

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President (Kolkata Zone)

**I.T.A. No. 288/KOL/2019
Assessment Year: 2007-2008**

M/s. Ara Properties Pvt. Limited,.....Appellant
P-95, Lake View Road, Kolkata-700 029
[PAN: AAECA 2191 D]

-Vs.-

Deputy Commissioner of Income Tax,Respondent
Circle-12, Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan,
Kolkata-700 069

Appearances by:

Shri S.M. Surana Advocate, for the Appellant
Shri Probhas Roy, Addl. CIT,, for the Respondent

Date of concluding the hearing : August 01, 2019
Date of pronouncing the order : September 25, 2019

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-5, Kolkata dated 13.08.2018.

2. The issue involved in Ground No. 1 relates to the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by computing Short-Term Capital Gain arising from the sale of 'Jasmine Tower' Office by the assessee at Rs.11,11,159/- as against the declared Short-Term Capital Gain of Rs.43,159/-.

3. The assessee in the present case is a Company, which filed its return of income for the year under consideration on 31.10.2007 declaring total income of Rs.14,74,059/-. During the year under consideration, the assessee had sold its office premises at 'Jasmine

Tower' for a consideration of Rs.17,00,000/- and after deducting the indexed cost of acquisition of Rs.16,56,841/-, Short-Term Capital Gain of Rs.43,159/- was declared by it in the return of income. As noticed by the Assessing Officer during the course of assessment proceedings, the concerned Registering Authority had determined the market value of the assessee's office premises at 'Jasmine Tower' for the purpose of stamp duty at Rs.27,68,000/- by invoking the provisions of section 50C. The Assessing Officer adopted the said value as deemed consideration and after reducing the indexed cost of acquisition of Rs.16,56,841/-, the Short-Term Capital Gain chargeable to tax in the hands of the assessee was computed by him at Rs.11,11,159/-. On appeal, the Id. CIT(Appeals) upheld the action of the Assessing Officer on this issue.

4. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the stamp duty value determined by the Registering Authority was adopted by the Assessing Officer as sale consideration by invoking the provisions of section 50C without making a reference to the DVO for determining the actual market value of the property sold by the assessee and this position clearly evident from the order of the Assessing Officer is not disputed even by the Id. D.R. In the case of Sudhir Kumar Agarwal -vs.- CIT [372 ITR 83] cited by the Id. Counsel for the assessee, Hon'ble Calcutta High Court has held that the Assessing Officer is duty bound to make a reference to the Valuation Officer before adopting the value of assets determined by the Stamp Valuation Authority for the purpose of computing capital gain even without there being any objection raised by the assessee. Respectfully following the said decision of the Hon'ble Jurisdictional High Court, I set aside the impugned order passed by the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after making a reference to the D.V.O. for determination of the market value of the property sold by the assessee. Ground No. 1 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

5. The issue involved in Ground No. 2 relates to the addition of Rs.10,63,100/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of capital gain arising from the sale of assessee's property namely 'Dimple Court'.

6. During the year under consideration, the assessee-company had sold its office premises at 'Dimple Court' for a consideration of Rs.25,00,000/- and after deducting the indexed cost of acquisition of Rs.10,80,598/-, the balance amount was offered to tax as long-term capital gain. As found by the Assessing Officer during the course of assessment proceedings, the value of the said property, which had been taken over by the assessee on lease, was determined by the Registering Authority for the purpose of stamp duty at Rs.35,63,100/-. He accordingly adopted the said value as sale consideration by invoking the provisions of section 50C and enhanced the long-term capital gain shown by the assessee by Rs.10,63,100/-. On appeal, the Id. CIT(Appeals) confirmed the said addition.

7. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. In the case of Tejender Singh [50 SOT 391] cited by the Id. Counsel for the assessee, the provisions of section 50C are held to be not applicable in the case of a leasehold property by the Coordinate Bench of this Tribunal for the following reasons:-

'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 not 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 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 50C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both If, the provisions of Section 50C 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 and 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 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 SOC could not have been invoked on the facts of this case. Revenue's contention that the provisions of Section SOC 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".

In the present case, the property at 'Dimple Court' sold by the assessee during the year under consideration was a leasehold property and this being the undisputed position, we follow the decision of this Tribunal in the case of Tejender Singh (supra) and hold that the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by invoking the provisions of section 50C is not sustainable. The same is accordingly deleted allowing Ground No. 2 of the assessee's appeal.

8. In the result, the appeal of the assessee is treated as allowed as indicated above.

Order pronounced in the open Court on September 25, 2019.

**Sd/-
(P.M. Jagtap)
Vice-President (KZ)**

Kolkata, the 25th day of September, 2019

- Copies to :
- (1) **M/s. Ara Properties Pvt. Limited,
P-95, Lake View Road, Kolkata-700 029**
 - (2) **Deputy Commissioner of Income Tax,
Circle-12, Kolkata,
P-7, Chowringhee Square,
Aayakar Bhawan, Kolkata-700 069**
 - (3) **Commissioner of Income Tax (Appeals)-5, Kolkata,**
 - (4) **Commissioner of Income Tax- ,**

- (5) The Departmental Representative
(6) Guard File*

By order

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

Laha/Sr. P.S.