn on Andhra Bank	Rs. 13,00,000/-
c. Housing loan raised from Andhra Bank Housing Finance	Rs. 7,00,000/-
d. Out of cash in hand of Rs. 3,40,000/- from prop. business	Rs. 3,36,500/-

2.2 Regarding the source of Rs. 5,00,000/-, vide letter dt. 24/11/2011, the assessee submitted as under:

*“In regard to cash payment of Rs. 5,00,000/- for purchase of residential flat by the assessee, it is submitted that the assessee has made the payment of Rs. 5,00,000/- to the seller of the flat on 30.08.2008. Actually the assessee has got the deed registered on 26.08.2008, the last date as per the agreement, but he could not make the arrangement of cash on 26.08.2008 as the cheques he deposited in bank cleared on 27.08.2008. So, on the specific request of the assessee and against two personal guarantees, the seller agreed to deed registered on 26.08.2008 and also agree to accept cash within 2-3 days. On 30.8.2008, the assessee*

*has withdraw the cash from his bank account and handed over to the seller of the flat.”*

3. The ld. Assessing Officer made an addition of the difference of the amount of value adopted by stamp duty authorities and the actual cost of acquisition in the hands of the buyer.

3.1. The ld. Assessing Officer invoked the provision of section 50C on the ground that the assessee would have paid the difference amount in cash in an unaccounted mode as the property purchased was for below the circle rate but the stamp duty paid was on the circle rate. The ld. Assessing Officer thus, made an addition of Rs. 23,05,000/- (Rs. 48,05,000 – Rs. 25,000).

4. Aggrieved by the order of the ld. Assessing Officer the assessee filed an appeal before the ld. CIT(A).

4.1. The ld. CIT(A) after considering the submissions of the assessee, deleted the addition and held that the ld. AO was not justified in drawing up an inference that the property was purchased for a consideration which is much lower than the market value, when the purchase transaction are recorded on the sale deed which was executed before the sub-registrar and the identity of the vendor is disclosed. The ld.CIT(A) also held that the ld. AO was not justified in concluding the investment as unexplained u/s 69 of the Income Tax Act.

5. We have gone through the submissions and the paper book filed by the assessee. We have also heard the rival arguments by both the parties.

5.1. We further observe that at page 55 of the paper book, a certificate has been issued by the seller in respect of the cash payment received amounting to Rs. 5 lakhs from the assessee, being the balance money payable in respect of the purchase of the flat. Page 7 of the PB is the reply dt. 24.11.2011 tendered by the assessee to the ld. AO in lieu of the notice dated 28.10.2011 issued by the ld. AO. The assessee herein has narrated the circumstances under which the cash payment has been made to the seller towards the purchase of the flat.

5.2. The ld.AR submitted that the agreement was registered on the last date being 26.8.08 as per the agreement and that he could not make arrangement of cash on 26.8.08 as the cheques he deposited in the bank was cleared on 27.8.08. The ld.Ar further submitted that it was on the specific request of the assessee, and against two personal guarantees, the seller had agreed to register the agreement on 26.8.08, and further agreed to accept the cash of Rs. 5 lakh within 2 to 3 days of time. It was further submitted that, in the letter by the assessee it has been accepted that the assessee has withdrawn cash from his bank amounting to Rs. 5 lakh and has handed over to the seller of the flat. It is observed that the ld. AO has not appreciated the circumstances under which the cash has been given to the seller by the assessee.

5.3. The ld.AR has placed his reliance on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Khoobsurat Resorts Pvt.Ltd. reported in 82 DTR 290, wherein the addition made on the basis of difference in the actual purchase consideration and the value

adopted for the purpose of the stamp duty which was deleted by the Tribunal has been upheld.

5.4. On perusal of the assessment order, we find that the ld. AO relied on the deeming provision of section 50C for drawing an inference that the property in question was transacted at the market value and the consideration received by the seller was based on such market value which was not shown in the sale deed for transfer of this property.

5.6. Section 50C is a deeming provision for a limited purpose for computation of income from capital gains in the hands of the transferor. Provisions of section 50C is applicable only for computation of capital gains in real estate transactions in respect to seller only and not for the purchaser. Section 50C creates a legal fiction for taxing capital gains in the hands of the seller and it cannot be extended for taxing the difference between apparent consideration and valuation done by Stamp Authority is undisclosed income in the hands of the purchaser. It cannot be invoked for charging to tax an undisclosed investment in the hands of the transferee. It is also a point to mention, that Section 50C does not authorize addition with reference to the stamp value as an amount paid by the purchaser, so as to require him to explain the source thereof. Section 50C has a limited operation for assessment of the vendor and not buyer. Therefore, the reliance of the Assessing Officer on the deeming provisions of section 50C for his inference that the property was purchased for a consideration which is much lower than the market value is not justified when

the purchase transactions are recorded on the sale deed which was executed before the Sub-Registrar and the identity of the vendor u/s 69 of the I.T. Act, 1961. The Hon'ble High Court of Gujarat in the case of CIT vs. Usha Kant W Patel (2006) 282 ITR 553 have held that the Revenue must establish that there was an unrecorded investment in the relevant financial year and a presumption raised in the assessment proceedings on the basis of provisions of section 50C is not sufficient. The burden is on the Assessing Officer to establish an understatement of consideration which in this case has not been discharged by the Assessing Officer. The Assessing Officer did not make any independent enquiry to bring on record any cogent evidence to establish that the purchase consideration shown in the registered sale deed is much lesser than the market value of the property.

6. In lieu of the above facts and circumstances and the discussion, we are inclined to dismiss the grounds raised by the Revenue.

7. In the result, the appeal filed by the Revenue thus, stands dismissed.

**The order is pronounced in the open court on  
11.02.2016**

**Sd/-**

**(N.K. SAINI)**

**ACCOUNTANT MEMBER**

Dated: 11.2.2016

*\*Kavita, P.S.*

**Sd/-**

**(BEENA PILLAI)**

**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date
1.	Draft dictated on	09.12.15
2.	Draft placed before author	14.12.15
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	11.2.16
6.	Kept for pronouncement on	11.2.16
7.	File sent to the Bench Clerk	11.2.16
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	