

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 146/KOL/2024
Assessment Year: 2020-2021**

***Realtech Nirman Pvt. Ltd.,.....Appellant
T-68, Tegharia main Road,
Post-Hatiara, Behind Lokenath Mandir,
Kolkata-700059, West Bengal
[PAN:AADCR6464K]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle11(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

Shri Giridhar Dhelia, Advocate, 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 : April 08, 2024

Date of pronouncing the order : April 08, 2024

O R D E R

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

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi dated 30.11.2023 passed for A.Y. 2020-21.

2. Though the assessee has taken three grounds of appeal, but the solitary substantial issue raised in these grounds is whether an addition of Rs.10,00,000/- with the aid of section 56(2)(x)(b) deserves to be made in the hands of the assessee or not.

3. Brief facts of the case are that the assessee has filed its return of income declaring total income of Rs.2,61,64,980/-. The case of the assessee was selected for scrutiny assessment and notices under sections 143(2) and 142(1) were issued and served upon the assessee.

4. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee has purchased a property for a consideration of Rs.34,00,000/-, whereas the Stamp Duty Valuation Authority for Registration of the Sale Deed had charged the Stamp on the value of Rs.44,00,000/-. The ld. Assessing Officer confronted the assessee as to why difference between the purchase value disclosed by the assessee, vis-a-vis adopted by the Stamp Duty Valuation Authority for charging the stamp should not be construed as a deemed gift in the hands of the assessee under section 56(2)(x)(b) of the Income Tax Act or not. In response to the notice, the assessee has submitted that it has purchased the property actually in 34,00,000/- rupees and it does not accept the value determined by the Stamp Duty Valuation Authority at Rs.44,00,000/-. The ld. Assessing Officer did not refer the property

for determination of its fair market value, as contemplated in sub-clause (2) of section 50C. The same procedure is to be followed for determining the fair market value of the property for the purpose of section 56(2)(x)(b) in order to determine any deemed gift in the hands of the purchaser. The ld. Assessing Officer in this way adopted the deemed purchase value equivalent to Rs.44,00,000/- and made the addition of Rs.10,00,000/- to the income of the assessee.

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

6. The ld. Counsel for the assessee relied upon the judgment of the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal -vs.- Commissioner of Income Tax, Siliguri (2014) 47 taxmann.com 158 (Calcutta). On the strength of this judgment, it was contended that the procedure contemplated in section 50C(2) is required to be followed for determining the deemed gift in the hands of the purchaser. The Hon'ble High Court has propounded that as and when the assessee has disputed the determination of fair market value by the Stamp Duty Valuation Authorities for deeming the sale consideration or purchase consideration in the hands of a vendor or purchaser, then such dispute is to be referred to the DVO for determining the fair market value as per sub-clause (2) of section 50C. He prayed that both the orders be set aside and the matter be referred to the ld. Assessing Officer for making a reference to the DVO to determine fair market value of the property purchased by the assessee.

7. The ld. D.R. was unable to controvert the contentions of the ld. Counsel for the assessee.

8. We have duly considered the rival contentions and gone through the record carefully. The 3rd proviso to section 56(2)(x)(b) would contemplate that where the stamp duty value of an immovable property is disputed by the assessee on the ground mentioned in sub-section (2) of section 50C, the ld. Assessing Officer may refer the valuation of such property to the Valuation Officer, and the provisions of section 50C and sub-section 15 of section 115 shall as far as may be applied in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections. This proviso would contemplate that as and when the stamp duty value determined by the Stamp Duty Valuation Officer is being disputed by an assessee for deeming the purchase value in its hand for the purpose of section 56(2)(x)(b), then, a reference is to be made to the Valuation Officer for determining the fair market value. This procedure has not been adhered by the Revenue Authorities in the present case. Therefore, we set aside the orders of both the authorities and remit this issue to the file of ld. Assessing Officer. The ld. Assessing Officer shall call for a report from the Valuation Officer, who shall determine the fair market value of this property and only thereafter decide the applicability of section 56(2)(x)(b) of the Income Tax Act in the hands of the assessee.

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

Order pronounced in the open Court on 8/04/2024.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 8th day of April, 2024

*Copies to :(1) Realtech Nirman Pvt. Ltd.,
T-68, Tegharia main Road,
Post-Hatiara, Behind Lokenath Mandir,
Kolkata-700059, West Bengal*

*(2) Deputy Commissioner of Income Tax,
Circle 11(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(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.