

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 2251/Del/2023

(Assessment Year: 2015-16)

Global Shoes and accessories Manufacturing Co., C/o. Prakash K Prakash, 6H, Hansalaya Building, Barakhamba Road, Cannaught Place, New Delhi (Appellant)	Vs. DCIT, Circle-48(1), New Delhi
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PAN: AAIFG4169N

(Respondent)

Assessee by :	Shri Ruchesh Sinha, Adv
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing 13/02/2024

Date of pronouncement 16/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2251/Del/2023 for AY 2015-16, arises out of the order National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in TBA/NFAC/S/250/2023-24/1053838828(1) dated 21.06.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.11.2017 by the Assessing Officer, ACIT, Circle-48(1), New Delhi (hereinafter referred to as 'Id. AO').

2. Though the assessee has raised several ground of the appeal, the only effective issue to be decided in this appeal is as to whether the fair market value of the property sold by the assessee could be substituted with the value sought to be determined by the

Departmental Valuation Officer (DVO) in terms of section 50C(2) of the Act when the variance between the actual consideration and DVO value is 4.97%.

3. We have heard the rival submissions and perused the material available on record. The assessee is a partnership firm and had filed its return of income on 30.09.2015 declaring total income Rs. 29,08,400/-. It is not in dispute that during the year under consideration, that assessee had sold property for Rs. 1.10 crores and declared long term capital gain accordingly in the return of income. The Id AO during the course of assessment proceedings sought to substitute this consideration with the value as determined by the Stamp Valuation Authorities in terms section 50C of the Act which was arrived at Rs. 1,96,37,000/- (for land Rs. 1,51,03,400/- and for building Rs. 45,33,219/-). The assessee requested for reference of the property for valuation by the Id DVO in terms section 50C(2) of the Act. The Id DVO determined the value of the property at Rs. 1,15,47,000/- vide his report dated 31.07.2019. The variance between the value as determined by the Id DVO and the value as declared of the assessee is just 4.97%. We find that 3rd proviso to section 50C(1) of the Act gives leeway to the assessee to accommodate the variance up to 10% of the actual consideration. For the sake of convenience the provisions of section 50C(1) of the Act together with its provisos is reproduced herein:-

"50C. (1) 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 adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the 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:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or

account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration."

4. We find that though this amendment had been introduced in the statute by the Finance Act, 2018 w.e.f 01.04.2019, this amendment has been held to retrospective by the coordinate bench of Mumbai Tribunal in the case of Maria Fernandes Cheryl vs ITO reported in 123 taxmann.com 252 (Mumbai Tribunal) wherein it was held that amendment made in scheme of section 50C(1) of the Act by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 per cent to 10 per cent are effective from date on which section 50C, itself was introduced, i.e 1-4-2003.

5. Respectfully following the same, we hold that no substitution of sale consideration need to be made in the case of the present assessee and sale consideration at Rs. 1.10 lakhs reported by the assessee is to be accepted for the purpose of computation of Long Term Capital Gain. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 16/02/2024.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:16/02/2024

A K Keot

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1. Applicant