

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2554/Del/2023 : Asstt. Year : 2008-09

Dinesh Gupta, C-31, Sector-30, G.B. Nagar, Noida, Uttar Pradesh-201301	Vs.	Income Tax Officer, Ward-1(1), Nodia, Uttar Pradesh-201301
(APPELLANT)		(RESPONDENT)
PAN No. ACTPG1607J		

Assessee by : Sh. Madhav Kapoor, Adv.

Revenue by : Sh. Om Prakash, Sr. DR

Date of Hearing: 16.04.2024

Date of Pronouncement: 30.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 10.07.2023.

2. Following grounds have been raised by the assessee:

"1. That the Ld. CIT(A) has erred in law by upholding the action of Ld. A.O. in confirming the additions made by the Ld. AO for Rs. 45,08,000/- on account of difference between the actual sale consideration and value adopted under Section 50C without appreciating the prevailing facts and circumstances of the case vide CIT(A)'s order dated 10.07.2023.

2. That the Ld. CIT(A) in view of the prevailing facts and circumstances of the case has erred in law in confirming the action of the Ld. AO by wrongly adopting the circle rate value u/s 50C for the A.Y. 2008-09 i.e. at the time of execution of the lease deed instead of correctly adopting the circle rates for A.Y. 2002-03 i.e. at the time of execution of the Agreement to sell. Thus, the said addition on account of difference between actual sale consideration and value adopted u/s 50C for Rs. 45,08,000/- deserves to be deleted.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) order passed on 10.07.2023 is in gross violation of principles of natural justice and that too without proper application of mind, is illegal and bad in law.

4. That the Ld. CIT(A) has erred in law in upholding the Assessment Order dated 18.03.2014 having been passed by the Ld. AO without adequate jurisdiction under Section 143(3)/147 vide CIT(A)'s order dated 10.07.2023 in view of the prevailing facts and circumstance of the case. Thus, the entire Re-assessment proceedings is bad in law and void-ab-initio.

5. That the Ld. CIT(A) has erred in law in upholding the Assessment Order dated 18.03.2014 having been passed by the Ld. AO without the statutory and compulsory notice under Section 143(2) of the Income Tax Act, 1961 vide CIT(A)'s order dated 10.07.2023 which makes the entire Re-assessment proceedings is bad in law and void-ab-initio.

6. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law in confirming the addition made by the Ld. AO for Rs. 45,08,000/- without following the proper procedure laid down under the provisions of Section 147 to 151 of the Income Tax Act, which makes the entire proceedings bad in law and void-ab-initio.

7. That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the impugned assessment order having been passed in gross violation of principles of natural justice and without affording reasonable opportunity, is illegal and bad in law.

8. That the Ld. A.O. has erred in law and on facts of the case in charging interest u/s 234A, 234B and 234 C of the Income Tax Act, 1961."

3. The only issue in the present appeal relates to the addition of Rs. 45,08,000/- (Rs. 54,34,000 – Rs.9,26,000) made u/s 48 of the Income Tax Act, 1961 on account of alleged difference between the actual sale consideration i.e. Rs. 9,26,000/- and value adopted u/s 50C after deeming the sale consideration to be at Rs. 54,34,000/- as per the stamp value rates as on the execution of Lease deed between the assessee and the buyer as on 16.10.2007 instead of the stamp value rates as on the date of agreement to sell i.e. 07.02.2003.

4. Brief facts of the case are that the assessee had been allotted a residential plot under the category of 250-300 sq. mtr. by the Noida Authority vide allotment letter no. NOIDA/AGMR/SCJ.2001(1)/2002/11605 dated 30.03.2002. Accordingly, Noida Authority allotted Plot no. 122, Block-C, Sector-122, Noida to the assessee. Copy of the said Allotment Letter dated 30.03.2002 is on record.

5. Thereafter, the assessee entered into an 'Agreement to sell' dated 07.02.2003 with Smt. Savita Sharma (Buyer) wherein he has transferred and relinquished all his legal rights in Plot no. 122, Block-C, Sector-122, Noida for a sale consideration of Rs. 9,26,000/- out of which he received a sum of Rs. 4,50,000/- by cheques nos. 260769, 227522 and 227523 dated 07.02.2003 and the remaining balance was to be paid by the said buyer directly to the Noida Authority as per the schedule of the Noida Authority. Copy of the said Agreement to Sell dated 07.02.2003 is on record.

6. Subsequently, after the execution of lease deed in favour of the assessee by the Noida Authority vide Lease deed dated 10.09.2007, the assessee and the buyer (Smt. Savita Sharma) executed a Lease deed dated 16.10.2007, mentioning the details of the Agreement to Sell dated 07.02.2003 vide Page no. 9 to 14 of the said Lease deed executed on 16.10.2007. Copy of the said Lease Deed dated 10.09.2007 and copy of the said Lease Deed dated 16.10.2007 executed in favour of the buyer (Smt. Savita Sharma) by the assessee is on record.

7. The assessment for the year under consideration in the case of the assessee was completed vide Assessment Order

dated 18.03.2014 under section 143(3)/147 by making an addition of Rs. 45,08,000/- (Rs. 54,34,000 - 9,26,000) made under section 48 after considering the sale consideration at Rs. 54,34,000/- under section 50C instead of the actual sale consideration for Rs. 9,26,000/-, by adopting the circle rates at the time of execution of Lease deed between the assessee and the buyer i.e. 16.10.2007, by ignoring the Agreement to Sell executed between the assessee and buyer on 07.02.2003 for a consideration of Rs. 9,26,000/-.

8. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the order of the Assessing Officer.

9. Aggrieved, the assessee filed appeal before the Tribunal.

10. Heard the arguments of both the parties and perused the material available on record.

11. The provisions of Section 50C being reproduced here under:

"Special provision for full value of consideration in certain cases.

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.”

12. The rate adopted for working out the taxable sale consideration under Section 50C for the purpose of calculating taxable capital gains for the year under consideration, shall be that of the date on which the agreement fixing the amount of consideration i.e. agreement to sell was executed which is 07.02.2003 and not be that of the date of which the Lease deed was executed i.e. on 16.10.2007. Moreover, it is also not out place to mention here that the payment made by the buyer to the seller in lieu of the said Agreement to Sell dated 07.02.2003, and payments were also made vide cheques dated 07.02.2003 itself.

13. Thus, it can be found that the assessee was allotted a plot by Noida Authorities. He entered into an agreement to sell on 07.02.2003 and the amount of Rs. 4,50,000/- have been duly received by the assessee. The remaining amount of Rs.4,76,000/- has to be paid to the Noida Authorities as per the payment schedule of Noida Authorities. The assessee has paid the remaining amount to Noida Authorities in 2007 and the Noida Authorities had duly executed the lease deed in favour of the buyer. Thus, the transaction between the buyer and the assessee was concluded in 2003 itself. The buyer has not paid the remaining amounts to the assessee but to the Noida Authorities who inturn transferred the lease to the buyer and since, the amount of Rs.9,26,000/- the circle rate as on the date of agreement and since the remaining amounts have been paid not to the assessee but to the Noida Authorities, keeping in

view the fact that the transaction between the assessee and the buyer was concluded 2003 itself as per the prevailing circle rate, in the specific facts of the instant case, it is hereby held that no addition is called for u/s 50C of the Income Tax Act, 1961.

14. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 30/05/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 30/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR