

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

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

**I.T.A. No. 800/KOL/2023
Assessment Year: 2012-2013**

**Satyendra Kumar Dhawan,.....Appellant
73, Colootola Street,
Kolkata-700073
[PAN: ACQPD5005Q]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-40(4), Kolkata,
3, Government Place (East)
Kolkata-700001**

Appearances by:

*Shri Anil Kochar, Advocate, appeared on behalf of the
assessee*

*Shri Prabhakar Prakash Ranjan, Addl. CIT, appeared
on behalf of the Revenue*

Date of concluding the hearing : January 08, 2024

Date of pronouncing the order : January 25, 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 30.06.2023 passed for A.Y. 2012-13.

2. Though the assessee has taken 10 grounds of appeal but his grievance revolves around two issues, namely –

(a) whether reopening of the assessment is valid in law or not;

(b) whether any addition with the aid of Section 50C(1) is deserved to be made in the hands of assessee and if 'yes', then, how much addition is to be made.

3. Brief facts of the case are that ld. Assessing Officer had received an information exhibiting the fact that assessee has sold an immovable property at Gaziabad, whose sale value did not match with the Stamp Duty Valuation, vis-à-vis shown by the assessee. Hence a notice under section 148 was issued. The assessee has filed return of income declaring total income of Rs.3,96,640/- on 17.04.2019.

4. The chronological events in respect of above sale transaction has been reproduced by the ld. CIT(Appeals) while taking note of the submission of the assessee. We take note of those events, which read as under:-

Chronological event in respect of the transaction of sale

Date

Particular

- 03.10.2000:-** *Sale Certificate issued by Gaziabad Development Authority in favour of Satyendra Kumar Dhawan, the appellant in respect of Plot No.GK-l/122 having area of 362.70 sq.mt. at Indira Puram, Gaziabad for a total consideration of Rs. 5,62,499/-*
- 20.10.2000:** *Agreement executed by the appellant in favour of Ravi Kaushik, son of Sri O.P. Sharma resident of D-104, Vijaya Nagar, Gaziabad for a total consideration of Rs.4,51,000/-*
- 20.10.2000:** *Sale Agreement executed by the appellant in favour of Ravi Kaushik, son of Sri O.P. Sharma resident of D104, Vijaya Nagar, Gaziabad for a total consideration of Rs.4,51,000/-*
- 20.10.2000:** *Power of Attorney executed in favour of Manoj Kumar Sharma, son of Sri Shiv Dutt Sharma duly registered with the sub-registrar*
- 18.11.2011:-** *Conveyance Deed executed by Manoj Kumar Sharma, son of Sri Shiv Dutta Sharma on behalf of the appellant in respect of residential plot No.1/122, Indira Puram, Gaziabad in favour of Vimla Sharma wife of Sri Om Prakash Sharma for an apparent consideration of Rs.4,51,000/- and the stamp duty value being Rs. 1,59,59,000/-.*

5. The ld. Assessing Officer in this way made an addition of Rs.1,41,56,826/-.

6. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

7. With the assistance of ld. Representatives, we have gone through the record carefully. Section 50C and its first proviso have a direct bearing on this controversy. Therefore, we deem it

appropriate to take note of this part of this section, which reads as under:-

“Sub section (1) of the section 50C provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value of adopted or assessed or assessable by any authority of State Govt. for the purpose of payment of Stamp duty in respect of such transfer, the value of adopted or assessed or assessable shall be deemed to be full value of the consideration received or accruing as a result of such transfer.

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer”.

8. A perusal of the above section would reveal that if an assessee has received a consideration or such consideration has accrued to the assessee on sale of a capital assets/ building is less than the value adopted or assessed for the purpose of charging Stamp Duty on such transaction, then, full sale consideration would be deemed equal to the amount on which Stamp Duty has been charged. The proviso appended to this Section further contemplates that in case, where the date of agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the Stamp Valuation Authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

9. In the light of above, let us examine the transaction of the assessee. It emerges out from the record that the assessee has purchased a plot bearing No. GK1/122 having area of 362.70 sq.mtr. at Indirapuram, Gaziabad for a consideration of Rs.5,62,499/-. The sale deed was executed by the Gaziabad Development Authority in favour of the assessee. Later on assessee sold this plot to one Shri Ravi Kaushik, son of Shri O.P. Sharma for a consideration of Rs.4,51,000/-. This amount was received by the assessee through Bank Draft. The assessee has further executed Power of Attorney in favour of Shri Manoj Kumar Sharma. Shri Manoj Kumar Sharma resold this plot on 18th November, 2011 to one Shri Shiv Dutta Sharma. Therefore, in the hands of the assessee the Stamp Duty Valuation ought to have been determined in the year 2000 and not 2011. Gaziabad Development Authority must have executed the Conveyance Deed in favour of the assessee more than the value determined by the Registering Authority for the purpose of Stamp Duty. Therefore, a deeming sale consideration cannot be assumed in the hands of the assessee in A.Y. 2011. The proviso appended to Section 50C duly protects the assessee from considering the Stamp Duty value as full sale consideration in the hands of the assessee in 2011. Therefore, both the authorities have erred in computing the alleged long-term capital gain in the hands of the assessee. We allow this ground and delete the addition made by the ld. Assessing Officer.

In view of the above, we desist ourself from deciding the issue of reopening.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 25/01/2024.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 25th day of January, 2024

*Copies to :(1) Satyendra Kumar Dhawan,
73, Colootola Street, Kolkata-700073
(2) Income Tax Officer,
Ward-40(4), Kolkata,
3, Government Place (East), Kolkata-700001*

*(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.