

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B(SMC)" KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member**

ITA No.635/Kol/2018 Assessment Year:2013-14

M/s Baniara Engs. Pvt. Ltd., DN Sector-V, Salt Lake, Kolkata-91 [PAN No.AABCB 0610 M]	बनाम/ V/s.	Income Tax Officer, Ward-3(3), Kolkata, P-7, Chowringhee Square, Aayakar Bhawan, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.M. Surana, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Sallong Yadden, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	26-06-2018
घोषणा की तारीख/Date of Pronouncement	04-07-2018

आदेश /O R D E R

This is an appeal filed by the assessee directed against the order of Commissioner of Income-tax (Appeals)-1, Kolkata passed u/s 258 of the Income Tax Act, 1962 in short ('the Act') dated 28.02.2018.

2. The assessee is a company the only issue for my adjudication is whether the provision of Section 50C of the Act would apply in the facts and circumstances of this case. The assessee entered into an agreement for purchase of unconstructed flats on 24.01.2009 with Shri Ramesh Kr. Gupta and 21 other co-owners including M/s Florida Towers Pvt Ltd. Thus, the assessee acquired certain rights to purchase the said flats. Before the flats were complete, the assessee sold his rights so acquired to purchase the flats to M/s Baniara Engineers Pvt. Ltd., and Nitu Jain by nominating them for registration of the said two flats. According to this nomination, the said two

flats were registered by the originally vendors in the name of these two ultimate purchasers on 27.09.2012. The assessee was the confirming party to this transaction. The assessee received consideration for sale of such rights and the profit from sale was declared as long term capital gains. The ultimate purchases i.e. M/s Banaria Engineers Pvt. Ltd. and Nitu Jain received possession of the flats directly from the Vendors Shri Ramesh KR. Gupta and 21 others co-owners including M/s Florida Towers Pvt. Ltd..

3. On these facts the issue is whether the Assessing Officer was right in invoking the provision of Section 50C of the Act on ground that the assessee sold flats and therefore market value as determined by Registration authority should be applied. The assessee submits, it had not transferred any land or building and hence the provision of Section 50C of the Act do not apply. The Revenue Authority did not accept this claim of assessee. Hence, the assessee before me.

4. I find that the issue is no more *res integra*. The ITAT 'B' Bench of Ahmedabad Tribunal in ITA No.2519/Ahd/2009 order dated 13.04.2012 in the case of Income Tax Officer vs. Shri Yasin Moosa Godil, under similar facts and circumstances at para-16 held as follows:-

*"16. From the reading of Sec. 50C, it is evident that Sec. 50C is a deeming provision and it extends to only to land or building or both. **Section 50C** can come into play only in a situation where the consideration received or accruing as a result of the transfer by an appellant of a capital asset, being land or both is less than the value adopted or assessed or assessable by any authority of State Government therefore for the purpose of payment of stamp duty in respect of such transfer. It is settled legal proposition that deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Clearly therefore, it is essential that for application of Sec. 50C that the transfer must be of a capital asset, being land or building or both. If the capital asset under transfer cannot be described as "**land or building or both**" then **section 50C** will cease to apply. From the facts of the case narrated above, it is seen that the assessee has transferred booking rights and received back the booking advance. Booking advance cannot be equated with the capital asset and therefore section 50C cannot be invoked."*

Respectfully following the same, I hold that Section 50C of the Act does not apply under the facts and circumstances of the case as what was sold was right in property but not land or building. Hence, this appeal of assessee is allowed.

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

Order pronounced in open court on 04/07/2018

Sd/-
(J.Sudhakar Reddy)
Accountant Member

Kolkata,

*Dkp

दिनांक:- 04/07/2017 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Baniara Engs. Pvt. Ltd. DN Sector—V, Salta Lake, Kol-91
2. प्रत्यर्थी/Respondent-ITO Ward-3(3), P-7, Chowringhee Sq. AayakarBhawan, Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता