

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2403/M/2023
Assessment Year: 2018-19**

Shri Vijaykumar Ganpat Bhosle, B-I, 702, 7 th Floor, Blue Ocean, Ekta Nagar, Kandivali (W), Mumbai – 400 067 PAN: AEXPB4812Q	Vs.	National E-Assessment Centre, Delhi 401, 2 nd Floor, E-Ramp, Jawaharlal Nehru Stadium, Delhi – 110 003
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rahul Hakani, A.R.
Revenue by : Shri Ajay Singh, D.R.

Date of Hearing : 11 . 10 . 2023
Date of Pronouncement : 10 . 11 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Vijaykumar Ganpat Bhosle (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 08.05.2023 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2018-19 on the grounds inter-alia that :-

“1) The learned CIT(A) erred in confirming the order of Assessing officer making addition of Rs 8,09,567 u/s 50C without appreciating that the transfer had taken place in A.Y. 2010-2011 and thus the

provisions of Section 50C cannot be invoked in A. Y. 2018-2019 and hence the addition of Rs 8,09,567/- may be deleted.

2) *The learned CIT(A) erred in confirming the order of Assessing officer making addition of Rs 8,09,567 u/s 50C without appreciating that Assessee had sold stock in trade and not capital asset and thus Section 50C does not apply and hence the addition of Rs 8,09,567/- may be deleted.*

3) *The learned CIT(A) erred in confirming the order of Assessing officer making addition of Rs 8,09,567 u/s 50C without appreciating that Assessing Officer determined the fair market value himself without making a reference to the Department valuation Officer and that the Assessing Officer is not an expert in valuation and hence the addition of Rs 8,09,567/- may be deleted.*

4) *Without prejudice to above, the learned CIT(A) erred in confirming the order of Assessing officer making addition of Rs 8,09,567 u/s 50C without appreciating that the share of Assessee in sale consideration is Rs 14,50,000/- and not Rs 12,50,000/- as adopted by the Assessing Officer and hence the addition to the extent of Rs 2,00,000/- may be deleted.*

5) *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”*

2. The assessee has also raised the following additional grounds:

“1. The learned Commissioner of (Appeals) and Assessing Officer failed to appreciate that provisions of Section 50C are not applicable as the Agreement for Sale dated 4/4/2009 was unregistered and hence the addition of Rs 8,09,567/- may be deleted.

2. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.”

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee being an individual deriving his income from business and has also earned capital gains and income from other sources, assessee's case was subjected to compulsory scrutiny as he has sold its immovable property below stamp duty value for a consideration of Rs.43,50,000/- as against stamp duty value of Rs.1,96,49,196/-. Declining the contentions raised by the assessee that he has sold the property in A.Y. 2009-10

after receiving the total sale consideration but registration of the property was done in A.Y. 2018-19 and that the property was stock in trade, the Assessing Officer (AO) proceeded to make addition of Rs.8,09,667/- by invoking the provisions contained under section 50C of the Act being the difference between price of the property sold by the assessee and the stamp duty value to the extent of 1/3rd share of the assessee in the property and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short 'the Act')

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly the assessee has entered into an agreement to sell dated 04.04.2009 the property in question with Shri Deepak P. Tawade & ors. for the sale consideration of Rs.43,50,000/- and received the entire sale consideration. It is also not in dispute that the sale deed qua the property in question was executed in terms of the agreement to sale on 04.04.2009 i.e. in A.Y. 2010-11. It is also not in dispute that by virtue of agreement to sale possession was

delivered to the buyer as the entire sale consideration was received by the assessee in A.Y. 2010-11.

7. In the backdrop of the aforesaid undisputed facts the Ld. A.R. for the assessee contended that in the instant case the AO has erred in making the addition on the basis of difference in stamp value and agreement value by invoking the provisions contained under section 50C(2) of the Act without referring the matter to the Departmental Valuation Officer (DVO).

8. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A) and prayed for dismissal of the appeal.

9. Undisputedly the sole issue sought to be argued by the Ld. A.R. for the assessee in this case is as to making the addition on account of difference in stamp valuation and agreement value of the property in question by the AO without referring the matter to the DVO and the Ld. A.R. for the assessee relied upon the decision rendered by the Hon'ble High Court of Calcutta in case of Sunil Kumar Agarwal vs. CIT (2014) 47 taxmann.com 158 (Calcutta).

10. It is settled principle of law that when the AO is of the opinion that for computing the Long Term Capital Gains (LTCG) the valuation made by the District Sub Registrar on the basis of stamp value instead of agreement value is to be taken then the issue is required to be referred to the DVO so as to assess the fair market value of the property. In the instant case the assessee along with other co-sharers entered into an agreement to sell on 04.04.2009 and entire sale consideration was made but sale deed has taken

place in A.Y. 2018-19. The matter was required to be referred to the DVO to assess the fair market value in order to compute the capital gain. Because in these circumstances the transfer of the property in question has taken place on the date of agreement to sale deed dated 04.04.2009 when the entire sale consideration was paid.

11. So in view of what has been discussed above the impugned order passed by the Ld. CIT(A) is set aside and case is remitted back to the AO to decide afresh after referring the matter to the DVO to assess the fair market value of the property by providing opportunity of being heard to the assessee.

12. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.11.2023.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 10.11.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.