IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2052/MUM/2022
(Assessment Year: 2018-19)

Shri. Bhupendra Sitapchand Zaveri, C/o. K. Hapani & Associates, Chartered Accountant, B-11, Sadhana 2nd Floor, Amarshi Road, Off S.V. Road, Malad (W) Mumbai-400064 [PAN: AAHPZ7426L]	.....	**Appellant**
	Vs	
ITO, International Taxation Ward, 4(3)(1), Mumbai Air India Building, Nariman Point, Mumbai- 400021	.....	**Respondent**

Appearance

For the Appellant/Assessee	:	Shri. Ketan Vajani
For the Respondent/Department	:	Shri. Anil Sant

Date

Conclusion of hearing	:	13.07.2023
Pronouncement of order	:	26.09.2023

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal is directed against the Assessment Order, dated 22/06/2022, passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for the Assessment Year 2018-19, as per directions issued by CIT(Dispute Resolution Panel -1, Mumbai- 1 [hereinafter referred to as 'the DRP') under section 144C(5) of the Act.

2. The Appellant has raised following grounds of appeal:

1. Objection against confirming addition of Rs. 41,55,300/- u/s. 50C of the Act

1.1 The Dispute Resolution Panel, hereinafter referred to as the "DRP". has erred in confirming the addition of Rs. 41,55,300/- on account of Section 50C of the Act as proposed in the Draft Assessment order by the assessing officer.

1.2. The DRP has erred in not appreciating the fact that the difference between the value adopted for the purpose of stamp duty and the transaction value is negligible and also that the said difference is due to certain negative factors in relation to the residential flat sold by the appellant.

1.3 The DRP has erred in finalizing the order u/s. 144C(5) of the Act without waiting for the report of the Departmental Valuation Officer, which had already been referred by the assessing officer prior to issuing Draft Assessment Order.

2. Objection against confirming disallowance of expenses in connection with the transfer

2.1 The DRP has erred in confirming the disallowance of expenses in connection with transfer aggregating to 16,05,380/-, as proposed in the Draft Assessment Order, without appreciating the correct factual aspects of the matter.

2.2 The DRP has erred in not passing a speaking order in relation to the claim of the appellant for the expenses in connection with transfer and has cursorily dismissed the claim of the appellant in a mechanical manner.

3. Objection against not adjudicating ground in relation to initiation of penalty

3.1 The DRP has erred in not adjudicating the Ground in relation to initiation of penalty proceedings vide the Draft Assessment Order by treating the same as pre-matured. The DRP has erred in not appreciating the fact that the impugned additions and disallowances cannot be stated as underreporting of income much less as misreporting of income by the appellant."

3. The relevant facts in brief are that the Appellant, a non-resident Indian, filed return of income for Assessment Year 2018-19 on 21/07/2019 declaring total income of INR 138,05,850/-. The case

of the appellant was selected for scrutiny. During the assessment proceedings the Assessing Officer noted that the appellant had sold a capital asset, being a flat acquired by the Appellant by way of a Gift Deed, dated 15/05/1964, for consideration of INR 396,00,000/- during the relevant previous year. The appellant had also claimed deduction for expenses aggregating to INR 16,05,380/-. According to the Assessing Officer the value assessable by the Stamp Valuation Authority was INR 4,37,55,300/- and therefore, provision of Section 50C of the Act were attracted. Since the Appellant disputed the value, reference was made to District Valuation Officer (DVO). Since the report of DVO was not received, the Assessing Officer proceeded to pass Draft Assessment Order, dated 25/09/2021 computing Long Term Capital Gain (LTCG) arising from the sale of capital asset at INR 1,79,23,460/- by taking INR 4,37,55,300/- as full value of consideration as per Section 50C of the Act and disallowing deduction for expenses of INR 16,05,380/- claimed to have been incurred by the Appellant in relation to transfer of the capital asset.

3.1. The objections filed by the Appellant against the Draft Assessment Order, dated 25/09/2021, did not yield any favourable results as the same were rejected by the DRP, vide order dated 20/05/2022. Sequent thereto, the Assessing Officer passed the Final Assessment Order, dated computing LTCG at INR 1,79,23,460/- as against INR 121,62,780/- computed by the Appellant. While doing so the Assessing Officer adopted 4,37,55,300/- as full value of consideration (as till the date of passing of Final Assessment Order the valuation report of the DVO was not available) and disallowed deduction of expenses of INR 16,05,380/- as proposed in the Draft Assessment Order.

3.2. Being aggrieved, the Appellant is now before us in Appeal against the Final Assessment Order, dated 22/06/2022.

4. During the pendency of the present appeal, report of the DVO, dated 15/05/2023, was received by the Appellant which has been placed on record as part of the paper-book. As per the aforesaid report, the DVO has determined the fair market value of capital asset at INR 4,00,32,000/-.

5. We note that the DRP had rejected the contention of the Appellant that the provisions of Section 50C of the Act would not be attracted in the fact and circumstances of the present case holding as under:

> *"5.4 We have carefully considered the submissions made by the assessee. It is noted that the third proviso to section 50C(1) was inserted w.e.f. 1-4-2019 by Finance Act, 2018, which provided that "where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five percent 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". This proviso was further amended by the Finance Act 2020, w.e.f. 1-4-2021 inasmuch as the tolerance band of 5% was increased to 10% by substituting the words "does not exceed one hundred and five percent of the consideration received or accruing" with "does not exceed one hundred and ten percent of the consideration received or accruing".*
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> *5.5 The case of the assessee, however, relates to assessment year 2018-19. Hence, neither the amendment brought out by the Finance Act, 2018 or the amendment carried out by the Finance Act, 2020 are applicable in the case of the assessee. Notwithstanding the above, even if the argument of the assessee were to be accepted and as held by Hon'ble ITAT in the case of Maria Fernandes Cheryl v. ITO, it is presumed that the safe harbour of 10% would be available right from the time when section 50C was inserted in the Act i.e. April*

> *1, 2003 events in the case of the assessee fails because the variation being 10.49% is more than 10%. Hence the objection of the assessee that it does not fall under the rigours of section 50C of the Income Tax Act is not tenable. Accordingly, objection No. 2 of the assessee is rejected."*

6. We concur with the above finding of the DRP. Even if the benefit the decision of the Tribunal in the case of Maria Fernandes Chery Vs. ITO (International Taxation), 2(3)(1), Mumbai : [2021] 85 ITR (T) 674 (Mumbai-Trib.) is granted to the Appellant, the provision of Section 50C of the Act would still be attracted in the fact of the present case as the value of INR 4,37,55,300/- assessable by the Stamp Valuation Authority exceeds 110% of the sale consideration of INR 3,96,00,000/- disclosed by the Appellant. However, since the DVO has determine the fair market value of the capital asset at INR 4,00,32,000/-, the assessing officer is directed to re-compute LTCG by taking the same as full value of consideration.

7. Similarly, as regard disallowance of deduction claimed by the Appellant in respect of the expense of INR 32,000/-, being fee paid for valuation, and expenses of INR 4,03,380/- pertaining to travel of Appellant to India are concerned, we concur with the Assessing Officer and the DRP that the deduction for the aforesaid expenses cannot be allowed as the same were not connected with the transfer of the capital asset. Expenses of INR 32,000/- were incurred after the transfer of capital asset for the purpose of preparation of valuation report. While expense of INR 4,03,380/- on travel of the Appellant were personal in nature and cannot be said to have been incurred for the transfer of the capital asset.

8. As regards claim for deduction of INR 11,70,000/- being the amount paid by the Appellant to the Mahavir Co-op Housing

Society Ltd (for short ' the Society') is concerned, we find merit in the contentions advanced on behalf of the Appellant. We note that the Appellant executed the Deed of Transfer on 12/02/2018 which was registered 12/03/2018. As per Clause 15 of the aforesaid Deed of Transfer, the Appellant took over the obligation to pay the transfer fee payable to the Society for transfer of the capital asset in the records of the Society. On perusal of the details of cheque issued by the Appellant and receipt issued by the Society, we find that the Appellant had made payment of INR 11,70,000/- to the Society. In our view, the Appellant had no reason to make a voluntary payment of around 3% of the sale consideration of INR 3,96,00,000/- to the Society after execution of Deed of Transfer except to aid registration of transfer in the name of the purchaser in records of the Society in terms of Clause 15 of the Deed of Transfer. The fact that the Society choose to treat the amount paid by the Appellant as a voluntary donation for repair and maintenance of the Society and issue a receipt to that effect is an issue to be addressed by the concerned regulator. As regards computation of LTCG in the hands of the Appellant, the Appellant parted with the money for discharging the his liability as per Clause 15 of the Deed of Transfer which crystallized on execution of Deed of Transfer on 12/02/2018. In view of the aforesaid, we hold that the payment of INR 11,70,000/- made by the Appellant to the Society by way of cheque was expense connected to transfer of capital asset and therefore, the same should be reduced from the full value of consideration while determining the amount of LTCG. The Assessing Officer is directed accordingly.

9. In terms of paragraph 6 to 8 above, Ground No.1 and 2 raised by the Appellant are partly allowed. Ground No.3 raised by the appellant pertains to initiation of penalty proceedings and the

same is dismissed as being premature.

10. In the result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 26.09.2023.

Sd/-	***Sd/-***
(S Rifaur Rahman)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 26.09.2023
Shubham. P. Lohar

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
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