

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 87/KOL/2021
Assessment Year: 2014-2015**

***Bharat Pradhan,Appellant
Chandra Bhawan, Bloomfield Cess Road, Dali,
Darjeeling-734101, West Bengal
[PAN: AENPP6778B]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3(3), Darjeeling,
Office of the Income Tax Officer,
A.J.C. Bose Road, P.O. & Dist. Darjeeling,
Pin-734101***

Appearances by:

*Smt. Mita Rizvi, appeared on behalf of the assessee
None, appeared on behalf of the Revenue*

Date of concluding the hearing : January 09, 2023

Date of pronouncing the order : January 16, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Siliguri dated 06.08.2019 passed for A.Y. 2014-15.

2. The grounds of appeal taken by the assessee read as under:-

(1) That, on the facts and in the circumstances of the case, the Ld. ITT(A) grossly erred in confirming the addition of Rs.62,28,046/- alleging non-disclosure of the actual LTCG arising from sale of landed property in spite of the fact that the ld. A.O. took the indexed cost of acquisition of the entire property as on 01.04.2014 it Rs.42,255/- and the assessee's share of 35.21% at Rs. 14,878/- instead of FMV as on 01.04.1981, which was baseless and not acceptable as per law.

(2) That, the Ld. C.I.T.(A) erred in upholding the deemed value of the property taken by the A.O. for computing the LTCG on the basis of higher certified market value between the Development Agreement (Rs.2,35,05,875) and the Power of Attorney (Rs 1 56 72 522), both executed and registered on 28.11.ZU1.J, in spite of the fact that although the matter was referred to DVO to determine the FMV u/s.50C(2) of the Act but without receiving such report, the assessment order was passed, which was in violation of mandatory requirement to be followed.

(3) That the Ld C I T.(A) further erred in not having considered the DVO's valuation report dated 26.04.2019 determining the FMV of the entire property at Rs. 1,86,94,154/- and the appellant's share of 35.21% at Rs.65,82,200/- as per sec.50C(2) of the Act in spite of the fact that the matter was brought to his knowledge at the appellate stage and the same is also mentioned in the impugned appellate order.

(4) That the Ld. C.I.T.(A) erred in not considering that the Ld. A.O. in total disregard of the report of the Investigation Wing of the department deciding the sale consideration of the land at 25% of Rs 2.56 crores and hence the addition sustained at Rs.62,28,046/- in the guise of non-disclosure of actual LTCG over and above LTCG of Rs.20,33,488/- declared by the appellant is totally arbitrary, uncalled for and liable to be deleted.

(5) That, without any prejudice to the above grounds, the addition on account of alleged low LTCG in the total income for A.Y. 2014- 15 under appeal is uncalled for inasmuch as the original agreement for transfer of the land was entered into on 07.12.2012 (FY 2012-13) and the registration of the said agreement was executed on 28.11.2013 (F.Y. 2013-14), which was not a new transaction falling within the A.Y. 2014-15 rather a transaction entered into and continued from A.Y. 2012-13.

(6) That, as the order of ld. CIT(A) on the above issues suffer from illegality and is devoid of any merit, the same should be quashed am your appellant be given such relief(s) as prayed for.

3. At the very outset, ld. Counsel for the assessee pointed out that 71 Kathas of land situated within the revenue estate of Mouza-Panchanoi, R.S. Plot No. 207, P.S. Pradhan Nagar, District-Darjeeling was owned by the assessee as a co-owner. His share was 35.21%. Similarly his brother Shri Puran Pradhan was having 28.16%. The taxability of long-term capital gain travelled upto the Tribunal in the case of his Brother in ITA No. 86/KOL/2021. The Tribunal has decided this appeal on 16th December, 2022. She placed on record copy of the Tribunal's order and prayed that same method be adopted in the case of assessee also. She further pointed out that appeal of the assessee was decided by the ld. 1st Appellate Authority on 06.08.2019. On this very day, appeal of his Brother was also decided by a separate order. Both the appeals become time-barred by 507 days and the explanation at the end of the assessee is also identical. Therefore, following our finding in ITA No.86/KOL/2021, we condone the delay in filing this appeal also.

4. On the other hand, ld. Departmental Representative was unable to controvert this fact.

5. Therefore, instead of taking note of all these details, we deem it appropriate to re-produce the order of the Tribunal dated 16.12.2022 in the case of his Brother, which reads as under:-

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 86/KOL/2021
Assessment Year: 2014-2015**

**Puran Pradhan,Appellant
Chandra Bhawan, Bloomfield Cess Road, Dali,
Darjeeling-734101, West Bengal
[PAN: AQDPP2162M]
-Vs.-**

**Income Tax Officer,.....Respondent
Ward-3(3), Darjeeling,
Office of the Income Tax Officer,
A.J.C. Bose Road, P.O. & Dist. Darjeeling,
Pin-734101**

Appearances by:

*Shri S.K. Tulsian, Advocate and Smt. Mita Rizvi, appeared on behalf of the assessee
Smt. Ranu Biswas, Addl. CIT (D.R.), appeared on behalf of the Revenue*

**Date of concluding the hearing : December 13, 2022
Date of pronouncing the order : December 16th, 2022**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Siliguri dated 06.08.2019 passed for A.Y. 2014-15.

*2. The Registry has pointed out that appeal filed by the assessee is time barred by 507 days. In order to explain the delay, the assessee has filed an application, which reads as under:-
"Before the Hon'ble Income Tax Appellate Tribunal,
Kolkata Benches, 225/C, A.J.C. Bose Road,
Kolkata-700 020.*

Reg: PURAN PRADHAN (PAN: AQDPP2162M)

*Ref: Appeal against order of Ld. C.I.T.(A), Siliguri dated 06/08/2019 passed u/s.
250 of the I.T. Act, 1961 - Assessment Year: 2014-15*

Sub : *Petitionpraying* *condonation of delay of 507 days in filing the appeal.*

Your Honours,

In my case, the Ld. C.I.T.(Appeals), Siliguri passed order u/s. 250 of the Act dated 06.08.2019 for A.Y. 2014-15 confirming the addition of Rs.54,84,714/- (wrongly mentioned as Rs.54,54,714 in the appellate order) made by the A.O. on the alleged ground of non-disclosure of actual LTCG arising from sale of a jointly held land measuring 71 kathas. The said order was received by me on 20.08.2019 and the appeal is filed before this Hon'ble Tribunal on 09.03.2021, resulting in a delay of 507 days beyond the prescribed due date for the following reasons.

1) The said appellate order was given to Mr. B.K. Pradhan, A.R., who was representing my case before the department, sometime in the 2nd week of September, 2019 for future course of action in the matter. He assured me that immediately after the Durga Puja is over by 8th October, 2019, he himself will go to Kolkata for consultation and opinion of a Senior Lawyer and the appeal will be filed within the due date.

2) Thereafter Mr. Pradhan did not inform me anything and I also forgot to enquire from him. It was sometime in March, 2020 that I contacted Mr. Pradhan and then only came to know that neither he contacted or visited any Lawyer in Kolkata, nor any appeal was prepared for filing before the Hon'ble ITAT.

3) I am not much aware of intricacies in the income-tax matters and thus used to rely on suggestion/ advice of my A.R. Being faced with the above unanticipated situations, I myself decided to consult with a Senior Lawyer at Kolkata about the needful steps at my end.

4) That before I came to Kolkata from Darjeeling, there was complete lock-down from 23rd March, 2020 due to Covid-19 pandemic. All spheres of life have been affected alike. All the offices/ establishments and Trains remained shutting on account of coronavirus pandemic. I am also 74 years old and could not visit Kolkata during this pandemic situation.

5) It was only at the last week of January, 2021 that I could come to Kolkata and consult a Senior Lawyer at Kolkata and on his advice that the order of the Ld. C.I.T.(A) is an appealable order, necessary papers/records relating to the case were handed over to him for preparation and filing of the appeal before this Hon'ble Tribunal. It was then found that in the papers handed over to the Senior Lawyer, there was no assessment order in relation to this appeal for A.Y. 2014-15 which was essential for filing an appeal before the Hon'ble Tribunal.

6) Being faced with such a situation, the erstwhile A.R. was immediately contacted over phone who denied to have retained any such order with him and rather stated to have handed over all the income-tax related papers to me. Thus letter was written to the Ld. I.T.O., Ward-3(3), Darjeeling requesting for certified copy of the assessment order for A.Y. 2014-15 which was received on 15/02/2021. Thereafter I had to visit Kolkata from Darjeeling for handing over the papers, for signing the documents etc. and this has caused further delay.

7) The appeal is ultimately filed on 09/03/2021 and in the process an unintentional delay of 507 days beyond the due date has been occurred. The major part of the delay relates to the period when the human life and normal activities came to a halt due to Covid-19 pandemic. In view of the above

unprecedented position, the Government of India vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 extended the due date of all compliances under the I.T. Act falling between to 31.12.2020 to 31st March, 2021.

8) *That the circumstances stated above were beyond the control of the appellant and, therefore, there was no mala fide intention behind not filing the appeal within the prescribed time; because in that case your appellant would be the sufferer by paying additional income-tax on such an income which is not taxable at all under the Act. Therefore when the delay is not voluntary, the provisions of condonation of delay should be liberally applied.*

9) *The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors., [1987] 167 ITR 471 (SC) held that the Courts should have a pragmatic and liberal approach while* considering the petition for condonation of delay. Their Lordships have also held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice should be preferred. In support of condonation of delay for bona fide reasons beyond the control of the appellant, the appellant would also rely on the order of jurisdictional Tribunal in the case of Vinod Asarwal vs Pr CTT (2018) 61 ITR (Trib) 598 (Kol).*

10) *The Hon'ble ITAT Delhi in the case of Royal Airways Ltd. vs. ADIT, [2006] 98 ITD 259 (Del) condoned the delay of 9 to 11 years in filing appeals by holding as under :*

"20.It is not a case where the assessee could expect to have derived any mileage on account of the matter getting delayed. The delay in filing of appeals has caused prejudice to no one else except the assessee himself. When we keep these facts in mind, the bona fide of the assessee is not in doubt. Sufficient cause and bona fide go hand in hand. If the assessee has acted bona fide, the reasons for delay in the absence of any material to the contrary, should be construed to be reasonable."

11. *On the facts and circumstances as explained above, your appellant could not expect to have derived any mileage on account of the appeal getting delayed for filing and hence the appellant can be said to have been prevented by a sufficient cause from filing the appeal on a date earlier that the same is filed before this Hon'ble Tribunal. Hence, it is prayed that the delay may kindly be condoned and the appeal may kindly be admitted for adjudication on merits of the case to meet the ends of justice.*

An Affidavit in this connection is also filed along with this petition for condonation of delay.

Yours faithfully,

Sd/-

(PURAN PRADHAN)

3. *With the assistance of ld. Representative, we now go through the record carefully. The ld. Counsel for the assessee submitted that the impugned order was passed on 06.08.2019 and it was received on 20.08.2019. The papers were given to Shri B.K. Pradhan, ld. Authorized Representative, who assured filing this appeal within the time. Somehow, that the appeal was not filed by Mr. Pradhan on behalf of the assessee. This fact came to the notice of assessee only in March, 2020 and thereafter COVID pandemic struck off in the country. The appeal has ultimately been filed in January, 2021. According to the ld. Counsel for the assessee,*

major part of delay is covered by the decision of Hon'ble Supreme Court because it falls during the COVID period, i.e. last week of March, 2020 upto the date of filing of the appeal, is not to be counted in the period of limitation. If this period is excluded, then the only delay, which is required to be explained by the assessee is from 20th October, 2019 upto 2nd week of March, 2020. He prayed that this delay be condoned.

4. On the other hand, ld. D.R. opposed the prayer of the assessee and contended that there is a huge delay of more than 150 days. It should not be condoned.

5. On due consideration of the above facts and circumstances, we are of the view that the assessee has not adopted the delay as a strategy to fight his income-tax litigation. On account of bonafide belief, this delay has happened. It is also observed that the assessee will not gain by delaying his appeal. In other words, that this delay has not been adopted as a dilatory strategy of income-tax litigation. Therefore, we allow this application and condone the delay. We proceed to decide the appeal on merit.

6. The assessee has taken seven grounds of appeal. However, his whole grievance revolves around a single issue namely, ld. Assessing Officer has erred in determining the long-term capital gain assessable in the hands of assessee at Rs.66,19,249/-.

7. Brief facts of the case are that 71 cottahs of land situated within the revenue estate of Mouza of Panchanoi, R.S. Plot No. 207, P.S. Pradhan Nagar, District- Darjeeling was owned by the assessee as a co-owner. His share of the property was 28.16%. The assessee entered into a Development Agreement alongwith co-owners with M/s. Arjun Grace Homes on 28.11.2013 and they handed over the possession of the land. This entrance into development agreement was construed by the Revenue as relinquishment of rights in the property, which would attract long-term capital gain taxable in the hands of the vendor/transferor. Accordingly, the ld. Assessing Officer discussed this issue in the assessment order and computed the capital gain assessable in the hands of the assessee as under:-

"In view of the above and documents as collected during the course of assessment proceedings, it is evident that the assessee along with his co-owners had handed over the possession of the landed property to the developer M/s. Arjun Grace Homes on 28.11.2013 with the registering of Development Agreement before the District Sub-Registrar, Darjeeling and thereby creating liability to pay capital gain on 'Transfer' of capital assets as defined in section 2(27) of the I.T. Act, 1961. Therefore, the long-term capital gain in the hands of the assessee r.w.s. 50(C) of the I.T. Act, 1961 is computed as under:-

Cost of the property as on 06.08.1979	Rs.4,500/-
Index cost of acquisition of the property as on 01.04.2014 $Rs.4,500 \times 939/100$	Rs.42,255/-
Assessee's share in the said property i.e. 28.16%	Rs.11,899/-

of Rs.42,255/-	
Total sale consideration	Rs.2,35,05,857/-
Assessee's share in the said property i.e. 28.16% of Rs.2,35,05,857/-	Rs.66,19,249/-

Long term capital gain = Sale consideration less index cost of acquisition
= Rs.66,19,249/- minus Rs.11,899/-
= Rs.66,07,350/-

In view of the above computation, long term capital gain of Rs.66,07,350/- is being considered as the actual long term capital gain in the hands of the assessee. Therefore, long-term capital gain of Rs.54,84,714/- i.e. (Rs.66,07,350/- minus Rs.11,22,636/- (as declared by the assessee in his return of income) is added back to the long term capital gain of the assessee.
[Addition of Rs.54,84,714/-]"

8. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

9. While impugning the orders of revenue authorities, ld. Counsel for the assessee contended that Section 50C contemplates a deeming situation whereby the full value of the sale consideration is to be deemed equivalent to the amount on which stamp duty was paid for the purpose of calculating the capital gain. He further contended that sub-section (2) of section 50C further provides an adequate machinery provision to the assesses which contemplates that in case an assessee disputes adoption of stamp duty valuation for the purpose of deeming full sale consideration in order to calculate capital gain, then a reference would be made to the D.V.O. for determining the fair market value of the capital asset as on the date of transfer. Ld. Counsel for the assessee drew our attention towards page no. 66 of the paper book, where report of District Valuation Officers of the Income Tax Department is available. Taking us through this report, he pointed out that a reference was made by the ITO of the assessee to the DVO on 19.12.2018. This report was submitted to the ld. Assessing Officer by the DVO on 26.04.2019, but by the time the ld. Assessing Officer had already passed the assessment order. However, this report was available to the ld. CIT(Appeals) and he could have taken cognizance of the value determined by the DVO while determining the full sale value for computing the capital gain taxable in the hands of the assessee. Ld. Counsel for the assessee further drew our attention towards page no. 8 of his written submission, wherein he has provided a computation required to be adopted by the ld. CIT(Appeals) on the basis of DVO's report. This report available in the written submission of the assessee reads as under:-

Fair Market Value of the impugned property as per Valuation Report of the DVO dated 26.04.2019	Rs.1,86,94,154/
Assessee's share [28.16%]	Rs.52,64,274/-
Fair market value of the impugned property as on	Rs.1,84,135/-

01.04.1981	
Assessee's shre [28.16%]	Rs.51,852/-
Indexed cost of acquisition of the assessee's share in the impugned property as on 01.04.2014 (Rs.51,852 x 939/100)	Rs.4,86,890/-

Long Term Capital Gain = Sale consideration less Indexed cost of acquisition
= Rs.52,64,274/- minus Rs.4,86,890/-
= Rs.47,77,384/-

In view of the above, it is prayed most respectfully that taking into consideration the Valuation Report of the DVO dated 26.04.2019, the long-term capital gain arising in the hands of the assessee shall be Rs.47,77,384/- and not Rs.66,07,350/-, as calculated by the AO and therefore, addition made on account of alleged long-term capital gain shall be restricted to Rs.36,54,748/- [i.e. Rs.47,77,384/- minus Rs.11,22,636/- (LTCG as declared by the assessee in his return of income filed u/s 148 of the Act)] only, instead of Rs.54,84,714/- as made by the AO and further confirmed by the ld. CIT(A)".

10. The ld. Counsel for the assessee accordingly prayed that suitable modification be made in the computation of capital gain assessable in the hands of the assessee.

11. On the other hand, ld. D.R. relied upon the order of ld. Assessing Officer.

12. We have duly considered the rival contentions and gone through the record carefully. Sections 48 and 50C have a direct bearing on the controversy in hand, therefore, we deem it appropriate to take note the relevant part of these sections, which read as under:-

"Mode of computation:-

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:—

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto;

(iii) in case of specified entity referred to in sub-section (4A) of section 45, the amount included in the total income of such specified entity under sub-section (4A) of section 45 which is attributable to the capital asset being transferred, calculated in the prescribed manner.

x x x x x x

"Special provision for full value of consideration in certain cases:-

50C: Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, x x x x x x

13. A bare perusal of the above provision would reveal that capital gain shall be computed by deducting from the full value of the consideration received or accruing as a result of transfer of the capital asset of following items:-

(1) Expenditure incurred in respect of such transfer;

(2) The cost of acquisition of the asset plus cost of any improvement.

(3) In case of value or any money or capital asset received by a specified person from specified entity referred to in sub-section (4) of section 45, then.....

As far as condition no. 3 is concerned, it is not attracted in the present case.

14. The expression "full value of the consideration" employed in section 48 represent the consideration received by a capital asset-holder on its transfer. This full value of consideration would be deemed equivalent to the amount on which stamp duty was paid for transferring such asset. This provision has been made in section 50C. In other words, Section 50C provides that full value of consideration provided in section 48 would be changed and it would be deemed equivalent to the amount on which stamp duty has been paid by the parties on a transaction of transfer of a capital asset. However, in order to safeguard the interest of the assessee, sub-clause (2) has been provided in section 50C. The basic purpose of this sub-section is that in a given case, stamp duty is being levied on a higher amount, then the actual market price of that asset available. It can be explained by way of simple example, namely an asset is being valued as at Rs.100/- for the purpose of charging of stamp duty, however, in the market, its real value is only Rs.80/-, this stamp duty charged on the value of Rs.100/- is roughly only 4 to 8% (depending upon the rate in a particular State). This amount may not affect substantially to the parties transacting the transaction, but for the purpose of income-tax, the tax rate is higher and further it can attract penalty for concealment, prosecution, etc. A party can dispute the determination of alleged full sale consideration on re-deeming fiction provided in section 50C for the purpose of taxation. In such situation, sub-clause (2) is provided i.e. in case an assessee disputes deeming of that full sale consideration, then a reference would be made to the DVO for determination of the fair market value required to be adopted on the date of transaction.

15. In the light of above, if we examine the facts of the present case, then it would reveal that ld. Assessing Officer in the assessment order adopted total sale consideration at Rs.2,35,05,857/-. The DVO in its report submitted on 26.04.2019 determined this sale consideration at Rs.1,86,94,154/-. The calculations are available in Annexure-1 of the DVO's report available at pages no. 66 & 67 of the paper book. We have gone through this exercise.

16. The second dispute raised by the ld. Counsel for the assessee relates to cost of acquisition. The ld. Assessing Officer in the computation of capital gain took the cost of the property as on 06.08.1979 at Rs.4,500/-. He took the index cost at Rs.42,255/- and worked out share of the assessee at Rs.11,899/-, whereas according to the valuation submitted by the assessee, the fair market value of the impugned property as on 01.04.1981, i.e. the appointed date for calculating the cost of acquisition was Rs.1,84,135/- and 28.16% of this would come to Rs.51,852/-. The index cost from 01.04.1981 to 01.04.2014 would come at Rs.4,86,890/-. Thus according to the assessee, the capital gain worked out by the DVO at Rs.52,64,300/- is required to be further reduced by a sum of Rs.4,86,890/-. We find force in this contention also because the ld. CIT(Appeals) failed to record any categorical

finding on both the issues. The brief finding recorded by the ld. CIT(Appeals) reads as under:-

“3. During the course of appeal proceedings, the appellant has submitted the written submission, which reads as under:-

1. That the incidence of taxation for LTCG arose on the signing of the Memorandum of Understanding on 27.11.2012 where the assessee the assessee agreed and enter into agreement for the development of his land for construction of residential flat with Sri Sundeep Arora and M/s. Grace Hill Construction Co.

2. That subsequently to raise finance and to have the project approved by the Bank for convenience of the prospective buyer as required by the Bank further executed and Registered the Development Agreement with Sub-Register, Siliguri where in the market value was adopted at Rs.2,35,05,875/- on 28.11.2013 and on the same date the Power of Attorney was executed where the market value for the same land was taken at Rs.1,56,72,522/-.

3. That the Assessing Officer while making the assessment has taken the higher market valuation for enhancing the income of assessee.

4. That the assessee being not satisfied by the market valuation determined by the Registrar of land requested the Assessing Officer to refer the matter to the valuation cell for proper valuation of the property.

5. That now the valuation office has finalized the valuation of the property Rs.1,86,94,154/- as per section 50(c)(2) of the I.T. Act, 1961.

4. Decision:- I have perused the grounds of appeal, statement of facts and assessment order on this issue. On merit, it is seen that the ld. A.O. has added an amount of Rs.54,54,714/- as the appellant failed to disclose the actual LTCG arising from sale of landed property in his return of income. There was no satisfactory explanation given by the appellant during assessment proceedings and also during appellate proceedings. Hence, the ground of appeal furnished by the appellant does not have any merit. Accordingly, the addition of Rs.54,54,714/- made by the A.O. is hereby confirmed and the appeal is dismissed.

5. *In the result, appeal is dismissed”.*

17. *The assessee has brought to the notice of the ld. CIT(Appeals), the report of DVO, his submission which has duly been noticed by the ld. 1st Appellate Authority, but he failed to take cognizance of this report. The reference to the DVO was made during the pendency of the assessment proceeding. In such situation, its cognizance ought to have been taken. Therefore, ld. 1st Appellate Authority failed in its duty to follow the correct procedure required for the disposal of the appeal. Similarly both the authorities have erred in rejecting the calculation submitted by the assessee regarding cost of acquisition. They have calculated the long-term capital gain simply by taking into consideration the stamp duty valuation by applying section 50C ignoring all other provisions. Therefore, we direct the ld. Assessing Officer to calculate the capital gain assessable in the hands of the assessee on the basis of computation made by the assessee (extracted supra). The capital gain will be calculated at Rs.47,77,384/-, out of that assessee has already calculated and shown at Rs.11,22,636/-. The addition is to be restricted to Rs.36,54,748/- instead of Rs.54,84,714/-. To be very specific, the capital gain including the gain disclosed by the assessee is directed to be calculated in the hands of the assessee at Rs.47,77,384/-. The credit of already shown of Rs.11,22,636/- is to be given to the assessee (Rs.47,77,384/- minus Rs.11,22,636/-) = net Rs.36,54,748/-.*

18. *In the result, the appeal of the assessee is allowed.*

Order pronounced in the open Court on December 16th, 2022.

Sd/-

(Girish Agrawal)

Accountant Member

Sd/-

(Rajpal Yadav)

Vice-President (KZ)

Kolkata, the 16th day of December, 2022”

6. We have duly considered the rival contentions and gone through the record carefully. We find that we have taken cognizance of the calculations of long-term capital gain in the written submission filed by the ld. Counsel. An identical calculation has been made by the ld. Counsel in the written submission filed before us. The only variation is because of the share of property owned by the assessee. This calculation reads as under:-

<i>“Fair market value of the impugned property as per Valuation Report of the DVO dated 26.04.2019</i>	<i>Rs.1,86,94,154/-</i>
<i>Assessee’s share (35.21%)</i>	<i>Rs. 65,82,200/-</i>
<i>Fair market value of the impugned</i>	<i>Rs. 1,84,135/-</i>

<i>property as on 01.04.1981</i>	
<i>Assessee's share [35.21%]</i>	Rs. 64,834/-
<i>Indexed cost of acquisition of the assessee's share in the impugned property as on 01.04.2014 (Rs.64,834 x 939/100)</i>	Rs. 6,08,791/-

Long-Term Capital Gain = *Sale consideration less Indexed cost of acquisition*
=Rs.65,82,200/-
minus
Rs.6,08,791/-
=Rs.59,73,409/-

In view of the above, it is prayed most respectfully that even otherwise, taking into consideration the Valuation Report of the DVO dated 26.04.2019, the long-term capital gain arising in the hands of the assessee shall be Rs.59,73,409/- and not Rs.82,61,534/-, as calculated by the AO and therefore, addition made on account of alleged long-term capital gain shall be restricted to Rs.39,39,921/- [i.e. Rs.59,73,409/- minus Rs.20,33,488/- (LTCG as declared by the assessee in his return of income filed u/s 148 of the Act] only, instead of Rs.62,28,046/- as made by the AO and further confirmed by the ld. CIT(A)".

7. We have approved the full sale consideration required to be taken for the purpose of calculating the capital gain equivalent to the amount determined by the DVO i.e. Rs.1,86,94,154/-. We have also upheld the fair market value of the property as on 01.04.1981. A Registered Valuer's report was filed by the assessee during the hearing of that appeal as well as before us available on page no. 1 to 11. Therefore, in principle, following the order of ITAT in the case of Brother working of the capital gain is to be adopted as demonstrated by the assessee in the written submission extracted supra, we direct the ld. Assessing Officer to calculate the capital gain at Rs.59,73,409/-. Since the assessee has already offered for tax Rs.20,33,488/-, therefore, the net amount

required to be added in the declared capital gain is Rs.39,39,921/-. Accordingly appeal of the assessee is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 16 January, 2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 16th day of January, 2023

Copies to : (1) ***Bharat Pradhan,***
Chandra Bhawan, Bloomfield Cess
Road, Dali,
Darjeeling-734101, West Bengal

(2) ***Income Tax Officer,***
Ward-3(3), Darjeeling,
Office of the Income Tax Officer,
A.J.C. Bose Road, P.O. & Dist.
Darjeeling, Pin-734101

(3) Commissioner of Income Tax (Appeals),
Siliguri;

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.