



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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.5292/Del./2024, A.Y. 2019-20

Amit Sabharwal, 3494, Hira Market, Chawri Bazar Delhi-110006 PAN: AEUPS5728R	Vs.	Asst. Director of Income Tax, CPC, Bengaluru/ ITO, Ward 46(3), New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Rajiv Jain, CA
Respondent by	Shri Ashish Tripathi, Sr. DR

Date of Hearing	05/03/2025
Date of Pronouncement	12/03/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal for the Assessment Year (hereinafter, the 'AY') 2019-20 filed by the assessee is directed against the order dated 22.10.2024 of the Addl./Joint Commissioner of Income Tax (Appeals)-5, Chennai [hereinafter, the 'Addl. CIT(A)'].

2. The assessee, vide two grounds, has raised core issue is that whether the addition/adjustment of Rs.36,51,250/- made under section 50C(1) of

the Income Tax Act, 1961 (hereinafter 'the Act') can fall within the ambit of adjustments provided under section 143(1)(a) of the Act.

3. The relevant facts giving rise to this appeal are that the assessee filed his Income Tax Return (hereinafter, the 'ITR') on 25.10.2019 declaring income of Rs.62,43,461/-. The assessee has shown Long Term Capital Gains of Rs.46,23,385/- on the sale of immovable property situated in Noida for sale consideration of Rs.1,58,43,750/- as against the circle rate of Rs.1,94,95,000/- shown in the ITR. The sale consideration and the circle rate as mentioned above of the said property were duly disclosed in the ITR. Keeping in view the provisions of Section 50C of the Act, the Assessing Officer (hereinafter, the 'AO')- CPC show caused the assessee under section 143(1) of the Act while processing the said ITR for working out the addition/adjustment of Rs.36,51,250/- by taking the sale consideration & circle rate at Rs.1,94,95,000/- instead of Rs.1,58,43,750/- as shown in the ITR (the difference between circle rate and sale consideration). In response to the show cause notice under section 143(1) of the Act, the assessee filed his objection before the AO-CPC. However, the AO did not take cognizance of the same and do needful as per the law. But he made the addition/adjustment of Rs.36,51,250/- under section 143(1)(a) of the Act. Aggrieved, the assessee filed appeal before the CIT(A)/Addl./Joint CIT(A), who dismissed the appeal observing as under: -

“The assessee is an individual having income under the head business income (as partner), income from other sources and long term capital gain on sale of leasehold residential property. Notice u/s 250 was issued on 01.06.2023, which was responded by the appellant on 09.06.2023. During the year, the appellant had sold a residential property in Noida for Rs.1,58,43,750/-. The guideline value of the said property on that date was Rs.1,94,95,000/-, i.e. the minimum value of that property as fixed by the State Government, at which property can be registered. The said property was sold at Rs. 1,58,43,750/-, which was below the guideline value fixed by the State Government.

As per Section 50 C of Income Tax Act, "the sale consideration value must not fall below the stamp duty value determined by the Stamp Value Authority. However, the income tax department allows a slight relief of 10% variation."

Further, the capital gain was computed on the basis of actual sale consideration. The facts of the case in the light of the grounds of appeal, statement of facts and the submissions made by the appellant were carefully considered. In the instant case, the appellant himself has admitted in the statement of facts that the property was sold below the guideline value. Hence, the appeal of the appellant is Dismissed.”

4. The Ld. Authorized Representative (hereinafter, the ‘AR’) contended that once the assessee had filed his objection to the show cause notice for proposed adjustment under section 143(1) of the Act, the proper recourse available with the AO was to refer the matter to the DVO for needful valuation and subsequent actions thereafter. However, the AO did not follow the proper procedure, once the same had been objected by the assessee, provided under section 50C of the Act; therefore the AO could not make any adjustment under section 50C(1) of the Act. To buttress the argument, the Ld. AR placed reliance on the decision in the case of Inder

Jeet Malik in ITA No. 1024/Del/2022 (order dated 26.07.2022). It was categorically submitted that the present case got squarely covered by the decision of the Co-ordinate Bench in the case of Inder Jeet Malik (supra).

5. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR'), placing reliance on the finding of the first appellate authority requested for dismissal of the appeal on the reasoning that the said adjustment tantamount to the wrong claim under section 143(1) of the Act.

6. We have heard both parties at length and have perused the material available on record. The Co-ordinate Bench of Tribunal in the case of Inder Jeet Malik (supra) has held as under:

5. I have heard the parties and perused the materials on record. The basic issue requiring consideration is, whether the addition made under section 50C(1) can fall within the ambit of adjustments provided under section 143(1)(a) of the Act. It is noticed; the following adjustments can be made while processing the return under section 143(1) of the Act:

"Assessment.

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:--

(a) the total income or loss shall be computed after making the following adjustments, namely: -

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure 68[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under 69[section 10AA or under any of the provisions of Chapter VI-A under the heading "C.--

Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or ITA No. 1024/Del./2022 AY: 2019-20

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:"

6. No doubt, in the present case adjustment has been made under sub-clause (ii) to section 143(1)(a). The expression "incorrect claim apparent from any information in the return" has been explained under Explanation to section 143(1)(a) of the Act and reads as under:

"Explanation- For the purposes of this sub-section-

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return-

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

7. On a conjoint reading of section 143(1)(a)(ii) along with Explanation it becomes very much clear that the addition under section 50C(1) cannot be in the nature of incorrect claim as provided in Explanation to section 143(1)(a)(ii) of the Act. This is so

because, section 50C has to be read as a whole and cannot be restricted to sub-section (1) alone. It is fairly well settled; a deeming provision has to be taken to its logical end. Undoubtedly, section 50C is a deeming provision. Though, sub-section (1) of section 50C ITA No. 1024/Del./2022 AY: 2019-20 provides for substituting the stamp duty value as deemed sale consideration in place of the declared sale consideration, however, sub-section (2) carves out an exception by providing that if the assessee objects to the stamp duty value, the valuation has to be referred to the Department Valuation Officer (DVO) and in case the value determined by the DVO is lower than the stamp duty value, the value determined by DVO has to be considered for computing capital gain in terms with sub-section (3) of section 50C. Therefore, sub-section (1) to section 50C cannot be considered in isolation. By making an adjustment of the nature contemplated under sub-section (1) to section 50C, that too, by CPC, the Department takes away a valuable statutory right given to the assessee to object to the value determined by stamp valuation authority.

8. Therefore, such type of adjustment, in my considered opinion, cannot be made under section 143(1)(a) of the Act. This is so because, at the stage of processing of return under section 143(1)(a), if such an adjustment is made, the assessee does not get an opportunity to object, as per section 50C(2) of the Act. More so, when conditions of the 1st and 2nd proviso to section 143(1)(a) are not complied. Therefore, I hold that the addition made by CPC ITA No. 1024/Del./2022 AY: 2019-20 under section 50C(1) of the Act by way of adjustment under section 143(1)(a)(ii) is unsustainable. Accordingly, I delete the addition.”

7. We are of the considered view that this case is squarely covered by the decision of the Co-ordinate Bench of Tribunal in the case of Inder Jeet Malik (supra). We therefore, following the reasoning given by the Co-ordinate Bench in the case of Inder Jeet Malik (supra), hold that the no adjustment/addition under section 50C of the Act can be made while

processing the ITR under section 143(1) of the Act. Accordingly, we delete the addition of Rs.36,51,250/-.

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

Order pronounced in open Court on 12th March, 2025

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:12/03/2025

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI