IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.3525/Del/2024
(ASSESSMENT YEAR 2016-17)

Abhinav Malik D 114, Saket, Delhi-110 017 PAN:AIYPM6590K	Vs.	Income Tax Officer, Ward-31(1), Delhi.
(Appellant)		**(Respondent)**

Assessee by	Divya Gujral, CA
Department by	ShriYogesh Kumar Nayyar, Sr. DR

Date of Hearing	11/12/2024
Date of Pronouncement	27/12/2024

O R D E R

PER BENCH:

This appeal by assessee is arising out of the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in appeal No. CIT(A), Delhi-11/10248/2018-19 vide order dated 13/06/2024. Assessment was framed by ITO, Ward-31 (1), Delhi for Asst. Year 2016-17 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 13/12/2018.

2. The only issue raised by assessee as regards to the order of CIT(A) in restricting the addition at Rs.35,11,070/- as against made by AO at Rs.1,11,68,140/- as income from other sources. To this issue is following two facets were raised by assessee:

(i) That the transaction in hand i.e., the property transacted located at 18, Block, F, Sector-8, Noida (U.P.) was in lieu of family settlement and hence not accessible to tax u/s 56(2)(vii)(b) of the Act.

(ii) The above stated property is a lease hold property and hence the provision of Section 50C of the Act does not apply.

3. Brief facts of the case are that assessee filed his return income, as an individual, for the Asst. Year 2016-17 on 17/10/2016 and the return was processed u/s 143(1) of the Act. Subsequently, the assessee's case was selected for scrutiny assessment under CASS. The AO during the course of assessment proceedings noticed that the assessee has purchased one property from a partnership firm M/s Abhinav Exports, whose partners are Shri Ateek Malik and Smt. Shailly Malik. The Assessing Officer on perusal of the transfer-cum-change in constitution deed dated 21/03/2016, noted that M/s Abhinav Exports has transferred 50% shares in Plot No.18, Block-F, Sector-8, Noida, (U.P.) for a sum of Rs.1.20 Cr. against the circle rate of this property mentioned in the sale deed at Rs.2,31,68,140/. The AO noted the provisions of Section 56(2)(vii)(b) of the Act and stated that where the person

purchase an immovable property for a sale consideration which is less than its circle rate, the difference between consideration and the circle rate is if more than Rs.50,000/-, then such difference shall be deemed to be the income of such person and would be taxable under the head income from other sources. Finally, he noted that assessee is an individual and received immovable property, the circle rate of which exceeds the sale consideration by a sum of Rs.1,11,68,140/-, therefore, provisions of section 56(2)(vii)(b) are clearly attracted. He required the assessee to explain through show cause notice, the assessee replied by letter dated 11/12/2018. The relevant reply of the assessee reads as under:

> *"Abhinav Exports transferred the property to its retired partner Shri Abhinav Malik due to the wish of demised partner Shri Shakti Kumar Malik (father of Ateev Malik and Abhinav Malik). It was the wish of Late Shri Shakti Kumar Malik that the property of the partnership firm Abhinav Exports which is closely held by family members Shri Ateev Malik, Shri Abhinav Malik, SmtShailly Malik, Mrs Raj Malik (not alive mother of Ateev Malik and Abhinav Malik) should not be transferred to outsiders, it should be transferred within the partners on account of the disputes among the partners.*
>
> *That the partner Abhinav Malik decided to retire from the partnership firm and the constitution of the firm was to carry on with two partnesAteev Malik and Shailly Malik.*
>
> *That to avoid the dispute and dissolution of the firm the partners decided to come a solution within family members. That it was also difficult to avoid the disputes where the whole business of the firm wouldhave been closed which would lead to heavy losses to the assessee. That it was also difficult at that time to find any outsider to buy the property of the firm. That to avoid the disputes among partners, to honour the wish of the demised partner Shri Shakti Kumar Malik and smooth running of the firm, the Abhinav Exports decided through its partners to transfer the property to retired partner Shri Abhinav Malik.*

It is requested to your goodself to consider this as transfer and settlement of the property amongst the partner and not a sale. That section 56 (2) (vii) (b) is not applicable in the above said case."

The AO has not accepted the plea of the assessee and added the differential amount of Rs.1,11,68,140/- being excess of circle rate over the sale consideration paid by assessee for purchase of immovable property, which was added as income from other sources. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after going through the facts of the case rejected the claim of family settlement that the family settlement does not apply to the transaction covered u/s 56(2)(vii)(b) of the Act. For this CIT(A) observed in para 6.2 as under:

"6.2 The submissions filed by the appellant have been quoted above. The appellant has claimed the impugned transactions to be in the nature of family settlement between the partners and as a result of that a document for change in the constitution of the ownership of the impugned property was executed. The appellant claimed that the appellant accordingly got entitled to 50% of the lease hold rights of the property and in this regard paid a sum of Rs. 1,20,00,000/- to his brother and sister-in-law as a part of family settlement. The appellant submitted the Memorandum of Understanding and a copy of valuation report of the departmental Valuation Officer dated 02.05.2019 which was conducted during the separate assessment proceedings conducted in the case of the firm M/s. Abhinav Exports w.r.t. the same property. The said request for admission of additional evidences submitted by the appellant along with the valuation report, along with the additional ground taken by the appellant has been quoted above. The same have been perused along with the other submission of the appellant. The MOU submitted by the appellant has been perused and it is noted that it is between Shri Ateev Malik and the appellant. It states that it was the wish of Late shri Shakti Malik, who was the partner of the firm that the property being factory of the partnership firm should go to his younger son Shri Abhinav Malik and that the factory should remain within the family and not sold outside. It has been claimed

that there were dispute and difference between the two parties w.r.t. this factory and w.r.t. the partnership business and to avoid litigationetc., this settlement was arrived at. It was decided that Shri Abhinav Malik, who was 50% partner in the firm would retire from the firm and will give the right to operate the firm to Shri Ateev Malik and Smt. Shailly Malik, wife of Shri Ateev Malik and partner of Abhinav Exports. Shri Abhinav Malik shall get the entire ownership and possession of the factory building and would pay a some of Rs 1.2 Crore to Shri Ateev Malik and Smt. Shailly Malik. The appellant has claimed that in its submission that Section 56(2)(vii)(b) provide for exception and states that this clause shall not apply to any sum of money or any property received from any relative and accordingly submitted that since the property was received from relative, section 56(2)(vii)(b) of the Act was not applicable. These claims of the appellant are however not found correct. The section clearly lays down that the Clause shall not apply to any sum of money or property received from any 'relative'. Section 2(41) of the Act defines 'relative' in relation to an individual means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual. Here the impugned property has been received by the appellant 'individual from M/s. Abhinav Exports who is the owner of the impugned property. M/s. Abhinav Exports is not covered by the definition of 'relative' of the appellant. Section 56(2)(vii) (b) of the Act as applicable to the instant A.Y. get invoked when an individual/ HUF receives immovable property from any person. Here the appellant is an individual and the firm M/s. Abhinav Exports is covered as 'person'. Hence, the claims made by the appellant regarding non applicability of the provision 56(2)(vii) (b) of the Act are found incorrect, and therefore the grounds of appeal disputing the applicability of this provision are dismissed. The claims of the appellant that the assessment order is bad in law and on facts made in ground 1 is dismissed, since the assessment order has been passed as per law after discussing the relevant facts."

The CIT(A) has not accepted the claim and aggrieved the assessee is in appeal before the Tribunal.

5. Before the Tribunal, assessee raised the above noted issue on two facets. The first facet is that the transaction in hand i.e., the property transacted located at 18, Block, F, Sector-8, Noida (U.P.) was in lieu of family settlement and hence not accessible to tax u/s 56(2)(vii) (b) of the Act. Ld. Counsel for the assessee stated that the

CIT(A) erred in upholding the addition of Rs.35,11,070/- in the hands of the assessee by not accepting the fact that the entire transaction was in the nature of family settlement and, therefore, the provisions of section 56(2)(vii)(b) of the Act does not apply the transactions carried out through family settlements. Ld. Counsel drew our attention to the provisions of section 56(2)(vii)(b) of the Act. She particularly drew our attention to proviso that the proviso of section 56(2)(vii)(b) of the Act does not apply and the relevant proviso reads as under:

> *"Provided further that this clause shall not apply to any sum of money or any property received-*
>
> *(a) from any relative; or*
> *(b) on the occasion of the marriage of the individual; or*
> *(c) under a will or by way of inheritance; or*
> *(d) in contemplation of death of the payer or donor, as the case may be; or*
> *(e) from any local authority as defined in the Explanation to clause (20) of section 10; or*
> *(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or*
> *(g) from any trust or institution registered under section 12AA (or section 12AB); or*
> *(h) by way of transaction not regarded as transfer under clause (vich) or clause (vid) or clause (vii) of section 47"*

She stated the facts that the assessee and his family members entered to memorandum of family settlement dated 05/12/2015, copy of which is enclosed in assessee's paper book at pages 21 to 24. She drew our attention to the clause 2,3,4 & 5 which reads as under:

"2. That is mutually decided that Shri Abhinav Malik (Party No 2) having 50% share in the partnership firm, Abhinav Exports shall retire from the partnership firm without any benefits and will give the night to operate the firm to Shri AleekMalik (Party No. 1) and Smt. Shailly Malik. Further. Shri Abhinav Malik (Party No. 2) shall get the entire ownership and possession of the factory building F-18, Sector 8, Noida UP and pay a sum of Rs. 1.20 crores to Shri Ateek Malik (Party No. 1) and Smt. Shailly Malik as settlement amount.

3. That Shri Ateek Malik (Party No 1) and Smt. Shailly Malik, both partners of Abhinav Exports shall execute the Transfer Cum Change in Constitution Deed (CIC) of the property / Plot No. F-18, Sector-8. Noida UP, in favour of Shri Abhinav Malik (Party No. 2)

4. That ShnAbhinav Malik (Party No. 2) shall cease to be a partner of Abhinav Exports with effect from 15th of March, 2016.

5. That it is mutually decided between both parties that the other properties left behind by their father Late Shri Shakti Malik shall be divided equally between the brothers, Shi Ateek Malik and Abhinav Malik."

In view of the above, she stated that all the properties were divided between the brothers i.e., Shri Ateek Malik and present assessee Shri Abhinav Malik and the family settlement was entered first i.e., on 05/12/2015 and this property was transferred by the sale deed dated 11/03/2016 which is enclosed in assessee's paper book at page 47 to 145 and particular page 47, it has been described as transfer-cum-change on constitution deed and not as sale deed. We noted that the assessee made statement that as a part of family settlement, M/s Abhinav Exports, a partnership first was transferred all property to its retired partner Sh. Ateek Malik as per wish of father his and the demise partner Shri Shakti Malik, who is father of the present assessee and his brother Shri Ateek Malik. The assessee pointed out that the Shri Ateek Malik retired from the

partnership from 15/03/2016 and reconstitution of the firm was done with the other two partners i.e., Shri Ateek Malik and Smt. Shailly Malik and the present property in question was transferred to Shri Ateek Malik in term of the family settlement. When these facts were confronted to Ld. Sr. DR, he could not controvert the family settlement or could not point out any contradiction in documents.

6. Hence, in the given facts, we are of the view that this property transfer was clearly on account of family settlement and the assessee being erstwhile partner was having interest in the property i.e., located at-18 Block-F, Sector-8, Noida (U.P.). Even the sum of Rs.1.20 Cr. paid out by the assessee to his brother and sister-in-law as part of the family settlement entered between family members dated 03/12/2015. We noted that the above transaction is on account of family settlement and this family settlement seems to be bonafide family settlement which was not controverted by the Department. This family settlement is an agreement to resolve the future dispute in the family and to maintain the unity in the family, thereby, fostering the concept of brotherhood. This issue stand covered by the decision of Co-ordinate Bench of the ITAT, Chennai Bench, order dated 09/09/2022 wherein the Tribunal has considered various case laws and finally held that the transactions entered into by family members by way of family settlement and consequent realignment of properties or interest therein does not

amount to transfer, thereby, invoking the provisions of capital gain under Income Tax Act. The Tribunal held as under:-

" 7. From the facts, it emerges that during assessment proceedings, the assessee was confronted with the applicability of s.56(2)(vii) since the assessee purchased a property from GTPL for a consideration of Rs.10 Lacs as against its stamp duty value which was much higher. The assessee was show-caused as to why the market value of property as per s. 56(2)(vii) of the Act be not taken as 'income from other sources' and added to the income of the assessee. The assessee submitted that the provisions of Section 56(2)(vii) of the Act would not apply for any property received under a will or by way of inheritance. The question of taxability would not arise at the time of settlement or at the time of partition since the same is entrusted to the family members on the demise of other family member.
8. It could be noted that the assessee's late Father Dr. B. Sivanthi Adityan expired on 19-04-2013 and this property was held by M/s. GTPL. This entity is family-owned entity and its entire shareholding was held by assessee's father and brother, a fact which is undisputed since the same is evidenced by documents filed by GTPL to Registrar of Companies. It could be seen that the father was holding 95% shareholding whereas remaining 5% were held by the brother Shri S. Balasubramaniun. A fact to be noted is that GTPL is family promoted entity out of joint family funds. This is also clear from the recitals of Deed of declaration-cum-undertaking as executed by Shri S. Balasubramaniun on 09-12-2013 upon expiry of Dr. B. Sivanthi Adityan on 19-04-2013.

9. After the demise of the father, the family members decided to partition and settle their family properties including the movable and immovable properties. In terms of the said deed-cum-declaration dated 09-12-2013, the property devolved upon the assessee. However, since the property was held in the name of GTPL, such settlement could not be affected by GTPL, it being separate legal entity having separate legal existence. Accordingly, to settle the property, a sale deed was executed by GTPL at consideration of Rs.10 Lacs which was shown to meet the transfer expenses and was not a sale consideration since the stamp duty value was much higher figure of Rs.445 Lacs. On the basis of these facts, it was alleged by Ld. AO that the GTPL parted with the property at much less than market value and the assessee being recipient of the property, would be assessable for differential amount as 'income from other sources'. However, this conclusion overlooks the basic fact that sale deed was executed pursuant to family settlement as agreed upon by the family members vide declaration-cum- undertaking. The genuineness of this document is not in doubt.

10. As rightly submitted by the assessee, a family settlement was nothing but an arrangement or an understanding between the members which resolves the family disputes and the rival claims of the members of the family are settled provided the settlement was bona-fide and fair in the allotment of properties amongst the members of the family. Settlement of bona-fide disputes, the purpose of which is to bring about harmony or maintaining peace or tranquility amongst family members would be sufficient consideration for a family settlement. Such settlement could not be termed as 'transfer' under the Income Tax Act.

11. The Hon'ble Supreme Court in the case Tek Bahadur Bhujil V/s Devasingh Bhujil AIR 1966 SC 292 has held that a family arrangement could be arrived at orally and its terms may be recorded in writing subsequently as memorandum of what has been agreed upon between the parties at an early date and such a document do not require registration.

12. Further, Hon'ble Supreme Court in the case of Ram Charan Das V/s Girja Nandini Devi AIR 1965 SC 323 held that bona-fide family settlement amongst family members to put an end to disputes between themselves would not amount to 'transfer' and it is also not the creation of an interest. In a family settlement, each party would take a share in the property by virtue of independent title which is admitted to the extent by the other party. All the members of the family have a sole right for equitable division of properties. If any dispute arises, it may involve family arrangement which is nothing but a device by which disputes or foreseeable disputes between the family members as to their respective property rights are settled. The settlement only defines pre-existing joint-interest as separate interest and hence, there would be no conveyance.

13. The decision in CIT V/s Shanthi Chandran 241 ITR 371 also support the case of the assessee wherein it was held that where an asset is acquired on a family arrangement then it is at par with an asset acquired on partition or any other succession.

14. Further, in the decision of Hon'ble Supreme Court in Rangasami Gounden V/s Nachiapa Gounden (AIR 1918 PC 196) it was held that family settlement was nothing but realignment of interest among the family members and such an arrangement would not amount to 'transfer'.

15. The Hon'ble High Court of Madras in CIT V/s AL Ramanathan (245 ITR

494), considering the principle laid down by Hon'ble Supreme Court in Kale V/s Deputy Director of Collection (1976 AIR 807), held as under: -

> *2. A perusal of the records goes to establish that the dispute arose in that family and the family arrangement was arrived at in consultation with the panchayatdars and accordingly re-alignment of interest in several properties had resulted. The family arrangement was arrived at in order to avoid continuous friction and to maintain peace among the family members.*

The family arrangement is an agreement between the members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. So, family arrangements are governed by principles which are not applicable to dealings between strangers and the family arrangement among them is for the interest of the family, for the harmonious way of living. So, such re-alignment of interest by way of effecting a family arrangement among the family members would not amount to transfer.

3. This court has held in CIT v. R. Ponnammal [1987] 164 ITR 706 that (headnote):

> *". . . the family arrangement had been brought about by the intervention of the panchayatdars and this clearly showed that the sons and daughters of the assessee were laying claims to the property which the assessee got under the will of her father and it was not relevant at the time when the family arrangement was entered into to find out as to whether such claims if made in a court of law would be sustained or not. If the assessee found it worthwhile to settle the dispute between herself, her sons and daughters by making the family arrangement, the said arrangement could not be ignored by a tax authority. In view of the finding of the Tribunal, the family arrangement dated December 17, 1971, had to be held to be a valid piece of document and, hence, the Tribunal was right in its view that no transfer of property was involved within the meaning of Section 2(xxiv) of the Gift-tax Act and, hence, there was no liability to gift-tax either under Section 4(1)(a) or under Section 4(2) and consequently no question of inclusion of the income of the minor in the hands of the assessee would also arise."*

4. It is the settled law that when parties enter into a family arrangement, the validity of the family arrangement is not to be judged with reference to whether the parties who raised disputes or rights or claimed rights in certain properties had in law any such right or not. In Maturi Pullaiah v. Maturi Narasrmham, AIR 1966 SC 1836, the Supreme Court has observed that (page 1841) ;

"Briefly stated, though conflict of legal claims in praesenti or de future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it."

5. In Kale v. Deputy Director of Consolidation, , the Supreme Court has laid down the propositions which are the essentials of a family arrangement that (page 812):

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence ;"

6. The Tribunal, on the facts, found that the family arrangement involved in this case appears to be a bona fide one inasmuch as it has been shown to have been made voluntarily and not induced by any fraud or collusion and the conduct of the parties referred to by the Revenue is consistent with the bona fide family arrangement particularly when it was arrived at in the presence of panchayatdars. So, the family arrangement is a bona fide one and it was effected to dissolve the family dispute.

7. Applying the principles laid down in the decisions cited supra, we hold that the family arrangement involved in this case does not amount to transfer. The Tribunal is perfectly justified in taking the view that the transaction of the assessee being a family arrangement did not amount to transfer and therefore, there was no chargeable capital gain arising from that transaction. So, the transaction of the assessee did not amount to transfer and there was no chargeable capital gain arising from that transaction."

In view of the above factual aspects and the various case laws as discussed in the decision of ACIT vs. Ms. Anita Kumaran (supra) by Chennai Bench of ITAT, we hold that the property under question is transferred by way of family settlement not exigible to capital gains.

Hence, we delete the addition and allow the AO to re-compute the income accordingly.

7. As regards to second aspect, whether the lease hold property can be subject matter of the provisions of section 50C of the Act or not. We noted that this property is a lease hold property and assessee has transferred lease hold rights transfer lease and this property was received by assessee partnership firm on the basis of lease hold rights in January, 2006. The relevant clause when this lease hold rights were acquired by assessee is given in lease deed executed on 2nd January, 2006 which is as under:-

> *"AND WHEREAS the Lease Deed in respect of the said property has been executed by the Noida Authority on 26-09-1981, in favour of SHRI JOGINDER PAUL SURI S/O LATE SHRI DEV RAJ SURI, R/O J-6/32, RAJOURI GARDEN, NEW DELHI, PROP. OF M/S CROMOLAC STEELS (INDIA), as Lessee for the term of 90 years from 12-12-1979, and the same was registered in the office of Sub-Registrar at Noida in Book No. I, Volume No.96, on pages 281/307, as Document No.3964 and 3965, DATE 14-10-1981."*

Admittedly this is a lease hold property and this issue stands covered by the decision of ITAT, Kolkata Bench in the case of DCIT vs. Tejinder Singh in ITA No. 1459/Kol/2011, dated 29th February, 2012 wherein the Tribunal has considered this issue and held as under:-

> *"8. A plain look at the undisputed facts of this case clearly shows that the assessee was a lessee in the property which was sold by the KSCT; there is no dispute on this aspect of the matter. Yet, the Assessing Officer has treated the assessee a seller of property apparently because the assessee*

was a party to the sale deed, and because, according to the Assessing Officer, "consideration is paid on sale of the property for giving up right of the owner of the property" and that "in the case of leasehold property, the right of owner is divided between lessor and lessee". We are unable to share this line of reasoning. It is no t necessary that consideration paid by the buyer of a property, at the time of buying the property, must only relate to ownership rights. In the case of tenanted property, as is the case before us, while the buyer of property pays the owner of property for ownership rights, he may also have to pay, when CO N o. 6 2 / Kol / 2 0 1 1 an d I . T. A . N o. : 1 4 5 9 / Kol. / 2 0 1 1 A s s e s s m e n t y e ar : 2 0 0 8 - 0 9 he wants to have possession of the property and to remove the fetters of tenancy rights on the property so purchased, the tenants towards their surrendering the tenancy rights. Merely because he pays the tenants, for their surrendering the tenancy rights, at the time of purchase of property, will not alter the character of receipt in the hands of the tenant receiving such payment. What is paid for the tenancy rights cannot, merely because of the timing of the payment, cannot be treated as receipt for ownership rights in the hands of the assessee. This distinction between the receipt for ownership rights in respect of a property and receipt for tenancy rights in respect of a property , even though both these receipts are capital receipts leading to taxable capital gains , is very important for two reasons - first, that the cost of acquisition for tenan cy rights, under section 55(2)(a), is, unless purchased from a previous owner - which is admittedly not the case here , treated as 'nil'; and, - second, since the provisions of Section 50 C can only be applied in respect of "transfer by an assessee of a ca pital asset, being land or building or both", the provisions of Section 50 C will apply on receipt of consideration on transfer of a property, being land or building or both, these provisions will not come into play in a case where only tenancy rights a re transferred or surrendered. It is, therefore, important to examine as to in what capacity the assessee received the payment. No doubt the assessee was a party to the registered tripartite deed dated 20 t h July 2007 whereby the property was sold by the KS CT, but, as a perusal of the sale deed unambiguously shows, the assessee has given up all the rights an d interests in the said property, which he had acquired by the virtue of lease agreements with owner and which were, therefore, in the nature of lessee's rights; these rights could not have been , by any stretch of logic, could be treated as ownership rights . It has been specifically stated in the sale deed that the lessee, which included this assessee before us, had proceeded to, inter alia, "grant, convey, transfer and assign their leasehold rights, title and interest in the said premises ". There is nothing on the record to even remotely suggest that the assessee was owner of CO N o. 6 2 / Kol / 2 0 1 1 an d I . T. A . N o. : 1 4 5 9 / Kol. / 2 0 1 1 A s s e s s m e n t y e ar : 2 0 0 8 - 0 9 the property in question. The monies received by the assessee, under the said agreement, were thus clearly in the nature of receipts for transfer of tenancy rights,

and, accordingly, as the learned CIT(A) rightly holds, Section 50 C could not have been invoked on the facts of this case. Revenue's contention that the provisions of Sect ion 50 C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statute. Section 50 C can come into play only in a situation " 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, (emphasis supplied by us by underlining) is less than the value adopted or assessed or assessable by any authority of a State Government ..... for the purpose of payment of stamp duty in respect of such transfer ". Clearly, therefore, it is sine qua non for application of Section 50 C that the transfer must be of a "capital asset, being land or building or both" , but then a leasehold right in such a capital asset cannot be equated with the capital asset per se. We are, therefore, unable to see any merits in revenue's contention that even when a leasehold right in "land or building or both" is transferred, the provisions of Section 50C can be invoked. We, therefore, approve the conclusion arrived at by the CIT(A) on this aspect of the matter.

9. Having held so, we may also point out that the Assessing Officer has adopted cost of acquisition of the asset as lease rent paid for the same and even granted indexation benefits t hereon. In the impugned order, CIT(A) has directed that consideration for computation of capital gains on surrendering the tenancy rights is to be taken at actuals, and not as recomputed by the Assessing Officer by taking stamp valuation as the sale consideration for the property, but then what the CIT(A) has apparently missed out is the fact that in the case of surrender of tenancy rights, the cost of acquisition of the tenancy rights, in view of the specific provisions of Section 55(2)(a), should have be en taken as 'nil'. This aspect of the matter is somewhat academic and tax neutral because admittedly CO N o. 6 2 / Kol / 2 0 1 1 an d I.T.A. No. : 1 4 5 9 / Kol. / 2 0 1 1 A s s e s s m e n t y e ar : 2 0 0 8 - 0 9 qualifying investment under section 54F is more than the consideration for surrender of these tenancy rights. The Assessing Officer has given a categorical finding about the quantum of qualifying investment of Rs 1,96,03,685. In view of these discussions, we are of the considered view that the assessee did not have any taxable capital gain in respect of receipt of Rs 1,59,50,000 on account of surrender of tenancy rights. The relief granted by the CIT(A), therefore, deserves to be upheld."

8. In view of the above, we delete this addition also and direct the AO to allow relief to the assessee.

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

Order pronounced on 27th December, 2024.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(MAHAVIR SINGH)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Dated: 27/12/2024
Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI