

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA**

Before **Shri Aby.T Varkey, Judicial Member and
Shri Waseem Ahmed, Accountant Member**

ITA No.925/Kol/2013
Assessment Year :2005-06

Sri Nikhilesh Sadhukhan 3, Raj Kumar Chatterjee Road, Kolkata-700037 [PAN No.aQLPS 4146-G]	V/s.	Income Tax Officer, Ward-40(2), 18, Rabindra Sarani, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.M. Surana, Advocate
प्रत्यर्थी की ओर से/By Respondent	Sallong Yaden, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	24-03-2017
घोषणा की तारीख/Date of Pronouncement	07-06-2017

ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-XXIV, Kolkata dated 13.03.2013. Assessment was framed by ITO Ward-40(2), Kolkata u/s 143(3)(II) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 10.12.2007 for assessment year 2005-06.

Shri S.,M. Surana, Ld. Advocate appeared on behalf of assessee and Shri Sallong Yaden, Ld. Departmental Representative represented on behalf of Revenue.

2. In this appeal various grounds have been raised out of which grounds No. 1, 5 & 6 are general in nature and do not require separate adjudication.

3. First issue raised by assessee in this appeal in ground No. 2 is that Ld. CIT(A) erred in treating the value declared for the purpose of stamp duty as the sale consideration for the calculation of capital gain u/s 50C of the Act.

4. At the outset, it was observed that Ld. AR has not advanced any argument in support of the above ground of appeal. Thus in view of above, we dismiss the same as infructuous.

5. Next issue raised by assessee in this appeal in ground No. 3 is that Ld. CIT(A) erred in not accepting the actual consideration received by the assessee on account of sale of the impugned property for the purpose of deduction u/s. 54EC of the Act.

6. The assessee in the year under consideration has inter-alia derived his income from the sale of property under the head 'capital gains'. The assessee has also made investment for ₹18 lakh in the asset as specified u/s 54EC of the Act for the purpose of deduction from the capital gains. The Assessing Officer in his assessment order has invoked the provision of Sec. 50C of the Act for the computation of Long Term Capital Gains on account of sale of impugned property. The assessee did not declare sale consideration as per the provision of Sec. 50C of the Act. Therefore, the AO disallowed the claim of assessee and determined the capital gain as per the provisions of section 50C of the Act.

The AO further while determining the deduction u/s 54EC of the Act claimed by assessee has taken the value of the consideration as per the provision of Sec. 50C of the Act. Although the assessee claimed the deduction u/s. 54EC of the Act on the basis of actual consideration received by him from the sale of property. However, the AO disregarded the contention of the assessee and worked out the deduction u/s 54EC of the Act on the basis of consideration declared for the purpose of stamp valuation.

7. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the total consideration for all the properties are arising out for ₹ 18,99,500/- and out of which a sum of ₹ 18 lakh was invested in security as specified u/s. 54EC of the Act for the purpose of exemption. Accordingly, there was no scope for making further investment of the deemed consideration for claiming the exemption u/s. 54EC of the Act. As per the provision of Sec. 54EC of the Act the assessee requires to make investment of the actual sale consideration in the specified long term asset. As such, there was no provision for making the investment of the deemed sale consideration as specified u/s. 50C of the Act. The AO in support of assessee's claim relied on the order of Hon'ble ITAT Mumbai Benches in the case of *Nila V. Shah vs. CIT(A)* in ITA No.3745/Mum/2008. However, Ld. CIT(A) after considering the submission has given relief to the assessee in part by observing as under:-

"2.3 I have considered the submission of the Ld. A/R and also gone through the assessment order. Vide his letter No. CIT(A)-XII/Remand Report/2011-12/Kol/155 dated 07.07.2011 the Ld. A/R had requested to the CIT(A)-XII, Kolkata to refer the case to the DVO for valuation in order to dispose off the additional grounds of appeal filed by the appellant. Vide his letter dated 07.03.2013, the Ld. A/R has informed that the Valuation Cell of the Income-tax Department has marginally reduced the valuation adopted by the Stamp

Valuation Authority. The Ld. A/R has submitted the copies of valuation reports dated 01.10.2012 of the Valuation Cell of the Income-tax Department, Kolkata. The details of the valuation made by the Valuation Cell is given as under:-

Sl.No.	Details of the property	Fair market value
1.	The shop/godown containing an area 520.78 sq.ft. at Habra Bazar, Third lane, Ward No.20, Dist.24-Pgs. North, P.S. Habra	Rs.10,62,390/-
2	The shop containing an area 146.50 sq.ft. at Habra Bazar, Third lane, Ward No.20. Dist. 24-Pgs. North, P.S. Habra	Rs.2,98,860/-
3	The shop/godown containing an area 269.75 sq.ft. at Habra Bazar, Third lane, Ward No.20. Dist. 24-Pgs. North, P.S. Habra	Rs.5,50,290/-
4	The shop/godown containing an area 816.00 sq.ft at Habra Bazar, Third lane, Ward No.20, Dist. 24-Pgs., North, P.S. Habra	Rs.16,64,640/-
		Rs.35,76,180/-

The decision of the Hon'ble ITAT Mumbai in the case of Mrs. Nila Shah Vs. CIT supra) is squarely applicable to the facts of the present case. The Hon'ble ITAT has held that for working of the Long Term Capital Gain the sale consideration would be as per the value determined u/s. 50C. In view of the above, the AO is directed to compute the Long Term Capital Gain u/s. 50C after adopting the Fair Market Value as determined by the Valuation Office of the Income-tax Department and allow the claim of deduction u/s. 54EC on actual, sale value. These grounds of appeal are partly allowed.”

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us on the following ground:-

“3. For that on the facts and circumstances of the case the capital gain should have been directed to be adopted on the basis of the actual consideration received by the appellant.”

8. Ld. AR for the assessee reiterated the arguments that were made before Ld. CIT(A) whereas Ld. DR for the Revenue vehemently relied on the order of Authorities Below.

9. We have heard the rival contentions of the parties and also carefully gone through the orders of the Authorities Below. The facts which are borne out from the records are that the assessee has sold four properties worth of ₹18.99 lacs which were valued u/s 50C of the Act for ₹35,76,180/- by the Department Valuation Officer. It is undisputed fact that assessee has made investment in specified securities for ₹ 18 lacs for the purpose of claiming exemption u/s. 54EC of the Act. The AO accordingly worked out the capital gains treating the value declared for the purpose of stamp valuation as sale consideration under section 50C of the Act.

The provisions of Sec. 54EC entitle the assessee for exemption from the Long Term Capital Gains in situations where the capital gains arose from the transfer of Long

Term Gain asset and the whole or any part of the said capital gains is invested in certain specified securities within six months from the date of transfer.

The provisions for Section 54EC of the Act require to make investment in the specified securities on the basis of actual sale consideration and not on the basis of deemed amount of consideration as envisaged in section 50C of the Act. Whereas the provision of Sec. 50C of the Act provides for deemed value of consideration adopted as per the Stamp Valuation Authority for the purpose of capital gain. In the instant case the impugned property was sold at a value lesser than the value adopted for the purpose of stamp duty. Therefore the valuation determined for the purpose of stamp valuation is taken as sale consideration. However, such deeming provision cannot be applied to the provision of law as specified Section 54EC of the Act. Accordingly, the deduction u/s 54EC of the Act in the instant case shall be limited to the amount of ₹18 lakh i.e. actual investment. However, for the computation of capital gain the provision of deeming sale consideration shall be applied as specified under section 50C of the Act i.e. ₹35,76,180/-. In view of the above, the AO is directed to compute the capital gains after taking the sale consideration at Rs. 35,76,180.00 as per the provisions of section 50C of the Act. But for the purpose of deduction u/s. 54EC, the sale value would be taken at ₹18.99 lacs which is the actual sale consideration. It is also important to note that the Ld. AR at the time of hearing has also relied on the order of *Nila V Shah* (supra) and Ld. CIT(A) has also adopted the basis for working out the capital gain in the aforesaid facts and circumstances. In view of the above, we find no reason to interfere in the order of Ld. CIT(A). We uphold the same. This ground of assessee is dismissed.

10. Next issue raised by assessee in ground No.4 is that Ld. CIT(A) erred in taking the cost of acquisition at ₹20,000/-

11. The assessee while working out the capital gains on the transfer of impugned property has taken the value of the property as on 01.04.1981 at ₹1,02,302/- and same cost of the property was indexed on the basis of gold rates of 24 carat gold which was worked out at ₹4,91,050/-. Thus, assessee worked out the cost of acquisition of the impugned property transferred at ₹4,91,050/-. However, the AO during the course of assessment proceedings observed that the impugned property was partitioned dated 15.07.1985 and thus he became the owner of the impugned property on that date. The AO also observed that assessee has given the value of the property as per partition deed at ₹20,000/- in respect of four impugned properties as discussed above. Firstly, the AO disregarded the basis adopted by the assessee for the purpose of indexation of the cost of the property sold in the year under consideration. Secondly, the valuation declared on the partition date of all the four properties as discussed above was at Rs. 20,000/- only. Out of which one property was sold in the immediate preceding year and remaining three properties were sold in the year under consideration. Thus, AO has taken the cost of acquisition of three properties on proportioned basis i.e. ₹15,000/- only and accordingly worked out indexed cost as under:-

$$15 \times 480 \div 133 = 54,135/-$$

Accordingly, AO worked out the capital gains at ₹39,29,490/- which was added to the total income of assessee.

12. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the impugned property was acquired by his father in the year 1959 for a sum of ₹14,000/- and cost of stamp was incurred at ₹500/-. Thus, the cost of acquisition of ₹20,000/- taken by the AO for the purpose of capital gains is not at all logical. In-fact the value of the impugned property has gone manifolds high. The assessee also submitted that in the immediate preceding year part of the property having 640 sq. ft. area was sold and its cost of acquisition was worked out on the basis of valuation made of such property as on 01.04.1981 for a sum of ₹1,13,300/- which was duly accepted in the assessment year 2003-04. Thus, assessee requested the Ld. CIT(A) to take the rate per sq. ft at ₹2030/- only ($130300 \div 640$) as on 01.04.1981. However, Ld. CIT(A) disregarded the contention of assessee on the basis of remand report taken from the AO and confirmed the order of AO.

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us on the following ground:-

“4. For that the Ld. CIT(A) should have accepted the cost of acquisition as on 1.4.81 as claimed by the appellant.”

13. Ld.AR for the assessee reiterated the submissions as were made before the Ld. CIT(A). Besides the above the Ld. AR submitted that the valuation report in respect of impugned property by the registered valuer was filed before the Authorities Below but none of them has considered the same while deciding the instant issue. On the other hand, Ld. DR for the Revenue heavily relied on the order of Authorities Below.

14. We have heard the rival contentions of the parties and perused the materials available on record as well as order of Authorities Below. The limited issue in this ground of appeal is confined to the following points:-

i) Whether cost of acquisition in respect of the impugned property sold should be taken at ₹20,000/- only as recorded in the partition deed.

OR

(ii) Whether the cost of acquisition will be taken as the value determined by the registered valuer as on 01.04.1981 in respect of the property sold in the year under consideration which has not been considered by the Authorities Below.

OR

ii) Whether the cost of acquisition of ₹2030/- only per sq. ft. should be adopted as disclosed by the assessee in the immediate preceding year which was accepted by the Revenue

In this connection, we find that Authorities Below have not considered the valuation report given by the registered valuer though the assessee's claim to have filed the same before the Authorities Below. Similarly, we also find that assessee has declared the valuation of the impugned property @ ₹2030.00 per sq. ft. in the immediate preceding year as evident from the supporting documents which are placed on record. But on perusal of the same, we find that no scrutiny

assessment was carried out by the Department in the earlier assessment year. Therefore in our considered view, the matter has not been adjudicated on the basis of merit. We also find that the valuation report showing the cost of acquisition of the assessee as submitted by the Id. AR was never verified by the Revenue. Therefore, we are not inclined to accept the same view taken by the Authorities Below. In view of the above, we are of

the opinion that the issue of cost of acquisition as on 01.04.1981 needs to be re-verified in the light of above facts and circumstances. Therefore we remit the issue to the file of AO with the direction to re-verify the cost of acquisition as on 01.04.1981 and after providing reasonable opportunity of being heard to assessee as per law. This ground of assessee's appeal is allowed for statistical purpose.

15. In the result, assessee's appeal stands allowed partly for statistical purpose.

Order pronounced in the open court 07/05/2017

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 07/06/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sri Nikhilesh Sadhukhan,3 Raj Kr. Chatterjee Road, Kolkata-37
2. प्रत्यर्थी/Respondent-Income Tax Officer, Ward-40(2), 18 Rabindra Sarani, Kolata-01
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।