

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 1233/KOL/2023
Assessment Year: 2015-2016**

**Apurba Sen,.....Appellant
186, Seakhala P.S. Chanditala,
Dist. Hooghly-712706, West Bengal
[PAN: BTHPS7156J]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-23(3), Hooghly,
Aayakar Bhawan, 2nd Floor,
G.T. Road, Chinsurah,
Hooghly-712101, West Bengal**

Appearances by:

*Shri S.P. Datta and Sukanya Datta, A.R, appeared on
behalf of the assessee*

*Shri B.K. Singh, JCIT, Sr. D.R., appeared on behalf of
the Revenue*

Date of concluding the hearing : January 17, 2024

Date of pronouncing the order : January 18, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 21.09.2023 passed for A.Y. 2015-16.

2. The assessee has taken eight grounds of appeal, but his grievance revolves around a single issue, namely Id. CIT(Appeals) has erred in confirming the addition of Rs.13,36,648/-, which was added by the Id. Assessing Officer with the aid of section 56(2)(vii)(b).

3. Brief facts of the case are that the assessee has purchased two pieces of land for a consideration of Rs.12,00,000/- and Rs.5,00,000/-. The stamp duty valuation authorities had valued them for the purpose of charging the stamp duty at Rs.17,16,944/- and Rs.13,19,704/- as on 08.11.2014 when assessee has purchased these plots. The Id. Assessing Officer has construed the difference of purchase consideration shown by the assessee, vis-a-vis determined by the stamp duty valuation authority for charging the stamp duty on the sale deed as a deemed gift within the meaning of section 56(2)(vii)(b) of the Income Tax Act. The Id. Assessing Officer in this way made an addition of Rs.13,36,648/-.

4. Appeal to the Id. CIT(Appeals) did not bring any relief to the assessee.

5. Before us, Id. Counsel for the assessee has raised two-fold submissions, namely –

(a) if an assessee took a plea before the Id. Assessing Officer that stamp duty value determined by the authority for charging the stamp duty is not a fair market

value, then in such cases, as per the proviso appended to this section, the ld. Assessing Officer is required to refer the matter to the DVO for determining the fair market value of the property on the date of transaction, as per the procedure provided in Section 50C(2) of the I.T. Act.

(b) The land in dispute is an agricultural land situated more than 15 Km. away from Municipality and, therefore, section 56(2)(vii) is not applicable in this case. For buttressing his argument with regard to the second fold, he drew our attention towards page no. 24-25, where copy of the Certificate from the Office of the Additional District Sub-Registrar, Jangipara, Hooghly is placed on the record.

On the strength of these documents, he submitted that the property be construed as an agricultural land and no addition on account of deemed gift be made under section 56(2)(vii)(b) of the Income Tax Act.

6. On the other hand, ld. D.R. contended that the assessee has not annexed any Certificate on the paper book, certifying that these documents were on the record of the ld. Assessing Officer. More so, on page no. 25, a Certificate issued by the ADSR, Hooghly is dated 4th September, 2019, whereas assessment order was passed on 18th September, 2017. Therefore, these documents cannot be relied upon.

7. We have duly considered the rival contentions and gone through the record carefully. As far as the first-fold of dispute is concerned, a perusal of page no. 5 of the assessment order would indicate that the assessee during the course of assessment proceeding has raised a dispute that stamp duty valuation authorities value does not exhibit the true fair market value of the property purchased by the assessee and, therefore, as per the proviso appended to this section, the valuation for determining the fair market value is to be carried out in the manner as provided in section 50C(2) of the Income Tax Act. The ld. Assessing Officer did not carry out this exercise after the prayer of the assessee, therefore, on the first-fold of grievance itself, the assessment order is not sustainable.

8. As far as the second-fold of contention is concerned, the assessee has not filed a Certificate on the paper book exhibiting that these documents were filed before the ld. Assessing Officer. More so, one of the documents i.e. certificate issued on 04.09.2019, whereas assessment order was passed on 18.09.2017. Hence this Certificate could have never been before the ld. Assessing Officer. It is also not ascertainable whether ld. CIT(Appeals) has called for the remand report or not.

9. Therefore, in view of the above discussion, we are of the view that end of justice would meet, if we set aside both the impugned orders and restore this issue to the file of ld. Assessing

Officer for fresh adjudication. The ld. Assessing Officer is directed to take into consideration both the fold of grievance and he will collect evidence from the State Revenue Officers about the nature of land, i.e. whether agricultural or not; whether it is situated beyond the prescribed limit of Municipalities for treating it as an agricultural land or not. He is also directed to call for a report from the DVO and thereafter re-determine the fair market value for determining the deemed gift assessable in the hands of the assessee.

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

Order pronounced in the open Court on 18/01/2024.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 18th day of January, 2024

*Copies to :(1) Apurba Sen,
186, Seakhala P.S. Chanditala,
Dist. Hooghly-712706, West Bengal*

*(2) Income Tax Officer,
Ward-23(3), Hooghly,
Aayakar Bhawan, 2nd Floor,
G.T. Road, Chinsurah,
Hooghly-712101, West Bengal*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

- (4) CIT- , Kolkata;
(5) The Departmental Representative
(6) Guard File
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.