

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3876/Del/2017

निर्धारणवर्ष/Assessment Year: 2007-08

Rakesh Kumar Gupta C/o Sh. Vinod Kumar Goel, 282, Boundary Road, Civil Lines, Meerut, Uttar Pradesh.	बनाम Vs.	ITO, Ward 2(2) Meerut, Uttar Pradesh.
PAN No. ADAPG7314E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	None
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	27.12.2022
उद्घोषणाकीतारीख/Pronouncement on	10.03.2023

आदेश /O R D E R

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Aligarh dated 30.03.2017 for AY 2007-08.

2. The summon issued to the assessee for today's hearing has been served on the assessee as per acknowledgment submitted by the postal authorities. Despite proper service of notice neither the assessee nor his Authorized Representative appeared nor any adjournment application has been filed, therefore, I have no alternate to proceed to adjudicate the appeal *ex parte* qua the assessee.

3. From the grounds raised by the assessee, I note that the assessee challenging the orders of the authorities below pertaining to the addition of Rs.2,41,345/- u/s 50C of the Income Tax Act, 1961 (for short “the Act”) in the hands of the appellant. From the orders of the authorities below, statements of facts and grounds of appeal I note that the assessee challenging the addition by submitting that the Assessing Officer has made addition under the head “short term capital gain” as against the difference between annual sale consideration and value as per stamp duty authorities. It is the main contention of the assessee that the appellant had sold the property in the capacity of power of attorney holder only of the sale consideration received by the appellant was only in the capacity of power of attorney holder. Therefore, it was submitted that no addition can be made in the hands of the assessee without making any enquiry from the owner of the property. In the written submission the assessee has placed reliance on the judgment of Hon’ble High Court of Madras in the case of CIT Vs. C. Sugumaran [2015] 57 taxmann.com 20 (Mad.).

4. Replying to the above, the Ld. Sr. DR supported the orders of the authorities below and submitted that the assessee while specifically asked to prove that sale consideration as received from the sale was given or transferred to Shri Ashok Kumar Garg on behalf of whom he executed the sale deed but no documentary evidence could be produced by the assessee despite repeated directions of the AO, therefore, the AO

was right in making addition in the hands of the assessee and Ld. CIT(A) was also justified in confirming the same.

5. On careful consideration of rival submission, I am of the considered view that when the assessee is harping on the sole point that he was not the owner of the property sold and he executed sale deed on behalf of owner Shri Ashok Kumar Garg and, therefore, fasting tax liability on account of “short term or long term capital” gain on the shoulders of the assessee is not valid. But at the same time, from the orders of the authorities below I clearly note that the assessee, despite several directions by the AO, did not produce any documentary evidence to show that the entire sale consideration received by him was transferred to the original owner Shri Ashok Kumar Garg who gave him power of attorney for execution of sale deed. Even despite due service of notice through postal department the assessee has not appeared himself or through any Counsel or Authorized Representative before this Bench. The benefit of the judgment of Hon’ble Madras High Court is available for the assessee only when the assessee successfully prove that he was merely an executor of sale deed in the capacity of Power of Attorney holder, on behalf of the original owner/seller and entire sale consideration has been transferred to the original owner/seller. The assessee has failed to prove these relevant facts. Therefore, benefit of said judgment is not available for the assessee in the peculiar facts and circumstances of the present

case. Accordingly, grounds of assessee being *devoid* of merits are dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 10/03/2023

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 10.03.2023

*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi