

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.2496/Del/2017  
Assessment Year: 2005-06

Smt. Krishna Yadav, W/o- Sat Narayana Yadav, B-552/A, Phase-1, Shushant Lok, Gurgaon	<b>Vs.</b>	Income-tax Officer, Ward-2(3), Gurgaon
<b>PAN :AAUPY8765G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Shri Sanjay Kumar, Sr.DR

Date of hearing	10.02.2022
Date of pronouncement	22.02.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

This is an appeal by the assessee against the order dated 13.02.2017 of learned Commissioner of Income Tax (Appeals)-1, Gurgaon, for the assessment year 2005-06 (wrongly mentioned as assessment year 2012-13 in the cause title of first appellate order).

**2.** The dispute in the present appeal is confined to addition of Rs. 2,37,400/- as short term capital gain by invoking the provisions of section 50C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

**3.** Briefly the facts are, assessee is a resident individual. For the assessment year under dispute, the assessee filed her return of income on 10.10.2005 declaring total income of Rs.46,18,500/- . While verifying the return of income filed by the assessee in course of assessment proceeding, the Assessing Officer noticed that during the year under consideration, the assessee has sold immovable property consisting of land and constructed portion for a sale consideration of Rs.90 lakhs. The Stamp Valuation Authority has determined the value of property at Rs.1,02,36,200/-. Thus, the Assessing Officer issued a show-cause-notice to the assessee to explain, why the value determined by the Stamp Valuation Authority should not be considered as deemed sale consideration. Though, the assessee objected to the proposed action of the Assessing Officer, however, rejecting assessee's submission, the Assessing Officer proceeded to substitute the declared sale consideration with the value determined by the Stamp Valuation Authority in terms of section

50C of the Act and proceeded to compute short term capital gain at Rs.15,45,172/-. The assessee having already offered short term capital gain of Rs. 3,08,972/-, the Assessing Officer made a net addition of Rs.12,36,200/-. Contesting the aforesaid addition, the assessee preferred an appeal before learned Commissioner (Appeals).

**4.** Before the first appellate authority, the primary contention of the assessee was, though, she had objected to the value determined by the Stamp Valuation Authority, however, the Assessing Officer without referring the valuation to the Departmental Valuation Officer (DVO), has adopted the value determined by the Stamp Valuation Authority. On the direction of learned Commissioner (Appeals), the Assessing Officer made a reference to the DVO to determine the value of the property. Consequently, the DVO determined the value of the property at Rs. 92,37,400/- as on the date of sale. Thus, based on the value determined by the DVO, learned Commissioner (Appeals) restricted the addition on the ground of short term capital gain to Rs. 2,37,500/-, being the difference between the declared sale consideration and the value determined by the DVO.

**5.** When the appeal was called for hearing, none appeared on behalf of the assessee. Accordingly, we proceed to dispose of the appeal *ex parte* qua the assessee after hearing learned Departmental Representative and based on the materials on record.

**6.** We have heard learned Departmental Representative and perused materials on record. Facts on record clearly reveal that as against the declared sale consideration of Rs.90 lakhs, the Stamp Valuation Authority has determined the value of the property, giving rise to short term capital gain, at Rs.1,02,36,200/-. It is also a fact that the Assessing Officer has proceeded to compute short term capital gain by adopting the value determined by the Stamp Valuation Authority as deemed sale consideration by invoking the provision of section 50C(1) of the Act. However, on the direction of learned first appellate authority, the DVO has determined the market value of the property as on the date of sale at Rs.92,37,400/-. Thus, the difference between the declared sale consideration and the value determined by the DVO has narrowed down to Rs.2,37,400/-. It is a fairly accepted position that valuation of asset involves some amount of guess work and estimation. Thus, keeping this fact in

view and for removing hardship caused to the assesseees because of adoption of stamp duty value as deemed sale consideration in terms of section 50C(1) of the Act where the difference is marginal, the legislature thought it appropriate to introduce third proviso to section 50C(1) of the Act, providing that, where the value determined by the Stamp Valuation Authority does not exceed 5% (at present 10%) of the declared sale consideration, in that eventuality, the declared sale consideration should be accepted. There are various judicial precedents, wherein, it has been held that the third proviso to section 50C(1) of the Act introduced by Finance Act, 2018, w.e.f., 01.04.2019, will apply retrospectively. In this context, we may refer to the decision of Tribunal in the case of Maria Fernandes Cheryl Vs. ITO, [2021] 123 taxmann.com 252 (Mum.).

**7.** In the facts of the present case, admittedly, after determination of market value of asset as on the date of sale by the DVO, the difference between the declared sale consideration and the market value is within the range of 5%, as referred to, in third proviso to section 50C(1) of the Act. This, being a beneficial provision, in our considered opinion, the benefit provided under the third proviso to section 50C(1) of the Act, should be extended

to the assessee, as, ultimately the value determined by the Stamp Valuation Authority has been substituted by DVO's valuation in terms of sub-section (3) of section 50C of the Act. Thus, in our considered opinion, the addition of Rs.2,37,400/- towards short term capital gain needs to be deleted. Accordingly, we delete the same. In view of our aforesaid decision on merits, ground nos. 1 and 3 have become academic, hence, do not require adjudication.

**8.** In the result, the appeal is allowed, as indicated above.

***Order pronounced in the open court on 22<sup>nd</sup> February, 2022***

***Sd/-***  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 22<sup>nd</sup> February, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi