

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 1634/Del/2023
(Assessment Year: 2011-12)

Mahindra Singla, C/o. Kapil Goel, Adv, F-26/124, Sector-7, Rohini, New Delhi PAN: ADHPS9577Q	Vs. ITO, Ward-2(4), Gurugram
---	------------------------------------

Assessee by :	Shri Kapil Goel, Adv
Revenue by:	Shri Om Prakash, Sr. DR

Date of Hearing	15/01/2024
Date of pronouncement	15/01/2024

ORDER

1. The appeal in ITA No.1634/Del/2023 arises out of the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2022-23/1049628352 dated 10.02.2023 against the order of assessment passed u/s 143(3) read with Section 147 of the Income-tax Act, 1961 dated 27.12.2018 (hereinafter referred to as 'the Act') by ITO, Ward-2(4), Gurgaon (hereinafter referred to as 'Id. AO').
2. The assessee had challenged the validity of reopening of assessment u/s 147 of the Act in the instant case. The inter connected issue involved therein is as to whether the Id. CIT(A) was justified in confirming the addition towards long term capital gains (LTCG) of Rs 13,23,662/- in the facts and circumstances of the instant case.
3. I have heard the rival submissions and perused the materials available on record. At the outset, we find that the assessee had not filed the return of income for the Asst Year 2011-12. The assessee had purchased the property on 27.3.2008 for Rs 17,33,650/- and sold the same for Rs 18,00,000/- on 26.3.2011 relevant to the year under consideration. The Id. AO obtained information from the Sub-Registrar that the stamp duty value of the property that was sold by the assessee was Rs

35,68,000/- . The Id. AO sought to substitute the full value of consideration of property sold at Rs 35,68,000/- being the value determined in terms of section 50C of the Act. For this purpose, the Id. AO reopened the assessment by issuing notice u/s 148 of the Act after recording reasons for reopening thereon. The Id. AR before us vehemently argued that the Id. AO had not mentioned either in the reasons or in the order disposing of the objections of the assessee that he is intending to substitute the sale consideration figure of Rs 35,68,000/- in terms of section 50C of the Act. Accordingly, the Id. AR pleaded that there was no income escaping assessment and Id. AO could not have formed any reasonable belief thereon warranting reopening u/s 147 of the Act. We are unable to comprehend ourselves to accept to this argument of the Id. AR before us in as much as at the time of registration of sale deed by the assessee on 26.3.2011 for Rs 18,00,000/-, the assessee is aware of the fact that the stamp duty value of the subject mentioned property was at Rs 35,68,000/-. Knowing that fact only, the assessee had proceeded to register the property at Rs 18,00,000/-. Merely because the Id. AO had not mentioned this fact as to from where the figure of Rs 35,68,000/- had been adopted by him, it does not automatically become fatal to the reassessment, especially when the said figure is nothing but the consideration adopted for the purpose of levy of stamp duty by the Sub-Registrar. Hence I hold that the assessment had been validly reopened by the Id. AO in the facts and circumstances of the instant case. The grounds raised by the assessee challenging the validity of reopening are hereby dismissed.

4. With regard to the computation of long term capital gains of Rs 13,23,662/- is concerned, the same is calculated by the lower authorities by adopting the sale consideration figure at Rs 35,68,000/- in terms of section 50C of the Act as against the registered sale consideration at Rs 18,00,000/-. It is not in dispute that the property had been held by the assessee for more than 3 years. It is not in dispute that the assessee had purchased the property for Rs 17,33,650/- and since the asset transferred was a long term capital asset, the assessee would be eligible for indexation benefit also. But I find that the assessee had objected to the adoption of sale consideration of Rs 35,68,000/- before the lower authorities as actual

consideration received by him was only Rs 18,00,000/-. Then in these circumstances, the only legal recourse available to the revenue is to refer the valuation of the property to the learned Departmental Valuation Officer (DVO) and determine the LTCG in accordance with provisions of section 50C(2) of the Act, which was not done in the instant case. Hence I direct the Id. AO to refer the valuation of the property to Id. DVO u/s 50C(2) of the Act and recomputed the LTCG accordingly. The grounds raised by the assessee on merits are hereby allowed for statistical purposes.

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

Order pronounced in the open court on 15/01/2024.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 15/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi