

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA  
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1215/Kol/2023  
Assessment Year: 2015-16**

Amal Mukherjee C/o Jain Vinod K & Associates, 41A, A.J.C. Bose Road, Suite No. 613, 6 <sup>th</sup> Floor, Kolkata-700017. (PAN: AIAPM0867D)	Vs.	ACIT, circle-1, Durgapur
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Vinod Kr. Jain, FCA

Respondent by : Shri Anindya Kumar Bandopadhyay, Addl. CIT

Date of Hearing : 19.02.2024

Date of Pronouncement : 21.02.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/21-22/1036637440(1) dated 28.10.2021 passed against the assessment order by ACIT, Circle-1, Durgapur, u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 16.12.2017 for AY 2015-16.

2. Grounds taken by the assessee are as under:

*1. The appellant pray to condone the delay of 648 days (approx.) in filing this appeal. The delay was without any malafide intention and caused due to circumstance beyond control of the appellant. The admission of appeal would be a cause for natural justice.*

*2. The Ld. CIT [A] NFAC was wrong in law as well as on facts to affirm the order of Assessing Officer in confirming the addition of Rs. 6,84,979 made u/s 56(2)(vii)(b)(ii).*

*3. The Ld. CIT(A) NFAC erred in law to accept the assertion of the AO that stamp duty valuation of the property is Fair market value so be taken as full*

*consideration without following the provision to section 56(2)(vii) sub clause (b) r.w.s 50(c) sub section 2, in the circumstances, the assessee had question the view taken by Assessing Authority.*

*4. Alternatively, the Ld. CIT(A) NFAC ought to consider that the difference in Stamp duty value taken at Rs. 70,85,000/- is only 10.70% higher than actual consideration of Rs. 64,00,021/- hence it cannot be termed as under valuation of property to evade tax”*

3. At the outset, there is a delay of 687 days for which petition for condonation of delay along with an affidavit and relevant documentary evidence is placed on record. The impugned order of Ld. CIT(A) is dated 28.10.2021, accordingly, the due date of filing of appeal before the Tribunal was 27.12.2021. According to the assessee, the impugned order was uploaded on the income tax portal during lockdown period of Pandemic Covid, 2019. Owing to pandemic, assessee could not connect with his tax consultant at Durgapur. Further, wife of the assessee met with an accident in December, 2022 which ultimately led her to death. Assessee has placed on record relevant documentary evidence in respect of the said events leading to the delay in filing the present appeal before the Tribunal. Considering the same, we find it appropriate to condone the delay and adjudicate the matter on merits.

4. The only issue involved in the present appeal is in respect of addition made by the Ld. AO u/s. 56(2)(vii)(b)(ii) of the Act in respect of difference between the market value of the property purchased by the assessee and the value adopted for the stamp duty on the said property. Assessee had purchased flat at NBCC VIBGYOR TOWERS situated in New Town, Kolkata for a consideration of Rs.64,00,021/- on 14.01.2015 registered at the office of ADSR, Rajarhat. As per the endorsement of the deed dated 14.01.2015, the market value of the property was Rs.70,85,000/-. Accordingly, Ld. AO sought explanation on the difference of Rs.6,84,979/- between the two values as to why it should not be added in the hands of the assessee. Ld. AO did not find

favour with the explanation offered by the assessee and completed the assessment by making the addition. Aggrieved, assessee went n appeal before the Ld. CIT(A) who sustained the same. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee submitted that the difference between the two values is less than the prescribed threshold limit of 10% in the 3<sup>rd</sup> proviso to sec. 50C(1) of the Act. According to this proviso, where the value adopted by the Stamp Valuation Authority does not exceed 10% of the consideration as a result of the transfer, the consideration so received or accruing as a result of the transfer shall be deemed to be the full value of consideration. He thus, pointed out that the stamp valuation is at Rs.70,85,000/- and 10% of such comes to Rs.7,08,500/-. However, the difference pointed by Ld. AO is of Rs.6,84,979/- which is below this amount of 10% computed as stated above and, therefore, does not fall within the deeming fiction of sec. 56(2)(vii)(b) for the purpose of making addition.

5.1. On a specific query by the Bench on this proviso to section 50C(1) as to its insertion by Finance Act, 2018 w.e.f. 01.04.2019, ld. Counsel submitted that the said insertion of the proviso is curative in nature to take care of unintended consequences of the scheme of sec. 50C and hence, relates back to the date when the statutory provision of section 50C was enacted i.e 01.04.2003. To buttress his contention, he placed reliance on the decision of Coordinate Bench of ITAT Mumbai in the case of Maria Fernandes Cheryl Vs. ITO, ITA No. 4850/Mum/2019 dated 15.01.2021.

5.2. Ld. Counsel also submitted that provisions of section 56(2)(vii) have a direct relation with the provision of section 43CA and 50C of the Act. These two sections come into play for the purpose of calculation of capital gains when the asset is sold or transferred by the assessee. Corollary to the same, section 56(2)(vii) comes into play in a

case where a property is purchased by the assessee. He referred to third proviso to section 56(2)(vii) in this respect.

6. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

7. We have perused the third proviso to section 56(1) which provides mandate of 10% variation in the value adopted by the Stamp Valuation Authority and the consideration accruing as a result of the transaction. In the present case, on the above stated facts, the difference between the two value is below the threshold of 10% and, therefore, the consideration of Rs.64,00,021/- shall be the full value of consideration. Further, taking into consideration the decision of Coordinate Bench of ITAT, Mumbai (supra) we also hold the same view that the said amendment is curative in nature and, therefore, applicable retrospectively. Therefore, considering the facts of the case and the applicable provisions of law as discussed above, we delete the addition made by the Ld. AO and allow the ground of appeal taken by the assessee in this respect.

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

Order is pronounced in the open court on 21<sup>st</sup> February, 2024

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated:21st February, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata