

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

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 1535/KOL/2024
Assessment Year: 2016-17

Krishna Chandra Mondal *Appellant*
Rammandir, Chinsurah Station Road,
Chinsurah-712102.
(PAN: AFCPM4341K)

Vs.

A.C.I.T, Circle-23(1), Hooghly *Respondent*

Appearances:

Appellant represented by : *Shri S. M. Surana, AR*

Respondent represented by : *Shri A. Kundu, CIT, DR*

Date of concluding the hearing : September 26th, 2024

Date of pronouncing the order : December 20, 2024

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal filed by the assessee is directed against the order dated 14.06.2024 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as Ld. 'CIT(A)'] for Assessment Year (AY) 2016-17.

2. Assessee in this appeal is aggrieved by the action of the Ld. CIT(A) in confirming the addition totalling to Rs. 98,48,472/- (Rs.90,63,066/- +

Rs.6,03,750/- + Rs.1,81,656/-) which was made by the Assessing Officer (in short "AO") on account of share of the assessee out of sale consideration received on sale of seven flats.

3. Brief facts of the case are that the assessee was a joint owner of the land situated at Mouza-Dharampur. The assessee along with the co-owners entered into a development agreement with the developer, whereby the assessee was entitled to 15% of the constructed area after the development of the land. The AO noted that the assessee during the year had sold seven flats along with the joint owners and developer. He calculated the share of the assessee out of the sale consideration of the flats at 15% at Rs. 98,48,472/- and added the same into the income of the assessee treating the same as undisclosed income of the assessee.

4. The Ld. CIT(A) confirmed the addition so made by the AO.

5. We have heard rival contentions and gone through the record. The Ld. Counsel for the assessee has made two fold submissions before us. Firstly, that the assessee did not receive any sale consideration on the sale of the aforesaid flats. That the said flats were sold by the developer and the entire sale consideration was deposited in the bank account of the developer. The assessee just signed the sale deeds being co-owner of the land/property in question. That since no amount was received by the assessee, therefore, the addition made by the lower authorities in the hands of the assessee was not justified. Secondly, the AO at the most could have added the capital gains accrued to the assessee. That the AO was not justified at all in adding the entire share of the sale consideration calculated by the AO into the income of the assessee.

6. The Ld. DR, however, has relied on the findings of the lower authorities.

7. We have considered the rival submissions. The Ld. Counsel for the assessee has brought to our attention to the impugned assessment order as well as the appellate order of the Ld. CIT(A) to demonstrate that the assessee had taken categorical stand before both the lower authorities that the assessee did not receive any sale consideration on the sale of flats during the

year under consideration. The Ld. Counsel has further furnished before us the copy of the audited accounts of the developer M/s. East Hooghly Construction to show that the developer had booked in its accounts, the sale consideration of Rs.7,48,41,915/- on account of sale of flats and shops. He has further submitted that in fact, the developer had sold more than seven flats during the year and the total sale consideration received by the developer was Rs.7,48,41,915/- which has been duly taken into account by the said developer. The developer has also filed the income tax return. The Ld. Counsel has also placed reliance upon the copy of the ITR Acknowledgment of the developer for the AY 2016-17. Apart from this, Ld. Counsel has also placed reliance on the Deed of Release executed on 08.06.2016, whereby, the developer has released 15% share of the developed area to the assessee. The Ld. Counsel for the assessee, therefore, has demonstrated that the assessee, in fact, did not receive his share of the developed property during the year under consideration rather, the same was received on 08.06.2016 relevant to AY 2017-18.

8. In view of the above, Ld. Counsel for the assessee has duly demonstrated that the assessee during the year did not receive any sale consideration on sale of the developed area. Flats in question were sold by the developer and sale consideration was also received by the developer. The assessee had signed as co-signatory on the sale deeds, he being the co-owner of the property in question. In view of this, the impugned addition made by the lower authorities in the hands of the assessee is not sustainable and the same is accordingly, ordered to be deleted.

9. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 20th December, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 20.12.2024

Jd., Sr.P.S)

Copy of the order forwarded to:

1. **Appellant** –
2. **Respondent** –
3. CIT(A)-NFAC, Delhi.
4. *Pr.* CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata