

IN THE INCOME TAX APPELLATE TRIBUNAL "H (SMC)"BENCH
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.2720/MUM/2024
(A.Y.2013-14)

Farhana Mushtaq Begum Plot No. 373, Poonam Nagar, Mahakali Caves Road, Andheri (E), Mumbai – 400 093.	Vs.	ITO, Ward – 30(1)(3) C-13, 5 th Floor, Pratyakshar Bhavan, Bandra (E), Mumbai.
PAN/GIR No. AUBPB4014C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Mr. Mohammed Shahab Khan, Adv
Respondent by	Ms.Jancy Elizabeth Rani. Sr.DR

सुनवाई की तारीख/Date of Hearing	25.07.2024
घोषणा की तारीख/Date of Pronouncement	26.07.2024

ORDER

PER RENU JAUHRI, AM:

The appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-55, Mumbai (in short "CIT(A)") passed u/s 143(3) of the Income Tax Act, 1961 (in short "the Act"). The assessee has raised the following grounds of appeal:

The Hon'ble Commissioner of Income Tax (Appeals) 55, Mumbai seriously erred in law and on the facts and in the circumstances of the case, in confirming the Impugned

Assessment Order passed by the Learned Income Tax Officer, Ward 30(1)(3), Mumbai, dated: passed U/s 143(3) of the Income Tax Act, 1961, dated 30/03/2016, Assessing Alleged Income at Rs. 28,08,777/-, being Alleged Addition of Rs. 18,33,820/- on account of Short Term Capital Gains and treated as Alleged Income U/s 50C(1) of the Income Tax Act, 1961 without appreciating that the Valuation of the Capital Asset by the DVO (Valuation Officer) on reference by the Ld Assessing Officer resulting in the Valuation Report dated 14/09/2023 vide No. VO-1/MUM/CGT/2023-24/576 determining the Fair Market Value of the Property to be Rs. 49,28,000/- stands to be the Stamp Duty Value of the said Capital Asset.

2. The brief facts are return for A.Y 2013-14 was filed declaring income of Rs. 9,74,957/- on 26.09.2013. Assesment was completed u/s 143(3) of the Act on 30.03.2016 at an income of Rs. 28,08,777/- after making addition of Rs. 18,33,820/- u/s 50C of the Act. The assessee had sold the residential flat located at Borivalli, Mumbai for a consideration of Rs. 41,00,000/- vide sale deed dated 0403.2013. Short term capital gain of Rs. 3,00,000/- was offered for taxation after reducing the cost of acquisition of Rs. 38,00,000/-. As the stamp duty was charged on the value of flat at Rs. 59,33,820/-, the AO added the difference of Rs. 18,33,820/- u/s 50C of the Act. During the Appellate proceedings, the Ld. CIT(A) directed the AO to refer the valuation of flat to the District Valuation Officer (in short "DVO") for determining fair market value (in short "FMV") in terms of Sec. 50C(2) of the Act. The valuation by the DVO was done at Rs. 49,28,000/- and disregarded the valuation. However, the Ld. CIT(A) confirmed the addition made by the AO by

holding that Sec. 50C(3) was not applicable in the case of assessee.

3. Before us, the Ld. AR has submitted that once the DVO has determined the FMV at Rs. 49,28,000/- the same ought to have been considered for computing short term capital gains.

4. We have carefully considered the rival submissions as well as provisions of Sec. 50C of the Act. We are of the view that once DVO has determined the FMV of the property on a reference made by the Department, the same had to be relied upon while calculation the short term capital gains. We accordingly direct the AO to calculate the short term capital gains, taking into account FMV as determined by the DVO.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26.07.2024.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai, Dated:26/07/2024

KRK

ITA No. 2720/MUM/2024
Farhana Mushtaz begum,
Mumbai

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai