

**आयकर अपीलिय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 611/Kol/2022**  
**Assessment Year: 2016-17**

|   |     |                           |
|---|-----|---------------------------|
| Sarada Impex Pvt. Ltd.<br>(PAN: AAKCS 1630 H) | Vs. | ITO, Ward-13(2), Kolkata  |
| Appellant / (अपीलार्थी)                       |     | Respondent / (प्रत्यर्थी) |

|  |                             |
|--|-----------------------------|
| Date of Hearing / सुनवाई की तिथि             | 15.02.2023                  |
| Date of Pronouncement/ आदेश उद्घोषणा की तिथि | 23.02.2023                  |
| For the Appellant/ निर्धारिती की ओर से       | Shri Ashok Barnwal, CA      |
| For the Respondent/ राजस्व की ओर से          | Shri Vijay Kumar, Addl. CIT |

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 08.09.2022 for the AY 2016-17.

2. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order of AO wherein the AO has made the addition in respect of long term capital gain of Rs. 4,32,22,831/- by taking the market value as stamp valuation authority of Rs. 6,63,20,818/- as against the sale consideration of Rs. 2,45,99,999/- without referring the issue of valuation to the DVO.

3. At the outset the Ld. Counsel for the assessee submitted that the AO has made the addition on account of long term capital gain by taking the market value/s under Section 50C of the Act as per the Stamp Valuation Authority without referring the issue of valuation to DVO which is a mandatory requirement under the Act. The Ld. A.R submitted that the Ld. CIT(A) passed the ex-parte order and thereby dismissed the appeal of the assessee thereby causing the miscarriage of justice. The Ld. A.R prayed before the bench the issue may be restored to the file of the AO with the direction to assess the income after obtaining the valuation report from the DVO. In defense of his arguments relied on the decision of Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT, Siliguri in 372 ITR 83 (Cal) wherein the Hon'ble Calcutta High Court held that before substituting the market value for the sale consideration, the AO is duty bound to refer the matter to the DVO. The Ld. A.R therefore prayed that the order of Ld. CIT(A) may be set aside and appeal may be restored back to the file of AO to assess the income of the assessee after obtaining the valuation report from the DVO qua the valuation of property and after affording the reasonable opportunity of hearing to the assessee. Tl. DR on the other hand relied on the order of authorities below.

4. After hearing the rival contentions and perusing the material on record, we find that the AO has substituted the market value u/s 50C of the Act as consideration for sale the property and thus computed long term capital gain at Rs. 4,32,22,831/- as against the actual consideration of Rs. 2,45,99,999/-. We have perused the decision of Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal (supra) and find that the assessee's case is squarely covered by the said decision cited supra wherein the Hon'ble High Court held that before substituting the market value u/s 50C for sale consideration, the AO has to get the valuation of property done by DVO in order to ascertain the market value. In our opinion the AO has failed in his duty to refer the issue to DVO and accordingly in the interest of justice and fair play we are restoring the issue to the file of AO with the direction to assess the income of the assessee after

obtaining the valuation report from DVO and also giving a fair opportunity of hearing to the assessee to file its reply. Accordingly the appeal is set aside to the file of AO.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 23<sup>rd</sup> February, 2023

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 23<sup>rd</sup> February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sarada Impex Pvt. Ltd., P-3, New C.I.T Road, 2<sup>nd</sup> Floor, Kolkata-700073.
2. Respondent – ITO, Ward-13(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata