IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.316/Del/2020
[Assessment Year : 2016-17]

Bharat Bhushan Jain, 61, Central Road, Bhogal, New Delhi-110014. **PAN-AAFPJ7453F**	vs	ITO, Ward-54(2), New Delhi.
APPELLANT		**RESPONDENT**
Appellant by	Shri Pushkar Jain, Adv.	
Respondent by	Shri Om Prakash, Sr.DR	
Date of Hearing	10.05.2022	
Date of Pronouncement	27.05.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2016-17 is directed against the order of Ld. CIT(A)-XXV, New Delhi dated 20.11.2019. The assessee has raised following grounds of appeal:-

1. *"That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income tax (Appeals) has erred in confirming the total income at Rs. 28,23,540/- as against the returned total income of Rs. 84,540/-.*
2. *That on the facts and in law, the Ld. Commissioner of Income tax (Appeals) has erred in law in confirming the addition of Rs. 27,39,000/- by invoking section 50C of the Income tax Act.*
3. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing officer in determining the sale consideration at Rs.46,39,000/- as against the actual sale consideration of Rs.19,00,000/-.*
4. *The learned Commissioner of Income-Tax (Appeals) ought to have considered the detailed explanation submitted before him and ought to*

have directed the Assessing Officer to adopt the sale consideration at Rs.19 lakhs.

5. *That on the facts and in law, Commissioner of Income tax (Appeals) has erred in law in considering the value of circle rate as sales consideration at Rs 46,39,000/- without appreciating the facts that the appellant has only sold the rights in the property on which section 50C is not applicable.*
6. *That on the facts and in law, the Ld. Assessing officer and Id Commissioner of Income tax (Appeals) has erred in law in not having the valuation report of property from valuation officer as mandatorily required under the Act, therefore, order passed by the officers is not valid in law.*
7. *That the grounds of appeal are without prejudice to each other.*
8. *The appellant craves leave to add, alter, remove and modify any grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal."*

2. The only effective ground in this appeal is against the sustaining of addition of Rs.27,39,000/- i.e. difference between the sale consideration disclosed by the assessee and the value adopted by the Stamp Valuation Authority.

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that income tax return declaring income of Rs.84,540/- was filed on 22.07.2016 which was duly processed u/s 143(1) of the Income Tax Act, 1961 ("the Act"). Thereafter, the case was selected for limited scrutiny. The reason for taking up for limited scrutiny was regarding the value of the property as per Stamp Valuation Authority was Rs.46,39,000/- whereas the assessee had disclosed sale consideration only Rs.19,00,000/- while computing the capital gain on the transfer of property. The AO issued statutory notices to the assessee. In response thereto, the assessee made submissions.

However, the submissions of the assessee was not found acceptable to the assessing authority and he proceeded to make addition of Rs.27,39,000/- as undisclosed income u/s 69 of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who sustained the addition as made by the AO instead of section 69A of the Act. Ld.CIT(A) confirmed the addition u/s 50C of the Act.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

6. Ld. Counsel for the assessee vehemently argued that the action of the authorities below is contrary to the mandate of law. He contended that firstly, the AO invoked the provision of section 69A of the Act which is *ex-facie*, illegal and without authority of law. He further contended that Ld.CIT(A) confirmed the addition u/s 50C of the Act. Here again, Ld.CIT(A) grossly exceeded the jurisdiction as conferred u/s 250 of the Act. Further, he contended that section 50C of the Act would not be applicable under the facts and circumstances of the present case as the assessee has only transferred sold right of the property which do not fall in the ambit of the section 50C of the Act. For this proposition, Ld. Counsel for the assessee has relied upon following case laws:-

[i] PRAKASH CHANDRA GOYAL VERSUS ITO WARD- 1(3)(4),SURAT(2017) I.T.A NO. 29/AHD/2017/SRT;

[ii] VIJAY KUMAR JAIN VERSUS ITO WARD 29(2), NEW DELHI (2014) ITA NO. 6242/DEL/2014;

[iii] CIT VERSUS GREENFIELD HOTELS & ESTATE (P) LTD. ITA NO. 735 OF 2014 DATED 24/10/2016(BOMBAY HIGH COURT);

[iv] RITZ SUPPLIERS PVT. LTD. VERSUS ITO WARD-12(3), KOLKATA I.T.A

NO. 1945/KOL/2019;

[v] DY. COMMISSIONER OF INCOME TAX CENTRAL CIRCLE VI, KOLKATA VERSUS TEJINDER SINGH C.O NO. 62/KOL/2011 ARISING OUT OF I.T.A NO.1457/KOL./2011*;*

[vi] ATUL G. PURANIK VERSUS INCOME TAX OFFICER-12(l)(l) I.T.A NO. 3051/MUM/2010;

[vii] KISHORI SHARAD GAITONDE VERSUS ITO WARD- 18(1)(1),MUMBAI ITA NO. 1561/M/09;

[viii] ASSTT. COMMISSIONER OF INCOME TAX-17(3) VERSUS M/S MUNSONS TEXTILES (2010) ITA NO. 6320/M/2010;

[ix] COMMISSIONER OF INCOME TAX, JAIPUR-II,JAIPUR VERSUS SHRI SATYA DEV SHARMA, HIGH COURT OF JUDICATURE FOR RAJISTHAN BENCH AT JAIPUR D.B INCOME TAX APPEAL NO. 75/2014; and

[x] JASTINER SINGH VEDI VERSUS DCIT, CIRCLE-25(1), New Delhi (2011).

7. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard the contentions of the rival parties and perused the material available on record and gone through the orders of the authorities below. The undisputed facts in the present case are that the AO invoked provision of section 69A of the Act on the basis that there was a difference between sale consideration as disclosed by the assessee and the Circle rate as prevalent at that point of time. The AO has considered the difference amount as the undisclosed money received by the assessee. However, Ld.CIT(A) ruled that the addition ought not to have been made u/s 69A of the Act as it does not meet the requirement of law. However, he sustained the addition u/s 50C of the Act. There is no dispute with regard to the fact that the property which was sold by the assessee, was a lease

hold property. The lease hold right was granted by Nitishree Builders Pvt.Ltd. in favour of the mother of the assessee. The fact that the lease hold rights were transferred is not disputed by the Revenue. The Revenue has not brought any contrary material on record to rebut the contention of the assessee. I find that there are series of decisions on this issue by the Division Bench of the Tribunal, confirmed by the Hon'ble Bombay High Court in the case of the *CIT versus Greenfield Hotels & Estate (P) Ltd. ITA No. 735 of 2014 dated 24/10/2016 (Bombay High Court)* wherein the Hon'ble High Court has observed as under:-

> 3. *"The impugned order of the Tribunal has dismissed the Revenue's appeal from the order dated 15 June 2012 passed by the Commissioner of Income Tax (Appeals). The issue before the Tribunal was whether Section 50C of the Act would be applicable to transfer of leasehold rights in land and buildings. The impugned order of the Tribunal followed its decision in Atul G. Puranik vs. ITO (ITA No.3051/Mum/2010) decided on 13 May 2011 which held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings.*
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> 4. *Mr. Kotangale, learned Counsel for the Revenue, states that the Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik (supra). Thus, it could be inferred that it has been accepted. Our Court in DIT vs. Credit Agricole Indosuez 377 ITR 102 (dealing with Tribunal order) and the Apex Court in UOI vs. Satish P. Shah 249 ITR 221 (dealing with High Court order) has laid down the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts*

or in law in the present appeal from that arising in the case of Atul Puranik (supra).

5. In the above view, the question as framed by the Revenue does not give rise to any substantial question of law. Thus, not entertained."

9. Further, the Division Bench of Tribunal in *Dy. Commissioner of Income Tax Central Circle VI, Kolkata versus Tejinder Singh C.O No. 62/Kol/2011 arising out of I.T.A No.1457/Kol./2011* also ruled that where there is a transfer of lease hold rights, there would not be application of section 50C of the Act. The relevant contents of the order of the Tribunal in the case of *Dy. Commissioner of Income Tax Central Circle VI, Kolkata versus Tejinder Singh* (supra) is reproduced hereunder:-

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 No. 62/Kol /2011 and I.T.A. No.: 1459/Kol./2011 Assessment year : 2008 - 09 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 tenancy 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 capital 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 are 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 20th July 2007 whereby the property was sold by the KSCT, 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 No. 62/Kol /2011 and I.T.A. No.:1459/ Kol. /2011 Assessment year : 2008 -09 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 50C could not have been invoked on the facts of this case. Revenue's contention that the provisions of Sect ion 50C 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 50C 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 50C 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."

10. Further, the Division Bench of the Tribunal in the case of *Shri Atul G. Puranik vs ITO in ITA No.3051/Mum/2010 [Assessment Year 2006-07]* order dated *13.05.2011* ruled that *"As section 50C applies only to a capital asst, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee transferred lease right for sixty years in the plot and not land itself, the provisions of section 50C cannot be invoked. We, therefore, hold that the full value of consideration in the instant case be taken as Rs.2.50 crores."* Further, the assessee has placed on record the report of the registered valuer who has valued the fair market value of the property of Rs.20,21,000/-. Therefore, looking to the facts of the present case where the authorities below have taken contrary stands about the taxability of the difference between the value declared by the assessee and value adopted by the Stamp Valuation Authority. Moreover, in the light of the binding precedents, I hereby direct the AO to delete the addition. Thus, grounds raised by the assessee are allowed in terms indicated herein above.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 27th May, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI