

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य

एवं

श्री संजय शर्मा, न्यायिक सदस्य

के समक्ष

Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

&

SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 379/KOL/2023

Assessment Year: 2014-15

Nisha Gupta.....Appellant
[PAN: ADUPG 7753 K]

Vs.

ITO, Ward-37(2), Kolkata.....Respondent

Appearances by:

***Assessee represented by – Sh. Somnath Ghosh, Adv. &
Sh. Arghadeep Panda, A/R.***

Department represented by – Sh. B.K. Singh, JCIT, Sr. D/R.

Date of concluding the hearing : December 7th, 2023

Date of pronouncing the order : January 5th, 2024

ORDER

Per Rajesh Kumar, Accountant Member:

This appeal preferred by the assessee is against the order of Learned Commissioner of Income-tax (Appeals)- NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] dated 24.02.2023 for the Assessment Year (in short 'AY') 2014-15.

2. The assessee has raised two issues in the grounds of appeal. The first issue is against the confirmation of addition of Rs. 15,32,600/- by ld. CIT(A) as made by the Assessing Officer (in short ld. 'AO') u/s 56(2)(vii)(b) of the Income Tax Act, 1961 (in short the 'Act').

3. The facts in brief are that during the year the assessee has purchased a property on 27.08.2013 situated at Panchwaati Tower, Harmu Road, P.S. Sukhdeonagar, Dist. Ranchi for a total consideration of Rs. 1,65,39,200/- but for the purpose of stamp duty and registration of documents the property was valued at Rs. 1,80,71,800/-. The AO after referring to the provisions of Section 56(2)(vii)(b)(ii) of the Act observed that where sale consideration of an immovable property is less than the stamp duty value as per the Stamp Valuation Authority and the amount exceeds Rs. 50,000/-, the same has to be added to the total income of the assessee. Accordingly, the AO after issuing show cause notice, added a sum of Rs. 15,32,600/- to the income of the assessee.

4. In the appellate proceedings ld. CIT(A) dismissed the appeal of the assessee for non-appearance despite granting six opportunities.

5. After hearing the rival contentions and perusing the material on record, we find that the difference between the sale consideration and stamp value as per the Stamp Valuation Authority is less than 10% and therefore, the difference falls within the range of 10% as provided under Section 56 read with Section 50C of the Act. Therefore, the same cannot be added in view of the

third proviso to Section 50C(1) of the Act. The case of the assessee finds support from the decision of Coordinate Bench in the case of *Joseph Mudaliar vs DCIT* reported in [2021] 130 taxmann.com 250 (Mumbai-Trib. Wherein a similar question has been decided in favour of the assessee. The operative part of the decision is extracted as under:

*“17. It is further relevant to observe, section 50C or for that matter section 56(2)(vii)(b)(ii) are identical provisions. Only difference being, 50C is applicable to the seller of an immovable property, whereas, the later provision is applicable to the buyer of the property. Therefore, a benefit given to a seller of the property in respect of marginal variation cannot be denied to the buyer of the property, since, they stand on the same footing. This aspect of the issue has also been considered by the co-ordinate bench in case of *Shri Sandip Patil v. ITO (supra)*, wherein, the co-ordinate bench has held that there cannot be two different fair market value in respect of the very same property, i.e. one at the hands of the seller and the other at the hands of the buyer. Thus, in our view, if the difference in valuation between the value determined by the stamp duty authority and the declared sale consideration is less than 10%, no addition can be made under section 56(2)(vii)(b)(ii) of the Act.*

18. Having held so, the second aspect of the issue which requires consideration is whether the exception to section 50C(1) by way of third proviso and section 56(2)(x)(b)(B) would apply prospectively or retrospectively. The issue is no more res integra in view of a number of decisions of different benches of the Tribunal. The Tribunal has consistently expressed the view that since the aforesaid amendments made by Finance Act, 2018 with effect from 1-4-2019 are curative in nature and beneficial provisions, it would apply retrospectively. In this context, we get support from the following decisions:-

- 1. Sandip Patil (supra)*
- 2. Maria Fernandes Cheryl (supra)*

19. Thus, keeping in view the discussions hereinabove, we delete the addition of Rs. 23,30,694/-. This ground is allowed.”

6. Since the facts of the case before us are materially same as involved in the case decided by the Coordinate Bench, we therefore, respectfully following the same set aside the order of Id. CIT(A) and direct the AO to delete the addition.

7. The second issue raised by the assessee is against the confirmation of addition of Rs. 1,50,624/- as made by the AO on account of undisclosed income.

8. The facts in brief are that the AO during the course of assessment proceedings observed that there was a difference between capital balance as on 31.03.2013 and 01.04.2013 of Rs. 1,50,624/- which the assessee did not substantiate with the evidences and accordingly, the same was added to the income of the assessee.

9. After hearing the rival contentions and perusing the material on record, we find that the case of the assessee was selected for limited scrutiny, a copy of notice is placed at page no. 40 of the paper book issued u/s 143(2) of the Act dated 31.08.2015 which clearly states that the scrutiny was limited scrutiny. We further, find that the limited scrutiny was not converted into complete scrutiny by the AO during the course of assessment proceedings by obtaining approval of the competent authority. We also note that the issue on account of which the addition of Rs. 1,50,624/- was made was not the subject matter of limited scrutiny and therefore, the AO has exceeded his jurisdiction while making the addition. The case of the assessee is squarely covered by the decision of Hon'ble Calcutta High Court in the case of *PCIT vs.*

Weilburger Coatings (India) (P.) Ltd. reported in [2023] 155 *taxmann.com* 580 (Calcutta) wherein the Hon'ble Court has held that where the case of the assessee has been selected for limited scrutiny and the ground of addition as made by the AO is not the subject matter of the limited scrutiny then the Hon'ble High Court of upheld the decision of the Tribunal holding that an addition which is beyond the scope of limited scrutiny is without jurisdiction and has to be deleted. Accordingly, we set aside the order of ld. CIT(A) and direct the AO to delete the addition.

10. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 5th January, 2024.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rajesh Kumar]
Accountant Member

Dated: 05.01.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Nisha Gupta, C/o. S.N. Ghosh & Associates, Advocates Sagar Mansion, 2, Garstin Place, 2nd Floor, Suite Nos. 202 & 203, Hare Street, Kolkata-700 001.***
- 2. ITO, Ward-37(2), Kolkata.***
- 3. CIT(A)-NFAC, Delhi.***
- 4. CIT-***
- 5. CIT(DR), Kolkata Benches, Kolkata.***

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata