

IN THE INCOME TAX APPELLATE TRIBUNAL “(SMC)” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.718/Kol/2023
Assessment Year: 2010-11**

Jagannath Datta 74, Sarat Chatterjee Road, Kolkata-700089. (PAN: ADRPD2995B)	Vs.	Income-tax Officer, Ward- 24(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Vigyaneshwar Nath Datta, Advocate
Respondent by : Shri L. N. Dash, JCIT

Date of Hearing : 30.08.2023
Date of Pronouncement : 02.11.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1053371322(1) dated 31.05.2023 passed against the assessment order by ITO, Ward-24(1), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.01.2013, for AY 2010-11.

2. Grounds raised by the assessee are reproduced as under:

“1 For that the order of CIT (A) in dismissing the appeal is an arbitrary, without application of mind and void ab initio since the appeal is filed on 4.03.2013.

2 For that the determination of two different standards method in computing the value of property in respect the cost of acquisition and the sale value for the determination of capital gain of the property is an arbitrary, opposed to requirement of law and vitiate in law.

3 For that assessment order without referring matter to DVO for Rs 3,44,750/- valuation for determination of long term capital gain is vitiated in law, opposed to requirement of law and not tenable in law.

4 For that the appellant craves leave to amend, alter, add, delete or substitute any other grounds of appeal before or at the time of hearing of the appeal.”

3. Brief facts of the case are that assessee filed his return of income on 16.07.2010 reporting total income at Rs.6,07,170/-. Ld. AO noted that there was a joint transaction for sale of immovable property with transaction amount of Rs.58,89,657/-. Assessee's status was third party out of the total five parties in the said transaction. Ld. AO had issued a show cause letter dated 17.12.2012 to explain as to why market assessed value of Rs.58,89,657/- be not applied for calculating capital gain on transaction of capital asset as per section 50C of the Act.

3.1. The facts relating to the sale transaction of immovable property are that assessee had jointly held immovable property at Rupnarayanpur, Asansol which was registered by ADSR, Asansol on 01.09.2009. Smt. Angana Datta, wife of the assessee who is also one of the directors of Ceascon Engineering Services Pvt. ltd. executed a joint venture agreement on 11.04.2002 on behalf of the company with the landlords of the premises for developing a ground plus three storied building. Sharing ratio for such development was agreed at 27.5:72.5 between the landlords and developers, respectively. Thereafter, company registered parts of incomplete flats of the premises in the name of assessee i.e. Shri Jagannath Datta, wife of the assessee i.e. Smt. Angana Datta and Smt. Rina Chakraborty, separately through Deed of Indenture made on 18.02.2005 at a total consideration of Rs.4,27,000/-, Rs. 1,00,000/- and Rs.1,30,650/- respectively. The said incomplete flats were sold by the assessee, his wife and Smt. Rina Chakraborty jointly along with the landlords of the premises, namely Shri Anjan Kumar Bag and Shri Parimal Banerjee

on 01.09.2009 for which the stamp duty value was assessed by the ADSR, Asansol at Rs.58,89,657/-. Share of assessee in the said transaction comes to 38.54% as noted by the Ld. AO.

3.2. In reply to the show cause letter issued by Ld. AO, assessee had not objected to the application of provisions of section 50C but had asked to consider the market assessed value in respect of purchase cost of acquisition also for the purpose of calculating capital gains. On this submission of the assessee, Ld. AO noted that provisions of sec. 50C are applicable only to the seller and not to the buyer. Ld. AO thus, worked out the capital gain of Rs.16,73,543/- in the hands of the assessee as under:

“Cost of acquisition	Rs.4,52,910/-
Indexed cost of acquisition	Rs.4,52,910/- x 632/480 = Rs.5,96,331/-
Full value of consideration (assessee’s portion)	Rs22,69,874/-
Long Term capital gain	Rs.16,73,543/- (Rs.22,69,874/- - Rs.5,96,331/-)”

3.3. Aggrieved, assessee went in appeal before the Ld. CIT(A) by filing manual form in Form 35. Subsequently, the appeal was migrated to National Faceless Appeal Centre in terms of Notification No. 76.2020 dated 25.09.2020 issued by CBDT. While disposing the appeal, Ld. CIT(A) noted that assessee was required to file the appeal electronically as mandated by CBDT in its Notification No. SO 637(E) 11/2016 dated 01.03.2016. He also referred to subsequent notification for extension of the period for filing the appeal electronically till 15.06.2016 vide Circular No. 20 of 2016 dated 26.05.2016. He thus held that appeal filed by the assessee is manual and a paper appeal does not meet the requirement laid down by the Notification issued by CBDT. He thus, held the manual appeal filed as not admissible and treated it as not maintainable and invalid ab initio thereby dismissing it. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, the Ld. Counsel for the assessee reiterated the facts of the sale transaction resulting into capital gain addition in the hands of the assessee which are already narrated above. He categorically pointed out that identical issue was raised in the hands of wife of the assessee i.e. Smt. Angana Datta since it was a transaction of an immovable property wherein there were joint owners including assessee. He submitted that in the case of wife of the assessee, matter travelled upto the Co-ordinate Bench of ITAT in ITA No. 913/Kol/2016 order dated 08.02.2017 whereby the matter was remanded to the file of Ld. AO. The relevant extracts from the said order is reproduced as under:

“11. In view of above observations of the Hon'ble High Court and Hon'ble Supreme Court that the assessee made the submissions before the CIT-A to refer the matter to DVO, but no such steps have been taken either by the AO/CIT-A. The AO also did not follow the procedure as contemplated in section 50e of the Act. We also find that the Hon'ble High Court has remanded the issue to the AO with the direction that the AO shall refer the matter to the DVO in accordance with the law. Therefore, we find the ratio of judgement of Hon'ble High Court is squarely applicable to the present case also. Respectfully following the above, we deem it fit and proper to remand the issue to the file of the AO to do so afresh in accordance with law by following the procedures as contemplated u/s 50C of the Act.”

4.1. As directed by the Hon'ble ITAT, Kolkata, the matter in the case of Smt. Angana Datta was referred by the Ld. AO to the District Valuation Officer, Valuation Cell, I.T Department, Kolkata for valuation of the property u/s. 55A of the Act. The Assistant Valuation Officer-VI, Valuation Cell, IT. Department, Kolkata furnished his report u/s 55A stating that the Fair Market Value of the property as on 01.09.2009 should be Rs.42,18,200/-. Accordingly, letter was issued to her to appear for hearing to discuss the above matter which was fixed on 18.12.2017. On 18.12.2017 Smt. Angana Dutta, wife of assessee appeared and the matter was discussed with her and heard.

4.2. Considering the valuation made by the Assistant Valuation Officer-VI, Valuation Cell, I.T. Department, Kolkata which is less than

the value assessed by ADSR, Asansol, the LTCG on sale of the property was computed by the Ld. AO as per the provision of section 50C(2) of the Act which is as under:

Computation of Long Term Capital Gain

Consideration received	Rs.25,75,000/-
Market Value assessed by ADSR, Asansol	Rs.58,89,657/-
Fair Market Value computed by Assistant Valuation Officer Valuation Cell, I.T Department, Kolkata u/s 55A of the Act which is considered as Full Value of Consideration	Rs.42,18,200/-
Share of the Vendors as per Development Agreement which is 72.5% of Rs.42,18,200/- is calculated at Rs.30,58,195/-	Rs.30,58,195/-
Less: Indexed cost of Acquisition as computed in order u/s 143(3)	<u>Rs. 8,66,051/-</u>
Long Term Capital Gain	Rs.21,92,144/-
Share of assessee is 15.20% of the LTCG of Rs.21,92,144/-	Rs. 3,33,206/-
Hence, Rs.3,33,206/- is treated as the Long Term Capital Gain of the assessee.	

4.3. Ld. Counsel thus, contended that since the transaction is common with the assessee it also needs to be dealt similarly as in the case of wife of the assessee.

5. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

6. We have heard the rival contentions and perused the material available on record. We have taken note of the facts narrated above as well as the assessment order passed by the Ld. AO in the case of wife of the assessee u/s. 254 read with section 143(3), dated 22.12.2017. After taking into consideration the directions given by the Co-ordinate Bench, the said assessment order in the case of the wife of the assessee has not been challenged before the appellate forum and has been accepted as final. Since the transaction is common to the assessee being joint owners, similar treatment is to be given in the case of assessee also. Accordingly, we direct the Ld. AO to recompute the long term capital gain in the case of the assessee in respect of his

share in the said transaction on similar lines as done in the case of wife of the assessee i.e. Smt. Angana Datta. Accordingly, the matter is remitted to the file of Ld. AO for the limited purpose of recomputing the long term capital gain as directed above.

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

Order is pronounced in the open court on 02 November, 2023

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 02 November, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata