

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

**Before Shri Sanjay Garg, Judicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 52/KOL/2024
Assessment Year: 2016-2017**

***Millie Dey,.....Appellant
Flat-3F, Abira Kaninika,
529, Hemanta Mukhopadhyay Sarani,
Kolkata-700029
[PAN:ATJPD8932E]
-Vs.-***

***Income Tax Officer,.....Respondent
(National Faceless Appeal Centre), Delhi
[Income Tax Officer,
Jurisdiction:Ward-25(1), Kolkata]***

Appearances by:

*Shri Anirban Gangopadhyay, C.A., appeared on behalf of
the assessee
Shri P.P. Barman, Addl. CIT, Sr. DR, appeared on behalf of
the Revenue*

Date of concluding the hearing : 10th April, 2024

Date of Pronouncing the Order: April 23, 2024

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Deelhi dated 15.11.2023 for the assessment year 2016-17.

2. The sole grievance of the assessee is against the order of Id. CIT(Appeals) confirming the addition made by the Id. Assessing Officer on account of long-term capital gain at Rs.44,99,360/-.

3. Brief facts of the case are that the assessee is an individual and on the basis of information about sale of immovable property, case of the assessee was reopened under section 147 of the Act after obtaining necessary approval from the Competent Authority. The regular return of income for A.Y. 2016-17 was furnished on 28.04.2021 declaring total income at Rs.3,46,060/-. The Id. Assessing Officer after serving valid notices under sections 142(1) and 143(2) alongwith questionnaires asked the assessee to explain the transaction of sale of immovable property during the year. After considering the submissions, the Id. Assessing Officer observed that the assessee being 50% owner of immovable property received sale consideration at Rs.50,00,000/- and the cost of acquisition as on 01.04.1981 was taken at Rs.10,00,740/-. The Id. Assessing Officer noticed that the cost of property has been computed by Registered Valuer on the reverse method of indexation and practically the sale consideration and indexed cost of acquisition are the same. The Id. Assessing Officer was not satisfied with this calculation and in absence of Circle rate of the said

property as on 01.04.1981, he estimated the indexed cost of acquisition at Rs.5,00,370/- and made an addition for long-term capital gain at Rs.44,99,630/- and the income assessed at Rs.48,45,690/-.

4. Aggrieved, assessee preferred in appeal before the Id. CIT(Appeals) and failed to succeed. The Id. CIT(Appeals) confirmed the addition observing as follows:-

“6. I have perused the assessment order, in view of the written submission, details and documents uploaded by the appellant during the appellate proceedings. I have also carefully perused the valuation report of the property sold, issued by a registered valuer.

6.1. The registered valuer has valued the property sold at Rs.1,08,18,000/- as on 22.12.2015. Since the appellant was the owner of 50% of the property sold, the market value of the property as per the valuation report was Rs.54,09,355/- whereas actual sale consideration received by the appellant was Rs.50,00,000/-. Consequently, the appellant has claimed to incur long-term capital loss at Rs.4,99,355/-.

6.2. A perusal of the valuation report shows that the valuer has calculated both, the indexed cost of acquisition of the property sold and the market value thereof at Rs.1,08,18,000/- which is not practically possible. The valuer has adopted a reverse method using indexation for determining the market value of the property sold as on 01.04.1981 which is not logical. The valuer has actually valued the property sold as on 22.12.2015 not as on 01.04.1981. He could have referred to the circle rate of the property as on 01.04.1981 but he did not do so. In such circumstances, Id. AO had no option except to take cost of acquisition of the property at Rs.5,00,370/-. In view of the facts of the case, I am of the considered opinion that the valuer has not done proper valuation of property sold to determine the base value thereof as on 01.04.1981. Accordingly, the appeal of the appellant is dismissed and not allowed”.

5. Being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee vehemently argued referring to the written submissions filed before the lower authorities as well as paper book containing 64

pages and further stated that the ld. Assessing Officer had not given the benefit of indexation on the cost of immovable property considered by him. He submitted that if indexed cost of acquisition is calculated, then there will be no long-term capital gain would remain to be added in the hands of assessee.

6. On the other hand, ld. D.R. vehemently argued supporting the order of lower authorities.

7. We have heard the rival contentions and perused the material placed before us. Correctness of long-term capital gain /loss from sale of immovable property is in dispute before us. The assessee is 50% owner of the immovable property situated at 8/3, Krishnanagar Hospital Road, P.S. West Agartala District- West Tripura. Share of sale consideration received by the assessee is at Rs.50,00,000/-. For the purpose of calculating cost of acquisition as on 01.04.1981, since the property was acquired prior to 01.04.1981, the assessee obtained report from the Registered Valuer. In the valuation report, copy of which is placed at pages 39 to 46 of the paper book, valuer has estimated the fair market value of the property at Rs.1,08,18,000/- and thereafter applying the reverse method of indexation, calculated the cost of property as on 01.04.1981 at Rs.10,00,740/-. However, ld. Assessing Officer while carrying out the assessment proceedings has

calculated the impugned amount by taking the cost of acquisition at Rs.5,00,370/-. The ld. CIT(Appeals) has also confirmed the view of the ld. Assessing Officer.

8. We have, however, failed to find merit in the finding of both the lower authorities for the reason that ld. Assessing Officer has himself noted that the cost of acquisition as on 01.04.1981 is at Rs.5,00,370/- (50% of cost at Rs.10,00,740/-), but while calculating the long-term capital gain has not given the benefit of indexation and in case, he has applied the indexation benefit (i.e. Rs.5,00,370/- divided by 100×1081), the index cost of acquisition would work out at Rs.54,09,000/-, which is more than the sale consideration. The ld. Assessing Officer has nowhere disputed the sale consideration. Even ld. CIT(Appeals) has also adopted the same analogy and even he has considered the cost of acquisition at Rs.5,00,370/-, but again no benefit of indexation has been given. Ld. Assessing Officer has observed in page 4 of the assessment order that the assessee has wrongly considered the amount at Rs.54,09,355/- (i.e. 50% of Rs.1,08,17,750/-) instead of Rs.5,00,370/- (i.e. 50% of Rs.10,00,740/-). Ld. Assessing Officer has himself considered the cost of acquisition at Rs.5,00,370/- based on the valuation report by Registered Valuer, which is fair market value of the property (assessee's share) as on 01.04.1981. For calculating the long-term capital gain, indexed cost of

acquisition is reduced from the sale consideration. However, ld. Assessing Officer has merely reduced the cost as on 01.04.1981 and has calculated the impugned addition. The ld. Assessing Officer has not made any efforts to get the information about the Circle rate of the immovable property as on 01.04.1981. Under these given facts and circumstances, where fair market value of the property as on 01.04.1981 as calculated by the Registered Valuer has been accepted by the ld. Assessing Officer and there being no other evidence of the fair market value of property as on 01.04.1981, we are inclined to hold in favour of the assessee observing that considering the cost of acquisition as on 01.04.1981 at Rs.5,00,370/- (adopted by ld. Assessing Officer), the indexed cost of acquisition would be Rs.54,09,000/-, and since it is higher than the sale consideration, it would result into a long-term capital loss. Therefore, we set aside the finding of ld. CIT(Appeals) and delete the impugned addition made in the hands of assessee. Grounds of appeal of the assessee are allowed

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

Order is pronounced in the open court on April 23rd , 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Manish Borad)
Accountant Member

Kolkata, the 23rd day of April, 2024

Copies to : (1) *Millie Dey,*
Flat-3F, Abira Kaninika,
529, Hemanta Mukhopadhyay Sarani,
Kolkata-700029

(2) *Income Tax Officer,*
(National Faceless Appeal Centre), Delhi
[Income Tax Officer,
Jurisdiction:Ward-25(1), Kolkata]

(3) *Commissioner of Income Tax (Appeals)-*
National Faceless Appeal Centre (NFAC),
Delhi;

(4) *Commissioner of Income Tax-* ,
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.