

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

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)**

**I.T.A. No. 323/PAT/2023  
Assessment Year: 2020-2021**

***Sanjiv Kumar Singh,.....Appellant  
23 S/o. Barhma Singh, At PO Hathni,  
Rohitas-802215, Bihar  
[PAN:BMSPPS6887A]***

***-Vs.-***

***Income Tax Officer,.....Respondent  
NFAC, New Delhi***

**Appearances by:**

*Smt. Smriti Singh, A.R., appeared on behalf of the  
assessee*

*Shri Ashwani Kr. Singal, JCIT, appeared on behalf of  
the Revenue*

**Date of concluding the hearing: December 03, 2024**

**Date of pronouncing the order: December 31, 2024**

**ORDER**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), dated 14<sup>th</sup> September, 2023 passed for Assessment Year 2020-21.

2. The assessee is an individual, who filed his return of income declaring total taxable income of Rs.7,34,940/- for the assessment year 2020-21. The case was selected for limited scrutiny for the reason of capital gains. Notices under sections 143(2) and 142(1) of the Act were issued to the appellant, but there was no response

from the assessee. Therefore, the Id. Assessing Officer passed the assessment order under section 144 read with section 144B of the Act assessing the total income of Rs.20,94,940/- by making an addition of Rs.13,60,000/- as short-term capital gains. The addition of Rs.13,60,000/- was made on account of sale of property during the year under consideration wherein the value of the property has been estimated at Rs.64,50,000/- without referring the matter to the valuation authority as per section 50C(2) of the Act. The Id. Assessing Officer has added Rs.13,60,000/- being the difference between actual sale consideration of Rs.51,00,000/- and the value as per the stamp duty valuation amounting to Rs.64,50,000/-.

3. On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals). The Id. CIT(Appeals) after considering the submission of the assessee dismissed the appeal filed by the assessee.

4. On being aggrieved, the assessee preferred an appeal before the Tribunal and raised the following issues:-

*(1) For that the Ld. CIT(A) has erred in dismissing the appeal and upholding the order passed by the A.O.*

*(2) For that the Ld. CIT(A) has erred in recording a finding that the appellant has not objected /requested for referring the matter to the valuation cell without considering the fact that it is incumbent upon the A.O. to refer the matter to valuation cell.*

*(3) For that the Ld. CIT(A) has erred in upholding the assessment order without affording proper and adjudicate opportunity of hearing to the appellant.*

*(4) For that the Ld. CIT(A) has erred in upholding the assessment order passed in violation of Principle of Equity and Natural Justice.*

(5) For that the Ld. CIT(A) has erred in upholding the order passed by the A.O. u/s 144 read with section 144B without following the procedure prescribed under section 144B by resorting to best judgement assessment.

(6) For that the Ld. CIT(A) has erred in sustaining the addition of Rs. 13,60,000/- by invoking section 50C of the Act on account of capital gain.

(7) For that the Ld. CIT(A) has failed to appreciate that the A.O. has not made any reference to the valuation officer as per mandate of law contained in Section 50C(2).

(8) For that the Ld. CIT(A) has erred in passing ex-parte order which is not tenable in the eyes of law that too without considering the reply filed by the appellant dated 16.08.2023.

(9) For that the Ld. CIT(A) has erred in sustaining the addition of Rs. 13,60,000/- i.e., by taking the stamp value of the property instead of the actual sale consideration received as per market value.

(10) For that the Ld. CIT(A) has erred in confirming the computation of short-term capital gain as the basis of stamp value even though the valuation for stamp duty purpose raises a rebuttable presumption and does not even bind the concerned authority i.e., Registrar as held by the Hon'ble Supreme Court (1994) 4 SCC 595.

(11) For that the Ld. CIT(A) ought to have appreciated the fact that the communication was being made at the email-id of the advocate and not on the email-id of the appellant.

(12) For that the Ld. CIT(A) failed to appreciate that the entire assessment proceeding has been conducted during the second phase of the pandemic of COVID-19.

(13) For that the order passed by the Ld. CIT(A) is wrong, illegal and unjustified in the facts and circumstances of the appellant's case.

(14) For that the appellant reserves its right to furnish detailed written submission along with documents and evidences on or before Date of hearing.

(15) For that the appellant may be given opportunity of personal hearing physically/virtually at the time of hearing of the appeal.

*(16) For that the whole order is bad in fact and law of the case and is fit to be annulled.*

*(17) For that the other grounds, if any, shall be urged at the time of hearing of the appeal.*

5. I have heard both the sides. The only grievance of the assessee in the instant appeal is that both the revenue authorities erred in making addition on long-term capital gains of Rs.13,07,978/- on account of determination of fair market value as per the stamp duty valuation under section 50C of the Act. The assessee also relied on the decision of the Hon'ble Apex Court in the case of Jawajee Nagnatham -vs.- Revenue Divisional Officer, Adilabad, AP & Others reported in (1994) 4 SCC page 595, wherein the Hon'ble Apex Court has held that "*stamp duty is rebuttable and does not bind even the registering Officer*". He also relied on the decision of the Coordinate Bench of this Tribunal in the case of Sunil Kumar Agarwal -vs.- CIT reported in (2015) 372 ITR 83 (KOL), wherein it was held that "*for computation of income in cases where the higher value of land is assigned for stamp duty purposes, it is incumbent on the Assessing Officer to refer the matter to Valuation Cell*". He also relied on the decision dated 14<sup>th</sup> September, 2018 of ITAT, Patna in the case of Rameshwar Prasad (HUF) -vs.- ITO, Ward- Chhapra in ITA No. 75/PAT/2018, wherein it was held that "*the statutory reference to the DVO under section 50C(2) has to be mandatorily made even in absence of any such plea by the tax payer concerned*".

6. I have perused the material available on record. After considering the facts and circumstances of the case, I am of the

considered view that the ld. Assessing Officer is bound to refer the matter to the DVO arriving the fair market value of the property and also ld. Assessing Officer has no discretion, but shall refer the matter to the DVO for valuation of the property. Therefore, I remand the issue back to the file of ld. Assessing Officer with a direction to refer the valuation of the property to the DVO and determine the value in accordance with law. I also further direct the ld. Assessing Officer after obtaining the valuation report to provide on more opportunity of being heard to the assessee and to pass assessment order afresh in accordance with law.

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

Order pronounced in the open Court on 31/12/2024.

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

***Kolkata, the 31<sup>st</sup> day of December, 2024***

*Copies to :(1) Sanjiv Kumar Singh,  
23 S/O. Barhma Singh, At PO Hathni,  
Rohitas-802215, Bihar*

- (2) Income Tax Officer,  
NFAC, New Delhi*
  - (3) Commissioner of Income Tax (Appeals);*
  - (4) CIT - , Patna;*
  - (5) The Departmental Representative;*
  - (6) Guard File*
- TRUE COPY*

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

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