

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 756/Kol/2023
Assessment Year : 2019-20

Rajdeep Sodhani	vs	ITO, Ward-40(2), Kolkata
PAN: ALSPS 1830 M		
Appellant		Respondent

Date of Hearing	04.01.2024
Date of Pronouncement	11.01.2024
For the Assessee	Shri Somnath Ghosh, Advocate
For the Revenue	Shri Pravash Roy, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2019-20 is directed against the order dated 08.06.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. The Ld. Commissioner of Income Tax (Appeals), NFAC, Income Tax Department, Delhi, has grossly erred in retaining the addition of Rs. 10,00,000/- made by the AO, CPC vide his intimation under section 143(1) by way of adjustments, by adopting the Stamp Value as the sale proceeds of the residential flat located at a very old building, ignoring the market value being the contract value at which the assessee has sold his property. The order passed by Ld. CIT (Appeals) is liable to be quashed.

2. The Ld. Commissioner of Income Tax (Appeals), NFAC has erred in not appointing a Departmental valuation Officer to ascertain the market Value of the residential flat sold by the assessee. Thereby thwarting the principles of natural justice. To the extent CIT (appeals) Order under section 250 is liable to be quashed.

3. The Ld. Commissioner of Income Tax (Appeals), NFAC has erred in rejecting the sale value shown by the appellant without having any

cogent material in hand, by merely relying on the stamp value and the adjustments made by the Ld. AO, CPC under section 143(1). As such the addition sustained by him is unreasonable, unjustified and liable to be quashed.

4. That the appellant craves leave to adduce additional evidences and add, alter or withdraw any of the grounds of appeal before or at any time of hearing.”

2. Though the assessee has raised multiple grounds of appeal but the sole grievance of the assessee is in relation with addition of 10,00,000/- made by the ld. AO, CPC vide intimation u/s 143(1) of the Act by making and addition ignoring the fact that market value of the property which has shown by the assessee in his return of income. The ld. counsel for the assessee submitted before the bench that case of the assessee is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of Sunil Kumar Agarwal vs. CIT reported in (2014) 47 taxmann.com 158 (Calcutta).

3. On the other hand, ld. DR vehemently argued supporting the orders of both the lower authorities but failed to controvert the submissions made by ld. counsel for the assessee.

4. We have rival contentions and perused the records placed before us. The issue for our consideration is whether ld. CIT(A) was justified in confirming the action of ld. AO making addition of Rs. 10,00,000/- by invoking the deeming provisions of section 50C of the Act. We notice that the assessee is an individual and filed ITR Form No. 3 on 27.08.2019. In the column of

computation of capital gain appearing in the ITR Form No. 3, the assessee has disclosed the transaction of long term capital gain. In the said detail which is appearing in page no. 31 of the paper book long term capital gain has been computed at Rs. 8,40,000/-. For computing the said capital gain sale consideration is said to have been received at Rs. 35 lakh. Index cost of acquisition and index cost of improvement is at Rs. 26,60,000/-. The index cost of acquisition is not in dispute before us. The assessee in column no. 'B' of Schedule 'CG' has stated the full value of consideration received / receivable at Rs. 35 lakh. However valuation of the property as per Stamp Valuation Authority, the assessee has mentioned Rs. 45,00,000/-. However, under the column full value of consideration adopted as per section 50C of the Act for the purpose of capital gain the assessee has mentioned Rs. 35 lakh only. The case of the assessee when it was processed u/s 143(1) of the Act the computer system by default picked up the figure of value of property as per Stamp Valuation Authority i.e. Rs. 45 lakhs and computed the long term capital gain by making an addition of Rs. 10 lakh in the hands of assessee. In this regard, the contention of ld. counsel for the assessee is that the fair market value of the property was Rs. 35 lakh only for determination of the long term capital gain and alleged that the addition made by the authority below is not correct.

5. Under these given facts and circumstances, we would like to go through the finding of Hon'ble Jurisdictional High Court in the

case of Sunil Kumar Agarwal (supra) and the same reads as follows:

“6. We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section (2) of Section 50C has not been met by the assessee, can hardly be accepted. The requirement of clause (b) of sub-Section (2) of Section 50C was evidently met. The only question is whether the requirement of clause (a) of sub-Section (2) of Section 50C was met by the assessee.

7. We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

8. For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have

been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

9. For the aforesaid reasons, the order under challenge is set aside.

10. The impugned order including orders passed by the CIT(A) and the assessing officer are all set aside. The matter is remanded to the assessing officer. He shall refer the matter to the departmental valuation officer in accordance with law. After such valuation is made, the assessment shall be made de novo in accordance with law.”

6. We find that the above judgement of the Hon'ble Jurisdictional High Court is squarely applicable in the case of assessee and facts are similar to the issue raised before us. Therefore, since the assessee has claimed and received the sale consideration amounting to Rs. 35 lakh which is equivalent to the fair market value of the said property and not the value as adopted by the Stamp Valuation Authority at Rs. 45 lakh, therefore, the lower authorities ought to have referred the matter to the Departmental Valuation Officer for valuing the fair market value of the property. Therefore, under these given facts and circumstances, the grounds raised in the assessee's appeal are allowed for statistical purposes and the matter is restored to the jurisdictional Assessing Officer for carrying out necessary exercise of referring the matter to the Departmental Valuation Officer and decide the issue in accordance with law as discussed herein above.

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

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

Order pronounced in the open court on 11.01.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 11.01.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rajdeep Sodhani, Shresta Co-operative Housing Society, BF-102, Newtown, Flat No. 201, Premises No. 01-160, Kolkata-700163.
2. Respondent – ITO, Ward-40(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata