

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 561/PAT/2022  
Assessment Year: 2012-2013**

**Alok Kumar,..... Appellant  
S/o. Ram Kumar Singh,  
Kankapuri, Near East Gate of Jain College,  
Arrah-802301, Bihar  
[PAN: BQFPK2666C]**

**-Vs.-**

**Income Tax Officer,.....Respondent  
Ward-1(4), Arrah,  
Katira Road, Arrah-802301,  
Bihar**

**Appearances by:**

*N o n e, appeared on behalf of the assessee*

*Shri Ashwani Kumar, Sr, D.R., appeared on behalf of the  
Revenue*

Date of concluding the hearing : September 24, 2024

Date of pronouncing the order : October 10, 2024

**O R D E R**

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

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

National Faceless Appeal Centre (NFAC), Delhi dated 13<sup>th</sup> September, 2022 passed for A.Y. 2012-13.

2. In response to the notice of hearing, no one has come present on behalf of the assessee. Shri Rakesh Kumar, Advocate, had appeared earlier and sought adjournment on behalf of the assessee, but on 24.09.2024, he expressed no instruction on behalf of the assessee. Therefore, with the assistance of ld. D.R., we have gone through the record carefully and proceed to decide the appeal *ex-parte qua* the assessee.

3. Though the assessee has taken ten grounds of appeal, but in substance, solitary grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the addition of Rs.42,39,000/-, which was made by the ld. Assessing Officer in an assessment order passed under section 144 read with section 147 of the Income Tax Act. The assessee in other grounds has raised number of technical issues, namely reopening is bad, 143(2) notice was not served, DIN was not quoted in the impugned orders, but he did not buttress these issues by submitting any paper book or material before the Tribunal. Therefore, we adjudicate only one issue, namely whether addition of Rs.42,39,000/- is sustainable or not.

4. Brief facts of the case are that the assessment order commenced with reference to some report from Intelligence and Criminal Investigation, Dhanbad in the case of Shri Mahesh Kumar Sharma, Deogarh. The ld. Assessing Officer further observed that M/s. Ara-Sasaram Light Railway Company was under liquidation. Some property measuring 72 Decimal at Mouza Anaith at Arrah was put on sale by its Power of Attorney holder Shri Mahesh Kumar Sharma. This Tribunal is not adjudicated any issue regarding genuineness of that sale nor it is deciding the title. It is only deciding the tax implication, if any, fallen in the hands of Shri Alok Kumar by virtue of that sale.

5. The ld. Assessing Officer was of the view that sale deed was registered by declaring sale consideration of Rs.48,64,000/-, whereas Stamp Duty Valuation Authorities have determined its value for the purpose of charging the Stamp at Rs.1,59,60,000/-. The ld. Assessing Officer has observed that section 50C of the Income Tax Act would contemplate that for the purpose of computing capital gain under section 48 of the Income Tax Act, full value of consideration is to be construed equivalent to the amount on which Stamp Duty was charged. In other words, for example, full value of consideration in a sale deed is determined at Rs.100/-, but Stamp Duty Valuation Authorities have charged the same at Rs.150/-, then, for

the purpose of computing capital gain under section 48 of the Income Tax Act, the full value of the property would be construed at Rs.150/-. This deeming fiction is provided in section 50C of the Income Tax Act. The ld. Assessing Officer made a reference to section 50C and observed that full value of sale consideration is being taken at Rs.1,69,56,000/-. Since the assessee has purchased 25% of the total land, hence, in his hand, he deemed as an unexplained investment of Rs.42,39,000/-. Accordingly, he made the addition.

6. On due consideration of the above record, we are of the view that this addition is not sustainable because the assessee is a vendee and not the vendor. Section 56(2)(vii) of the Income Tax Act has been introduced in the Statute Book by the Finance Act, 2013 w.e.f. 1<sup>st</sup> April, 2014. This section provides deeming fiction of deemed gift. Sub-clause (vii) of section 56(2) would contemplate that if a vendee purchased a property, for example, Rs.100/- and Stamp Duty Valuation Authority has determined the value of such property at Rs.150/-, then purchase cost would be deemed equivalent to Rs.150/- and the difference between both is to be added under the head "deeming gift" in the hands of the purchaser. There are other exceptions provided in the section and deeming fiction would be invoked subject to those exceptions. The assessment year involved herein is A.Y. 2012-13, therefore, no deeming

fiction could be invoked in the hands of the purchaser in this A.Y. The reference to section 50C is meant for the vendor and not for the vendee. In other words, it is meant for the seller and not for the purchaser. Therefore, this inference by the ld. Assessing Officer is contrary to the law and absurd one. Apart from the above, we find that total purchase consideration has been disclosed at Rs.48,60,000/-. This has not been debited from the alleged deemed gift. 1/4<sup>th</sup> of this at least ought to have been reduced from the total addition worked out by the ld. Assessing Officer. We do not have any hesitation in observing that both the revenue authorities have acted against the assessee with the vindictive approach without appreciating the right controversy and without understanding the issue. Hence, the additions made in the hands of the assessee are not sustainable. It is deleted.

**7. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 10.10.2024.

Sd/-

**(Manish Borad)**  
**Accountant Member**

**Kolkata, the 10<sup>th</sup> day of October, 2024**

Sd/-

**(Rajpal Yadav)**  
**Vice-President**

*Copies to :(1) Alok Kumar,  
S/o. Ram Kumar Singh,  
Kankapuri, Near East Gate of Jain College,  
Arrah-802301, Bihar*

- (2) *Income Tax Officer,  
Ward-1(4), Arrah,  
Katira Road, Arrah-802301, Bihar*
- (3) *Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC),  
Delhi;*
- (4) *Commissioner of Income Tax- ;*  
(5) *The Departmental Representative*  
(6) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***