

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-I": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 5837/Del/2019  
(Assessment Year: 2016-17)

Khazan Singh Anand, Kothi No. 2, GF Kailash Enclave, Pitampura, New Delhi PAN: AAAPA1872A	Vs.	ITO, Ward-40(5), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Baldev Raj, CA
Revenue by:	Shri R. K. Gupta, Sr. DR
Date of Hearing	29/10/2020
Date of pronouncement	02/12/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-14, New Delhi dated 22.05.2019 for the Assessment Year 2016-17, wherein, the appeal filed by the assessee against the order passed u/s 143(3) of the Act, where total income of the assessee was assessed at Rs. 27,77,120/- against the return filed at Rs. 5,67,120/- passed u/s 143(3) of the Act by the ITO, Ward-40(5), Delhi was dismissed.
2. The assessee has raised the following grounds of appeal:-
  - “1. That on the facts and circumstances of the case, the order dated 22.05.2019 passed by the Income-tax Officer, Ward 40(5), New Delhi [hereinafter referred to as "the Ld. A.O."] under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] and as upheld by the Ld. Commissioner of Income-tax (Appeals) - 14, New Delhi [hereinafter referred to as "the CIT(A)"] is bad at law and *mid ab initio*.
  2. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the Applicability of section SOC of the Act on transfer of lease hold land.
  3. That, without prejudice to the ground no 2 :  
That, on the facts and in the circumstances of the case and its law, the CIT(A) erred in upholding Rs 42,10,000 as full value of consideration

*being the value adopted by stamp valuation authority, even when the Ld, AO had not referred this matter to Valuation Officer and or not followed the mandatory procedure law down U/S 50C(2 ) of the Act. where Appellant had disputed the value so adopted and submitted that value adopted by the stamp duty authority is higher than the fair market value.*

4. *That on the facts and in circumstances of the case, the Ld. CIT(A) erred Rs. 6,38,302/- in upholding the addition to the tune of Rs, 22,10,000/- in short term capital gain as per provision of section 50 C of the Act*
- 5.1 *All the above-mentioned grounds are independent and without prejudice General ground to other.”*

3. Brief facts of the case shows that the assessee is an individual. He filed his return of income on 04.07.2016 declaring income of Rs. 567120/-. The case of the assessee was selected for limited scrutiny for the reason that sale consideration of property shown in income tax return is less than the value as per stamp authority. Therefore, notice u/s 143(3) was issued on 14.07.2017.
4. During the year it was found that the assessee was allotted leasehold right of plot NO. 25, Pocket A3 in Sector 28, Rohini , New Delhi on 27.11.2014 by Delhi Development Authority. The total cost of the plot was Rs. 1395120/- which was sold on 26.10.2015 for Rs. 20 lakhs. The circle rate of plot as per stamp duty rate was Rs. 42,10,000/-. However, the assessee opted for showing the capital gain on the same by adopting the sale consideration as per sale deed of Rs. 20 lakhs and supported it by a market value certification from registered valuer. The assessee declared the resultant capital gain as short term capital gain of Rs. 554880/-.
5. The ld AO noted that provisions of section 50C applies and therefore, show cause notice was issued on 02.12.2018. The assessee submitted which is reply on 05.12.2018 stating that market value of the above property is very low as compared to circle rate. The assessee supported it by the valuation certificate.
6. The ld AO rejected the contention of the assessee and substituted the sale consideration of Rs. 20 lakhs by the stamp duty valuation u/s 50C of the property of Rs. 4210000/-. Accordingly, short term capital gain was worked out at Rs. 2764880/- against the short term capital gain assessed by the assessee at Rs. 554880/-. Consequently, addition of Rs. 2210000/- was

made. The assessment order was passed u/s 143(3) of the Act on 15.12.2018 determining the total income of the assessee at Rs. 2777120/- against the return income of Rs. 567120/-.

7. Aggrieved by the order of the ld AO the assessee preferred appeal before the ld CIT(A) who confirmed the addition and therefore, the assessee is in appeal before us.
8. The rival parties are heard, paper book produced by the ld representative was perused. On careful consideration of the whole issue it is apparent that ground No. 1 is general in nature and hence, same is dismissed.
9. Ground No. 2 and 3 of the appeal are on the merits of the addition. The fact shows that DDA allotted to the appellant the leasehold right of a plot of land at Plot No. 25 Pocket No. 3A, Sector 28, Rohini, New Delhi as per allotment letter dated 27.11.2014. The assessee took the possession of the above plot on 03.05.2015. Above leasehold right were transferred by the assessee as per registered agreement to sale to one Smt. Deepika Kapoor. The claim of the assessee is that provisions of section 50C applies only to the transfer of land and Building or both but it does not extend to the transfer of leasehold right. According to the assessee leasehold rights are neither land or building or both. For this proposition the assessee relied upon the decision of the coordinate bench in case of Noida Cyber Park Pvt. Ltd ITA No. 165/Del/2020 dated 12.10.2020. However, on careful perusal of the fact it is apparent that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in 389 ITR 68 CIT Vs. Greenfield Hotels and Estates Pvt. Ltd wherein, the Hon'ble High Court has upheld the order of the coordinate bench holding that provisions of section 50C will not be applicable while computing the capital gain on transfer of leasehold rights in land and plot. The issue is also covered in favour of the assessee by the decision of the coordinate bench in case of Ritz Suppliers Pvt. Ltd Vs. ITO 182 ITD 227 (Kol), Pyaribai K Jain Vs. CIT 175 ITD 177 (Mum), Kencast Pvt. Ltd Vs. ITO 68 SOT 110(Pune). In view of the above binding precedents we allow ground No. 2 of the appeal which challenges that provision of section 50C of the Act do not apply on transfer of leasehold right in plot of land and direct the ld AO to delet the addition of Rs

2210,000/- made u/s 50C of the act . Accordingly, ground No. 2 of the appeal is allowed.

10. Ground no. 3 and 4 are on the merit of the issue which are not required to be adjudicated in view of the finding in ground No. 2 of the appeal wherein ld AO s directed to delete the addition of Rs. 2210000/- made u/s 50C of the Act as short term capital gain.

11. Accordingly, appeal of the assessee is partly allowed.  
Order pronounced in the open court on 02/12/2020.

-Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 02/12/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi