

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.1356/Kol/2023**  
**Assessment Year : 2016-17**

**Sri Buddhadeb Samadder.....Appellant**  
**49/1B, Tollygunge Road,**  
**Kalighat, Kolkata-700026.**  
**[PAN: BPBPS5750L]**

**vs.**

**ITO, Ward-29(3), Kolkata..... Respondent**

**Appearances by:**

Shri Arya Das, Adv. and Anibarya Das, AR, appeared on behalf of the appellant.  
Shri Pradip Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 08, 2024

Date of pronouncing the order : April 29, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 15.09.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1 For that on the facts of the case, the assessment order passed under section 143(3) of the I.T. Act dated 21.12.2018 by I.T.O Ward 29(3)/ Kolkata and subsequently confirmed by the Ld. C.I.T (Appeal) dated 15/09/2023 are completely arbitrary, unjustified and illegal.*

*2 For that on the facts of the case, the Ld. A.O as well as the Ld. Appellate Authority was wrong in making addition of Rs. 55,81,590/- to the income of the appellant being one of the land-owners even though*

*such sale was made by the developer i.e. M/s R. K Construction from the developer's allocation as per the Joint Venture agreement.*

*3. For that, the Ld. A.O and as well as the Ld. Appellate Authority erred in law as well as fact in considering Flat No. 1A in the First Floor and Flat no. 2B of the Second floor belonged to the appellant instead of M/s R.K Construction (Developer) who became the owner of the said two flats by the virtue by the joint Venture agreement.*

*4. For that, the Ld. A.O and the Ld. Appellate Authority erred in law as well as on fact in not considering the bank statement of M/s R. K. Construction (Developer) clearly shows that the monetary consideration of Rs. 26,00,000 and 26,75,000 for sale of said two flats was credited in the current account of M/s. R. K. Construction.*

*5. For that, the Ld. A.O and the Ld. Appellate Authority failed to take into consideration that your appellant i.e. Buddhadeb Samaddar, along with other land owner Mr. Sunil Kar sold their part i.e. the Landlord's allocation in the subsequent assessment years being 2019-20 and 2021-22 and offered the same for taxation.*

*6. For that even if it is assumed but not admitted that the assessee/appellant had not disclosed income from sale of two flats being Flat no 1A on the first floor and Flat no 2B on the second floor, the undisclosed income from the sale of said two flats should not have fallen upon the appellant solely as the land was jointly owned by the appellant and Mr. Sunil Kar.*

*7. For that the appellant reserves the right to adduce any further ground or grounds, it necessary, at or before the hearing of the appeal.”*

3. At the outset, the ld. counsel for the assessee has submitted that the assessee has owned immovable property. The assessee entered into a joint development agreement with the developer M/s R. K. Construction. That after the development/construction of the property, two flats i.e flat no.1A in the first floor and flat no.2B at the second floor which has come to the share of the developer, were sold by the developer during the year and that the income, if any, relating to the sale of the said flats belonged to the developer and not to the assessee.

That the assessee, Sri Buddhadeb Samadder and the other land owner Mr. Sunil Kar had sold their part of share out of the developed property in subsequent assessment years being A.Ys 2019-20 & 2021-22 and offered the income therefrom for taxation in the said assessment years. However, the income on sale of flat no.1A and flat no.2B was required to be assessed in the hands of the developer i.e. M/s R.K. Construction and not in the hands of the assessee. It has been further pleaded that, even otherwise, the assessee had joint property along with Mr. Sunil Kar and that under the circumstances, the entire income could not have been added in the hands of the assessee. The ld. counsel, therefore, has submitted that since the income from the sale of flats, in question, did not belong to the assessee, therefore, the impugned additions were not sustainable in the hands of the assessee.

4. On the other hand, the ld. DR has submitted that the Assessing Officer has not properly examined the entire facts and circumstances of the case and that the matter be restored to the file of the Assessing Officer for proper appreciating the facts and transactions done in this case.

5. Considering the above submissions of both the parties, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer with a direction that the Assessing Officer will properly examine the entire transaction involved and thereafter to decide the matter in accordance with law. The matter is accordingly restored to the file of the Assessing Officer for de novo assessment on this issue.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

***Kolkata, the 29<sup>th</sup> April, 2024.***

Sd/-

[गिरीश अग्रवाल /**Girish Agrawal**]  
लेखा सदस्य/**Accountant Member**

Sd/-

[संजय गर्ग /**Sanjay Garg**]  
न्यायिक सदस्य/**Judicial Member**

Dated: 29.04.2024.

RS

*Copy of the order forwarded to:*

1. Sri Buddhadeb Samadder
2. ITO, Ward-29(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches