

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2780/Del/2017
Assessment Year: 2012-13

Amarjeet Kaur,
C/o L.N. Nangalya & Co.,
101 & 105, S-524, Neelkanth
Complex, Shakarpur,
Delhi.

Vs ACIT,
Circle-46(1),
New Delhi.

PAN: AAIPK4730F

(Appellant)

(Respondent)

Assessee by : Shri Saurabh Jain, Advocate
Revenue by : Shri Ashok Gautam, Sr. DR

Date of Hearing : 09.03.2021
Date of Pronouncement : 08.06.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 2nd February, 2017 of the CIT(A)-16, New Delhi, relating to assessment year 2012-13.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 31st July, 2012 declaring total income at Rs.7,49,01,810/-. During the course of assessment proceedings, the Assessing Officer noted that the

assessee has claimed capital gain on sale of her undivided 12.5% share of 921.06 sq. yard. of land in property No.11B, Jungpura, New Delhi - 110014 which was sold for Rs.74 lacs to her son Mr. Aniljit Singh, whereas Mr. Aniljit Singh has purchased the undivided 25% share of the above said property from his uncle at Rs.2,40,00,000/-. According to the Assessing Officer, since both are part of the same property, the rate at which it is sold by the assessee is under valued. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.45.50lakhs being the difference between the value of 12.5% share at Rs.1.20 crore and the sale value of Rs.74.50 lakhs.

2.1 The Assessing Officer similarly noted that during the year the assessee sold another property at 264, Industrial Area, Phase III, Okhla, New Delhi at Rs.39.30 crores. But, in computation the sale consideration of this property is taken at Rs.37,59,20,845/-. On being asked by the Assessing Officer, it was submitted that an amount of Rs.1.50 crores was forfeited by the buyer M/s Hero Corporate Services Ltd. and that Rs.20,79,155/- was paid as brokerage on the sale of the property. The Assessing Officer noted that in reply to requisition u/s 133(6), the buyer M/s Hero Corporate Services Ltd., submitted that an amount of Rs.1,29,51,720/- is still payable to the assessee. He, therefore, rejected the claim of forfeiture of an amount of Rs.1.30 crores and added the same to the total income. The other addition of Rs.95,697/- is not in dispute before us, therefore, we are not concerned with the same. The Assessing Officer accordingly determined

the total income at of the assessee at Rs.11,01,32,106/- as against the returned income of Rs.7,69,01,809/-.

3. Before CIT(A) the assessee made elaborate arguments. So far as the addition of Rs.45.50 lakhs added on account of notional sale consideration is concerned, it was submitted that the assessee owned a residential flat at property at 11 B, Jangpura, New Delhi-110014. This is four storey building; assessee owns 12.5% share as a back side flat of the building. This residential flat was sold by the assessee to her son, Mr. Aniljit Singh at prevailing circle rate at the time of sale which comes to Rs. 74.50 Lac. Referring to the copy of government circle rate at the time of sale, it was argued that the same comes to Rs.74.50 lac. It was argued that incidentally, Mr. Aniljit Singh acquired and became the owner of 75% portion of the property at 11-B, Jangpura, New Delhi-110014 other than 25% share i.e. one entire floor which was owned by some other party. This 25% share in the same building was purchased by Mr. Aniljit Singh for Rs. 2.40 Crore and an opportunity cost was paid to the owner of this portion to become the owner of the entire property.

3.1 It was accordingly submitted that the assessee has sold the property at prevailing circle rate prescribed by the competent authority. The portion is back portion of the property and, therefore, the same cannot be compared with the entire 25% (first floor of the property) and the Assessing Officer had not referred the matter to the DVO before making the addition.

4. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition of Rs.45.50 lakhs by observing as under:-

I have considered all the facts and circumstances of the case. It is not disputed by the Ld AR that the purchaser of the party Sh Aniljit Singh acquired the one floor in the property 11 B, Jangpura, New Delhi-110014 for a consideration of Rs.2.4 crore, which constitute only 25% of the said property. It is also undisputed fact that the appellant had sold the one half of the floor (12.5% of the property) to her son Sh Aniljit Singh for a consideration of Rs.74.50 lac. In spite of the fact that the property sold is at the back portion of the property, the property is grossly under valued. The Assessing Officer has merely adopted the valuation of the property which has been declared by Sh Aniljit Singh in purchase of other floor of the same property. There is a stark difference in the value adopted for the same property. How could one property be valued at Rs.74.50 lac when the same property has been valued by the third party at Rs.20 crore. The Assessing Officer had a very strong case and he rightly held that the property has been transferred in a grossly under valued consideration. The mere fact that the purchaser was the son of the appellant does not really change the nature of transaction.

The other argument of the appellant that the consideration over and above sale value (declared) may be considered as gift from mother to son. However, I am afraid that such argument cannot be accepted at this stage. It is open to the appellant to gift any property to anybody the department has nothing in favour or against the appellant. However, the transfer of property should take place as per the law prevalent at that stage. Whether there was a gift from mother to son or not should have been declared by the appellant. The appellant cannot and should not expect the appellate authority to draw conclusions of gift, without any material evidence, been brought on record; I may add here that creation of evidence is not permissible. Therefore, I do not see any reason to interfere with the order of the Assessing Officer on this ground. The ground is therefore, dismissed. The order of the AO with regard to addition of Rs.45.50 lacs is confirmed.

5. So far as the addition of Rs.1.30 crores is concerned, it was submitted that the amount of Rs.1.30 crores was not received by the assessee from the buyer due to non-compliance of the terms of the agreement to sell i.e., to regularize the unauthorized construction. The buyer has the condition of agreement to sell that this amount will only be released after the regularization of the additional

construction which is impossible and ultimately Rs.1.30 crores was forfeited by the buyer was not considered as part of sale consideration. A letter dated 29th May, 2015 from M/s Hero Corporate Services Private Ltd. was also submitted. The argument before CIT(A) has been summarized by him in his order which reads as under:-

ñ1.1 That the/Appellant executed a Sale Deed with Hero Corporate Services Ltd. on 20th December 2011 with respect to property at 264 Okhla Industrial Estate, New Delhi showing a total consideration of Rs.39,30,00,000.

1.2 That simultaneously by letter dated 20th December, 2011 signed by Hero Corporate Service Ltd. and counter signed by the Appellant, the vendee, Hero Corporate Service Ltd., held back a sum of Rs.2.50 Crore initially on account of certain obligations which were to be fulfilled by the Appellant to enable Hero Corporate Service Ltd. to enjoy total right to the property sold.

1.3 That out of the sum of Rs.2.50 Crores held back the Appellant received Rs.1.20 Crores and never received Rs.1.3 Crore on account of the fact that the Appellant was unable to produce Completion Certificate with respect to the building.

1.4 That the amount of Rs. 1.30 Crores has been held back on the ground that a portion of building sold was unauthorized and subject to demolition by the authorities.

1.5 That accordingly the Appellant is not entitled to consideration of Rs.1.30 Crores, since the "sword of demolition" would always be hanging on the vendee. Furthermore, in any case cost of obtaining completion by paying compounding fee and legal fee would be more than Rs. 1.30 Crores.

1.6 As such the amount of Rs.1.30 Crores was not to be paid by the Appellant to the vendee.

1.7 Therefore he contended that the Appellant cannot be taxed or an amount he is not entitled to receive.

1.8 He further argued that the account statement received from Hero Corporate Service Ltd. by the Assessing Officer under section 133(6) of the Income Tax Act, 1961 showing Rs. 1,29,51,720/- payable to the Appellant cannot be used as evidence against the assessee since no opportunity to rebut

the same has been given to the Appellant and no chance to cross examine Hero Corporate Service Ltd. has being given. Accordingly, this amount Rs.1.30 Crores could not form part of Capital Gains assessed by the learning Assessing Officer.

6. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition of Rs.1.30 crores made by the AO by observing as under:-

I have considered all the facts and circumstances of the case. There is no dispute to the fact that an amount of Rs. 1,29,51,720/- is still outstanding in the books of accounts of M/s Hero Corporate Service Ltd which is payable to the appellant. As far as the agreement to sell is concerned, there is no clause for forfeiture of any amount by the purchaser. The contention of the appellant, that it has to get the completion certificate and fulfill other obligations before the amount could be released by the purchaser, does not change the character of receipt. The only thing is that it becomes receivable rather than the received. Further the appellant has also issued a legal notice to the appellant for recovery of amount of Rs. 1,29,52,720/-. The dispute regarding obtaining various certificates from the authorities and payment or retention of amount is extraneous to the issue being discussed here. The appellant had and still has the right to recover the amount of Rs.1.30 lacs from M/s Hero Corporate Service Ltd. Therefore, to my mind the AO is legally correct and is on sound footing. Hence I have no reason to interfere with his order with regard to addition of Rs.1.3 crore.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

On Assumption of Jurisdiction

1. That on the facts and in the circumstances of the case and in law, reasons recorded in present case for assumption of jurisdiction do not satisfy the requirements of law and are not sufficient to form a belief that income has escaped assessment within the meaning of provisions section 147/148 of the act and as a sequel present reopening action of Ld. AO, order passed by Ld. AO thereon and impugned order of Ld. CITA are liable to be quashed.

1.1. That on the facts and in the circumstances of the case and in law, the reasons recorded in present case are based on non application of mind as evident from the reasons which are based on mere suspicion and guess work.

1.2. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in reopening the reasons on basis of unaccrued and hypothetical income, against the concept of real income.

1.3. That on the facts and in the circumstances of the case and in law, Ld. AO erred in trespassing the reasons, making assessment on the issues which have no reference to information received and for which no separate notice u/s 148 is issued, and there is no fresh material received during the course of the reopening proceedings.

On Merits

2. That on the facts and in the circumstances of the case and in law, Ld. CITA erred in confirming the addition of Rs. 45,50,000/- on account of alleged under valuation, without appreciating that assessee has declared consideration as per sale deed, which is as per prevalent circle rates prescribed by competent authority, on mere basis of assumptions and presumptions, dehors provisions of section 48 & 50C of Income Tax Act, 1961.

2.1. That on the facts and in the circumstances of the case and in law, Ld. CITA erred in confirming the addition of Rs. 45,50,000/- on account of alleged under valuation without any reference to DVO.

3. That on the facts and in the circumstances of the case and in law, the Ld. CITA erred in sustaining the addition of RS. 1,30,00,000/-, which amount has never been paid by the buyer to the assessee, evident from (a) Reply of Buyer dated 29.05.2015 addressed to assessee A advocate, (b) Letter dated 20.12.2011 describing retention of said amount, (c) Contents of sale deed dated 20.12.2011, (d) Affidavit of the assessee dated 02.01.2017, all these documents established that said amount has remained unaccrued, non crystallized, inchoate, thus cannot be taxed on basis of real income theory.

3.1. That on the facts and in the circumstances of the case and in law, the Ld. CITA erred in confirming the addition of Rs. 1,30,00,000/- on basis of irrelevant and perverse finding without considering the detailed documentary evidences filed by the assessee, which is very clear that assessee has never received the stated amount as buyer has forfeited the amount duly admitted in letter dated 29.05.2015.

3.2. That on the facts and in the circumstances of the case and in law, Ld. CITA erred in confirming the addition of Rs. 1,30,00,000/- which is notional, artificial, theoretical and imaginary because assessee has never received the said sum and buyer has never agreed to pay the same, rather buyer has forfeited it.

That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.ò

8. At the time of hearing, the Id. Counsel for the assessee did not argue the grounds relating to validity of jurisdiction u/s 147/148 for which the Id. DR has no objection. We, therefore, dismiss ground of appeal No.1 as ónot pressed.ô

9. Ground of appeal No.4 being general in nature is dismissed.

10. So far as ground of appeal No.2 is concerned, the same relates to order of the CIT(A) in sustaining the addition of Rs.45,50,000/- on account of alleged under-valuation. The Id. Counsel for the assessee, referring to para 2 of the assessment order, submitted that the assessee was having an undivided share of 12.5% in the property which was transferred at the prevailing circle rate to her son. Referring to page 3 of the paper book, he submitted that the undivided share of the assessee in the property was at the back side of the whole property. Referring to page 3 of the paper book, again, he submitted that the assessee transferred the property to her son as a result of which he became the owner of 75% of undivided share of the property. The Id. Counsel for the assessee, referring to page 3 of the paper book, submitted that the AO made the addition in the hands of the assessee by merely comparing the sale of another share without appreciating that the son of the assessee paid Rs.2.40 crore for 25% share as opportunity cost to the uncle to become owner of the entire property. Further, provisions of section 50C was not applied by the AO since it was not applicable. He submitted that no addition on

the basis of assumed consideration can be made until and unless the AO has shown that the assessee has received the consideration more than the apparent consideration. No material or evidence was brought on record by the AO that the assessee has received something more than the consideration mentioned in the sale deed. He submitted that even otherwise, if it is treated that the property has been transferred for inadequate consideration that will tantamount to be the gift made by the mother to her son and cannot be assessed u/s 56(vii) of the Act. It was accordingly argued that since the addition has been made on the basis of assumption and presumption, therefore, the addition so made by the AO and sustained by the CIT(A) should be deleted.

11. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that when the son of the assessee has purchased 25% of the property from his uncle at Rs.2.40 crores. Therefore, it is not conceivable that the assessee would have sold her 12.5% share in the same building at Rs.74,50,000/- as against Rs.1,20,00,000/-. He accordingly submitted that the order of the CIT(A) being a reasoned one, the same should be upheld and the ground raised by the assessee on this issue should be dismissed.

12. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, has sold her 12.5% share in the property No.

No.11B, Jungpura, New Delhi - 110014 for Rs.74 lacs to her son Mr. Aniljit Singh. Since Shri Aniljit Singh has purchased the undivided 25% share of the above said property from his uncle at Rs.2,40,00,000/-, therefore, the AO held that 12.5% of the share in the said property owned by the assessee should be at Rs.1,20,00,000/-. Since the assessee has sold the same at Rs.74,50,000/- to her son, the AO added the difference of Rs.45.50 lakhs to the total income of the assessee which has been upheld by the CIT(A). It is the submission of the ld. counsel that the property owned by the assessee was at the back side of the building and was sold at the prevailing circle rate. Further, the property has been sold to the son of the assessee and neither provisions of section 50C were applied nor the matter was referred to the DVO and there is no evidence with the Department that the assessee has received something more than the amount mentioned in the sale deed. It is also his argument without prejudice that the difference at best can be treated as gift made by the mother to her son and, therefore, it cannot be assessed u/s 56(vii) of the IT Act, 1961.

12.1 We find some force in the above arguments of the ld. counsel for the assessee. It is an admitted fact that the property has been sold at the prevailing market rate and provisions of section 50C have not been applied by the AO. It is also a fact that the AO has not referred the matter to the DVO. We find, the AO has basically made the addition on the ground that Shri Aniljit Singh has purchased the undivided 25% share of the above-said property from his uncle at

Rs.2,40,00,000/- and, therefore, 12.5% share of the assessee in the said property should have been sold at Rs.1,20,00,000/- and since the assessee has sold her 12.5% share in the property at Rs.74.50 lakhs, he made the addition of Rs.45.50 lakhs. As mentioned earlier, the assessee has sold her 12.5% share in the property to her son and not to an outsider and at the prevailing market rate for which the AO has not invoked the provisions of section 50C of the Act. The AO has no material on record or at his possession to show that the assessee has, in fact received more than what is mentioned in the sale deed. The matter has also not been referred to the DVO. There may be so many reasons for two different rates in the same property such as on account of location of the property, willingness of the seller to sell the property, etc. When a person is not willing to sell the property, but, the buyer is determined to buy the property for becoming the owner of an entire floor, he may have to make some higher payment to tempt the seller to sell the property. In such type of cases it cannot be said that the other sellers must have received payments at the same rate. Since, in the instant case, the assessee has sold her 12.5% share in the property to her son at the prevailing circle rate and there is no evidence on record that the assessee has received something more than the amount mentioned in the sale deed and there is no addition in the hands of the son of the assessee on account of such extra payment made for purchase of the property, therefore, the addition made by the AO on presumption and surmises which has been sustained by the CIT(A), in our opinion, deserves to be deleted. We

accordingly set aside the order of the CIT(A) on this issue and direct the AO to delete the addition.

13. Ground of appeal No.3 by the assessee relates to the order of the CIT(A) in confirming the addition of Rs.1.30 crores made by the AO. The ld. counsel for the assessee submitted that the assessee sold a property at 264, Industrial Area, Phase III, Okhla, New Delhi, at Rs.39.30 crores. Referring to page 13 to 23 of the paper book which is the copy of the sale deed, the ld. counsel referring to page 19 of the paper book submitted that the assessee was required to fulfill certain obligations for which the buyer retained a sum of Rs.2.50 crores. Out of the sum of Rs.2.50 crores, the buyer paid only a sum of Rs.1.20 crores and the balance amount was not received by the assessee at all due to non-fulfillment of the obligations. Therefore, the assessee reduced the above amount out of the sale consideration. Referring to page 9 to 12 of the paper book, the ld. counsel referred to paras 5 and 7 at page 11 and submitted that the assessee issued a show cause notice to the buyer M/s Hero Corporate Services Ltd., to make payment of Rs.1,30,00,000/- when the buyer stated to the AO in reply to notice u/s 133(6) that the said sum is payable to the assessee. He submitted that in reply to the notice issued by the assessee M/s Hero Corporate Services Ltd. sent a reply, vide letter dated 29th May, 2015, copy of which is enclosed at pages 7 and 8 of the paper book, stating that although in their books of account an amount of Rs.1,30,00,000/- is payable, but, the same is subject to fulfillment of the given condition. Since the assessee could

not fulfill the obligation cast on it, they had no other alternative, but, to forfeit the amount of Rs.1,30,00,000/-. He accordingly submitted that since the assessee could not perform a part of the obligation mentioned in the sale deed and has not received the amount of Rs.1,30,00,000/-, therefore, the Id.CIT(A) was not justified in sustaining the addition. So far as the observation of the Id.CIT(A) that non-receipt of the amount does not change the character of receipt is concerned, he submitted that a perusal of the copy of the sale deed shows that a sum of Rs.2.50 crores was in respect of certain obligations to be fulfilled by the assessee. The assessee could fulfill the obligations only upto a sum of Rs.1.20 crores which was received by her. For the remaining Rs.1.30 crores, she could not discharge the obligations and, therefore, the same was not received. He submitted that it is not the case of the Revenue that the whole of the consideration was for the transfer of the property, but, there was certain embargo on the property. Therefore, for removing the embargo, the separate consideration is mentioned in the sale deed as agreed by the seller and the buyer. The said consideration amounting to Rs.2.50 crores although is the part of full consideration of the transfer of the property, but, it was specifically in respect of certain obligations to be discharged by the assessee which is also apparent from the copy of the letter dated 20th December, 2011, copy of which is placed at pages 5 and 6 of the paper book. Since the assessee could not fulfill the obligations and the amount was forfeited by the party, therefore, the sale consideration to the extent the obligations are not performed cannot be part of the apparent consideration and, therefore, the CIT(A) was not justified in sustaining

the addition made by the AO. He accordingly submitted that the addition so made by the AO and sustained by the CIT(A) should be deleted.

14. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

15. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited. We find, the assessee, in the instant case, sold a property bearing No. 264 Okhla, Phase - 3, New Delhi - 110 020, at a consideration of Rs.39.30 crores. However, in the computation, the assessee has taken the consideration at Rs.37,59,20,845/-. On being questioned by the AO, it was submitted that an amount of Rs.20,79,155/- was towards brokerage and an amount of Rs.1.30 crores was forfeited by the buyer. The AO obtained information u/s 133(6) from the buyer M/s Hero Corporate Services Ltd., who submitted that an amount of Rs.1,29,51,720/- is still payable to the assessee and, therefore, the AO rejected the claim of forfeiture of Rs.1.30 crores and made the addition. We find, in appeal, the ld.CIT(A) upheld the addition made by the AO, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld. counsel that as per the terms of the sale deed, the assessee was required to fulfill certain obligations and for that an amount of Rs.2.50 crores was retained by the buyer. Since the assessee could not fulfill the above obligation and could fulfill the obligation to the extent of Rs.1.20 crores, therefore, the balance amount of Rs.1.30 crores forfeited by the

buyer was not considered by the assessee in the sale consideration. It is his submission that the consideration for the obligation which was not discharged by the assessee was never received and, therefore, the sale consideration to the extent the obligations are not performed cannot be the part of the apparent consideration.

16. We find some force in the above argument of the ld. counsel. As per the sale deed, the consideration of Rs.39.20 crores has to be paid to the vendor in the following manner (page 5 and 6 of the sale deed and paper book pages 18 & 19):-

S. No.	Mode of Payment	Amount (Rs.)	Payment made in the name of
1.	Cheque No.273007, dated 14.10.2011 drawn on Axis Bank Ltd., Karol Bagh Branch, New Delhi.	4,00,00,000	Confirming Vendor i.e., Shri Aniljit Singh acting for and on behalf of Vendor in terms of Clause 2 on page 5 of Agreement to Sell dated 17.10.2011.
2.	Cheque no. 273017, dated 28.10.2011 drawn on Axis Bank Ltd., Karol Bagh Branch, New Delhi.	16,00,00,000	Confirming Vendor i.e. Sh. Aniljit Singh acting for and on behalf of Vendor in terms of clause 2 on page 5 of Agreement to Sell dated 17.10.2011
3.	Demand Draft No. 056700, dated 05.12.2011, issued by Axis Bank Ltd.	3,51,84,317	In terms of Letter dated 29.11.2011 from the Vendor and Confirming Vendor, requesting the amount to be paid directly to Reliance Capital Ltd. for release of mortgage.
4.	Demand Draft No. 056701, dated 05.12.2011, issued by Axis Bank Ltd.	9,35,658	In terms of Letter dated 29.11.2011 from the Vendor and Confirming Vendor, requesting the amount to be paid directly to Reliance Capital Ltd. for release of mortgage.
5.	Demand Draft No. 056702, dated 05.12.2011, issued by Axis Bank Ltd.	4,58,47,505	In terms of Letter dated 29.11.2011 from the Vendor and Confirming Vendor, requesting the amount to be paid directly to Reliance Capital Ltd. for release of mortgage.
6.	Retained and deposited Amount	2,50,00,000	Amount retained and deposited at the request of Vendor to be released on fulfillment of obligations in terms of letter dated 19.12.2011 from the Vendor (emphasis supplied by us).

7.	Cheque no. 273030, dated 19.12.2011, drawn on Axis Bank Ltd., Karol Bagh Branch, Delhi	8,60,32,520	VENDOR i.e. Smt Amarjit Kaur.
	Total	39,30,00,000	

17. From the above, it is seen that an amount of Rs.2.50 crores was retained by the vendee to be released on fulfillment of the obligations in terms of letter dated 19th December, 2011. Similarly, in reply to the legal notice issued by the assessee to M/s Hero Corporate Services Ltd, after their response to the notice issued by the AO u/s 133(6) of the Act, they have replied as under (page 7 & 8 of the paper book):-

ñ2. That the contents of para no.2 are not admitted as it is erroneous and is factually different from the averments made herein. Your client was to receive the entire sale consideration and except Rs. 1.50 crores which was retained by us being conditional on the fulfillment of the obligations in terms of letter dated 19.12.2011 from your client. As per this letter your client was supposed to complete the regularization of this building no. 264 Okhla, Phase - 3, New Delhi - 110 020, within a reasonable time after the execution of the sale deed. However, inspite of repeated reminders, verbal and electronic through mail (copies of which has been retained in our office), your client has failed to perform the obligations.

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6. While in our books of account we have still maintained that your client is entitled to receive the balance of Rs. 1.30 crore on fulfillment of the given condition but as it appears from the facts on record that either he is unable to perform his part of the obligations or not willing to do the same.

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8. Please note that under these circumstances we have got no other alternative but to forfeit the amount of Rs. 1.30 crore which is a liability standing in our books of accounts.ò

18. From the above, it is clear that an amount of Rs.1.30 crores was yet to be received by the assessee since it was forfeited by the buyer of the property on account of non-fulfillment of the obligations set out in the sale deed itself. Under

these circumstances, we are of the considered opinion that when the amount was not received by the assessee due to non-fulfillment of certain obligations and that condition was mentioned in the sale deed itself, therefore, we are of the considered opinion that the CIT(A) was not justified in sustaining the addition made by the AO.

19. So far as the observation of the Id.CIT(A) that non-receipt of amount does not change the character of the receipt is concerned, we find, out of the total consideration of Rs.39.30 crores, a sum of Rs.2.50 crores was in respect of certain obligations to be fulfilled by the assessee. In the instant case, the assessee could fulfill obligations only upto Rs.1.20 crores which was received by her. But, for the remaining Rs.1.30 crores, the assessee could not discharge the obligation for which the said amount was not received. We find merit in the submission of the Id. Counsel that it is not a case that the whole of the consideration was for the transfer of the property, but, there were certain embargo on the property. Therefore, for removing the embargo, the separate consideration was mentioned in the sale deed as agreed between the seller and the buyer. The said consideration amounting to Rs.2.50 crores although is the part of the full consideration of the transfer of the property, but, it was specifically in respect of certain obligations to be discharged by the assessee which is also apparent from the copy of the letter dated 19th December, 2011 the relevant portion of which has already been reproduced in the preceding paragraph. Since the assessee could not fulfill a part of the obligation as

per the sale deed, therefore, the sale consideration to the extent the obligations are not performed cannot be the part of the apparent consideration. In this view of the matter, we are of the considered opinion that the Id.CIT(A) was not justified in sustaining the addition of Rs.1.30 crore made by the AO. We, therefore, set aside the order of the CIT(A) on this issue and direct the AO to delete the addition. However, we make it clear that in case the assessee receives any amount out of the forfeited amount of Rs.1.30 crores on a future date, the same shall be taxed in the year of receipt. This ground of appeal raised by the assessee is accordingly allowed.

20. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 08.06.2021.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 08th June, 2021.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi