

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

**Before Shri Rajpal Yadav, Vice-President  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 711/KOL/2022  
Assessment Year: 2013-2014**

***M/s. Wideangle Construction Company  
Pvt. Limited,.....Appellant  
24/3, Maulana Abul Kalam Azad Sarani,  
Phool Bagan, Kolkata-700054  
[PAN: AAACW2581P]***

***-Vs.-***

***Income Tax Officer,.....Respondent  
Ward-9(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri S.M. Surana, A.R., appeared on behalf of the  
assessee*

*Smt. Ranu Biswas, Addl. CIT, D.R., appeared on behalf of  
the Revenue*

Date of concluding the hearing : January 30, 2023

Date of pronouncing the order : May 1<sup>st</sup>, 2023

**O R D E R**

**Per Shri Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi

dated 2<sup>nd</sup> December, 2022 passed for assessment year 2013-14.

2. The assessee has taken five grounds of appeal but its grievances revolve around a single issue, namely ld. Assessing Officer has erred in making the addition of Rs.1,10,21,820/- with the aid of section 50C of the Income Tax Act. In other words, the grievance of the assessee relates to computation of income on account of sale of a house property with the help of section 50C of the Income Tax Act.

3. Brief facts of the case are that the assessee has filed its return of income electronically on 29.03.2015 declaring total income of Rs.7,73,200/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer while making an addition of Rs.1,10,21,820/- made the following discussion:-

*“During the course of assessment proceedings it is observed from the sale deed that the sale consideration of the property sold on 30.05.2012 is Rs.2,80,00,000/- . But as per the reply received from SubRegistrar, Nibandhan Bhawan, Kanpur Nagar. Uttar Pradesh dated 18/02/2016 the Fair Market Value of the relevant property is Rs. 3,90,21,820/-, and , sale consideration as shown in the Deed is shown to be Rs. 2,80,00,000/-. The Director of the Co. Shri Nimesh Tandon was asked to furnish the explanation as to the difference between the Sale Consideration shown and as per the market value of the property, Shri Nimesh Tandon, Director of the company furnished the explanation that the property*

*was sold for Rs. 2,80,00,000 which was received by account payee cheque and reflected in bank statement and that they came to know the value of the property adopted by the Registrar for Rs.3,90,21,820/- from the Sale Deed. The Director of the Company also denied having received excess value for the property. It is observed from the documents of the property that the property was acquired on 19/01/2012 for and sold on 30/05/2012 . As such, question of long term does not arise.*

*The explanation of the Director Shri Nimesh Tandon is considered but as per the meaning of Section 50 C of the Income Tax Act, 1961, the Fair market value or assessed value of the property assessed by the stamp valuation authority being Rs.3,90,21,820/- is deemed to be the full value of consideration received as a result of the transfer of the property. As such, the difference between the market value of the property and the sale consideration received Rs. 1,10,21,820/- {Rs. 3,90,21,820/- (-) Rs. 1,10,21,820/-} is added to total income.*

4. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

5. Before us, ld. Counsel for the assessee raised three-fold of submissions. In his first-fold of submission, it was contended that the assessee has purchased its landed property on 19.01.2012 for a consideration of Rs.2,38,00,000/-. It was sold on 30.05.2012 for a consideration of Rs.2,80,00,000/-. The property was kept by the assessee for a period of less than 3.5 months. The stand of the assessee was that the capital gain is not being claimed by the assessee on account of sale of this property, rather it was in the nature of adventure in the trade or business hence section 50C is not at all applicable.

6. In his second-fold of contention, it was contended that fair market value provided in section 50C, equivalent to the valuation for the purpose of stamp duty payment is required to be adopted if capital gain under section 48 is being calculated. The ld. Assessing Officer has nowhere made such calculation, i.e. there is no finding discernable from the assessment order that cost of acquisition, whether short-term capital gain is to be computed or not.

7. In his third-fold of contention, he submitted that since holding period is of roughly 3.5 months, therefore, it is to be ascertained whether this property could command a price as construed by the ld. Assessing Officer at Rs.3,90,21,820/-. The ld. Assessing Officer in this situation ought to have called for a report from the Departmental Valuation Officer as contemplated in section 50C, sub-section (2) of the Income Tax Act.

8. On the strength of the decision of the Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal -vs.- CIT, ld. counsel submitted that even if an assessee has not specifically made prayer for calling of a report under section 50C(2), then also, in the given circumstances such report ought to have been obtained by the ld. Assessing Officer. The ld. Counsel for the

assessee has placed on record copy of this judgment in GA No. 3686 of 2013, ITAT No. 221 of 2013. He thereafter put reliance upon the ITAT order in ITA No.532/KOL/2022 in the case of B.S. Industrial Equipments Pvt. Limited -vs.- ITO, Kolkata.

9. We have duly considered the rival contentions and gone through the record carefully. Section 48 has a direct bearing on the controversy in hand, therefore, we take note of the relevant part of this section, which reads as under:-

*“Mode of computation:-*

48. *The income chargeable under the head “Capital gains” shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:—*

*(i) expenditure incurred wholly and exclusively in connection with such transfer;*

*(ii) the cost of acquisition of the asset and the cost of any improvement thereto;*

*(iii) in case of specified entity referred to in sub-section (4A) of section 45, the amount included in the total income of such specified entity under sub-section (4A) of section 45 which is attributable to the capital asset being transferred, calculated in the prescribed manner.*

*x x x x x x*

10. A perusal of the above section would reveal that a capital gain shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the amounts namely (a) expenditure incurred for transfer of such a

capital asset; (b) the cost of acquisition of the asset and cost of any improvement.

Sub-section (3) of section 48(1) is not called for in the present case. The expression 'full value of the consideration' employed in this section is required to be replaced with the amount of which stamp duty valuation authorities have determined for the payment of stamp duty.

11. Section 50C provides so and the relevant part of this section reads as under:-

*“Special provision for full value of consideration in certain cases:-*

*50C: 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, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:*

*Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*

*Provided further that the first proviso shall apply only in a 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 the agreement for transfer:*

*Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.*

*(2) Without prejudice to the provisions of sub-section (1), where—*

*(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*

*(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,*

*the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, x x x x x*

12. A perusal of the above section would reveal that when capital gain is to be computed under section 48 of the Income Tax Act, then full value of the consideration received or accruing as a result of the transfer by an assessee of a capital asset being land or building or both, is less than the value adopted or assessed by any authority of a State Government for charging the stamp duty, then such valuation determined by such State Government would be deemed to be the full value of

consideration. In other words, stamp duty valuation will be adopted as a full value of the consideration as prescribed in section 48 of the Income Tax Act.

13. However, sub-clause (2) of section 50C further provides that if an assessee claims that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer, then the ld. Assessing Officer may refer the valuation of the capital asset to the Valuation Officer. The moment assessee pointed out that it has sold the property within 3.5 months and it cannot fetch the price as deemed by the ld. Assessing Officer on the strength of stamp duty valuation, the ld. Assessing Officer should have referred it to the Valuation Cell. The ld. CIT(Appeals) has erred in observing that since the assessee has not asked the Assessing Officer to refer the valuation of this property to the Valuation Cell, therefore, there was no necessity at the end of the ld. Assessing Officer to determine the fair market value under section 50C(2) of the Income Tax Act. It is pertinent to observe that quasi judicial authorities are being respected not on account of their power to legalise the injustice on technical ground but because they are capable of removing injustice and is expected to do so. Once the fact was brought to the notice of ld. Assessing Officer that this property was purchased for a sum of



Rs.2.38 crores and it is actually being sold after three & half months for Rs.2.80 crores, then before deeming its sale value at Rs.3,90,00,000/-, the ld. Assessing Officer ought to have applied his mind and ought to have got its value determined by the DVO. Respectfully following the judgment of the Hon'ble Jurisdictional High Court as well as the decision of the Coordinate Bench, we set aside both the impugned orders and remit this issue to the file of ld. Assessing Officer for re-adjudication. The ld. Assessing Officer is directed to call for a valuation report under sub-clause (2) of section 50C for determining the fair market value of the property on the date of transfer. The Assessing Officer is also directed to decide the claim of the assessee whether the gain is to be assessed as a capital gain or a business income.

**14. With the above directions, the appeal of the assessee is treated as allowed for statistical purposes.**

Order pronounced in the open Court on May 1<sup>st</sup>, 2023.

**Sd/-**  
**(Manish Borad)**  
**Accountant Member**

**Sd/-**  
**(Rajpal Yadav)**  
**Vice-President(KZ)**

***Kolkata, the 1<sup>st</sup> day of May, 2023***

*Copies to :* **(1) M/s. Wideangle Construction Company Pvt. Limited, 24/3, Maulana Abul Kalam Azad Sarani, Phool Bagan, Kolkata-700054**

- (2) ***Income Tax Officer,  
Ward-9(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***
- (3) *Commissioner of Income Tax (Appeals),  
Income Tax Department, National Faceless  
Appeal Centre (NFAC), Delhi*
- (4) *Commissioner of Income Tax ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

*TRUE COPY*

*By order*

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

***Laha/Sr. P.S.***