

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.2474/M/2024
Assessment Year: 2018-19**

Shri Anand Kedarnath Sharma, 201-B, Anand Ashram, Marve Road, Malad West, Mumbai Maharashtra – 400 064 PAN: AACPS2231B	Vs.	Income Tax Officer, 753, Kautilya Bhavan, Income Tax Office, BKC, Bandra East, Mumbai Maharashtra – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashok Bansal, Ld. A.R.
Revenue by : Shri Gotimukul Santosh Kumar, Ld. Sr. D.R.

Date of Hearing : 09 . 01 .2025

Date of Pronouncement: 24 . 03 .2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 05.04.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2018-19.

2. In the instant case, during the assessment year under consideration on dated 19.01.2018, the Assessee has sold a property on a consideration of Rs.4,25,000/- whereas market value of the same was Rs.30,69,000/-, however, the Assessee has not declared any capital gain/loss for the assessment year under consideration and therefore the case of the Assessee was selected for scrutiny and the Assessee was requested to provide the copy of

document pertaining to the above mentioned sale along with capital gain/working. The Assessee, by providing the details, has claimed that the said property was purchased on 19.06.2002 and possession of the same was also handed over in the same year but the sale agreement was registered in the year 2018. As the consideration amount of the property, has already been received on 04.06.2002 and therefore as per provisions of section 2(47) of the Act r.w.s. 53A of the Transfer of Property Act, the transfer of the impugned property took place in the year 2002 and therefore the provisions of section 50C for consideration of the market value of the property at the time of registration/executing the sale deed would not be applicable. Even otherwise if the provisions of section 50C of the Act are to be applied, even then also 1st proviso of section 50C would be applicable, which provides that where the date of agreement fixing the amount of consideration and the date of registration for the transfer of capital asset is not the same, then the value adopted or assessed or assessable by the stamp duty valuation authority on the date of agreement, may be taken for the purposes of computing full value of the consideration. For such transfer, 2nd proviso further prescribes that the 1st proviso shall apply only in case where the amount of consideration or a part thereof has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account (or through such other electronic mode as may be prescribed) on or before the date of agreement for transfer. The Assessee has paid the amount of consideration of Rs.4,25,000/- through banking channel as detailed below:

<i>Date</i>	<i>Amount</i>	<i>Cheque number</i>	<i>Drawn on</i>
03.06.2002	Rs.3,00,000/-	531715	Maharashtra Bank, Goregaon West Branch

03.06.2002	Rs.1,25,000/-	007797	Maharashtra Bank, Goregaon West Branch
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2.1 Making of payment through banking channel, also clearly reflects from the bank statements and the sale agreement dated 19.01.2018 and the receipt/schedule of payments which is part of the agreement. The Assessee further demonstrated various documents, such as house tax receipts, Aadhar card, PAN card and election card etc. having been issued prior to assessment year under consideration.

2.2 The Assessing Officer (AO) though considered the claim of the Assessee, however, not being satisfied, applied the main provisions of section 50C of the Act and worked out capital gain of the Assessee to the tune of Rs.29,31,012/- by deducting the index cost of the property to the tune of Rs.1,37,988/- out of deemed sale consideration of Rs.30,69,000/- and consequently added the said amount of **29,31,012/-** in the income of the Assessee.

3. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, could not get any relief, as the Ld. Commissioner dismissed the appeal of the Assessee and affirmed the addition, by observing and holding as under:

“In the judgment rendered by the Hon’ble Apex Court in the case of CIT vs. Balbir Singh Maini (2017) 86 taxmann.com 94(SC), it was held “unless the contract is registered, there is no contract in the eyes of law in force u/s 53A of the Transfer of Property Act after 2001”. The Assessee was not able to produce any agreement, whatsoever of the said transfer u/s 53A of the Transfer of Property Act at the time of assessment or during the appellate proceedings. The sale deed executed in 2018 merely

mentions that the purchaser had purchased the impugned property for a sum of Rs.4,25,000/- on 19.06.2002, whereas no evidence in the form of contract or agreement was produced”.

4. The Assessee, being aggrieved, is in appeal before this Court.

5. Heard the parties and perused the material available on record. Admittedly, it is not in controversy here that the Assessee has paid the entire consideration amount of Rs.4,25,000/- to the vendor/seller on 19.06.2002 itself. This fact is also clear from the sale deed dated 19.02.2018 itself. Further, from the receipt, which is part of the said sale agreement/ sale deed reflects the payment of Rs.4,25,000/- having been made by the Assessee on 03.06.2002 through cheque nos. 531715 and 007797 respectively amounting to Rs.3,00,000/- and Rs.1,25,000/- drawn on Maharashtra Bank, Goregaon West Branch. From the documents, such as electricity connection, Aadhar card, PAN card, election card etc., the Assessee also proved corroborative material of ownership of the property. Thus, considering the peculiar facts and circumstances in totality and the sale deed, wherein the purchase of the property has specifically been mentioned, coupled with corroborative documents/evidences, which goes to show that the Assessee on the basis of agreement fixed the amount of consideration and paid the consideration amount in two cheques on dated 03.06.2002 itself and this fact is part of the sale deed and therefore it can easily be construed that the Assessee's case falls under 1st proviso of section 50C of the Act and therefore the stamp duty value as on the date of agreement is required to be taken for the purpose of computation of consideration for such transfer. Thus, the AO is directed to consider the stamp duty value of the property, as on the date of agreement i.e. 03.06.2002/19.06.2002, as mentioned in the sale deed itself and recompute the capital gain/tax liability accordingly.

6. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 24.03.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.