

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3402/Del./2015
Assessment Year: 2010-11

Smt. Alka Jain, 3-C/46, New Rohtak Road, New Delhi	Vs.	ACIT, Circle-33(1), New Delhi
PAN :AADPJ8056G		
(Appellant)		(Respondent)

Appellant by	Shri Ajay Wadhwa, Adv. Ms. Ragini Handa, CA
Respondent by	Shri Umesh Takyar, Sr.DR

Date of hearing	24.02.2020
Date of pronouncement	01.05.2020

ORDER

PER O.P. KANT,A.M.:

This appeal by the assessee is directed against order dated 31/03/2015 passed by the learned Commissioner of Income-tax (Appeals)-17, New Delhi, [in short the Ld. CIT(A)] for assessment year 2010-11, raising following grounds:

1. *That the order of the Ld. CIT(A) dated 31.03.2015 is bad in law and on facts.*
2. *That on the facts and circumstances of the case the Ld. CIT(A) has erred in upholding the order of the AO computing long term capital gain on sale of agricultural land at Rs.65,43,367/- as against Rs. 17,31,267/- computed by the appellant.*
 - 2.1 *That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in upholding the action of the AO in adopting the half share of the assessee from sale of agricultural land at*

Rs.78,12,100/- as against Rs.30 lakhs actually received by the appellant vide MOU dated 17.10.2014.

- 2.2 That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in adopting the sale value of agricultural land as mentioned in SPA dated 6.4.2009 (conveyance deed executed on 23.6.2010) fraudulently got signed from the appellant by the buyer of land namely Shri H.P. Singh, Director, Anushna Estates (P) Ltd.*
- 2.3 That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in adopting the sale consideration of land as mentioned in the SPA dated 6.4.2009 without referring the matter to DVO as envisaged in Sec. 50C of the I.T. Act.*
- 2.4 That in absence of any reference to the DVO the stamp duty valuation adopted for the purpose of computing the long term capital gains is illegal and may be set aside.*
- 3. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in confirming the order of the AO in treating the loss on sale of shares as non-genuine and thereby not allowing set off against long term capital gains.*
- 4. The Ld. CIT(A) is not justifying in giving direction to the AO for initiating wealth tax proceedings against the appellant.*

2. Briefly stated facts of the case are that the assessee filed return of income on 29/03/2011, declaring total income of ₹ 27,61,600/-, which comprised of income declared under the head 'income from house property', 'profit or gains from business or profession', 'capital gain and income from other sources'. The return of income filed by the assessee was selected for scrutiny assessment and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. In the scrutiny assessment completed under section 143(3) the Act on 26/03/2013, the Assessing Officer made addition under the head capital gain for long-term capital gain of ₹ 48,12,100/-and disallowance of short-term capital loss of ₹ 24,50,000/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who upheld the finding of the Assessing Officer. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above. The assessee

had also filed an additional ground before the Tribunal as under on 16/01/2019:

“(i) The learned CIT(A) has failed to appreciate the fact that the consideration paid by the buyer of the property was above the circle rate but the Assessee seller received a much lesser amount of Rs.30 lakhs as the broker and the intermediaries had misappropriated the difference. Hence, section 50C was duly complied with but for the purpose of computing capital gain, the amount appropriated had to be allowed as a deduction out of the sales consideration.”

4. However, during hearing before us, the learned Counsel submitted not to press the additional ground and made endorsement on the appeal paper for withdrawing the said additional ground.

5. The ground No.1 of the appeal being general in nature, we are not required to adjudicate upon specifically

6. The ground No. 2 to 2.4 of the appeal are related to the addition of long-term capital gain of ₹ 48,12,100/-.

6.1 The facts qua the issue in dispute are that;

(i) The assessee in the return of income shown sale of agricultural land at ₹ 4,30,00,000/-and after subtracting the cost of acquisition, cost of construction and other legal cost, the long-term capital gain of ₹ 17,31,266/-has been declared.

(ii) During assessment proceeding, on being asked, the assessee filed a copy of the agreement to sale dated 01/04/2009. In the agreement to sale, the assessee has claimed to sale its 50% share in the agriculture land along with remaining 50% owners to “M/s Anushna Estate Private Limited” for a total sum of ₹ 60,00,000 /-. (₹ 30 lakhs to the assessee and remaining ₹ 30 lakh to other owners of the land). According to the Assessing

Officer, the said agreement to sale was made on non - judicial stamp paper of ₹ 50 but it was neither registered before any authority nor notarized, so he asked for the sale deed of the property, however, the assessee did not submit the said sale deed.

- (iii) the Assessing Officer by way of issue of notice under section 133(6) of the Act dated 18/03/2013, gathered a copy of the sale deed from the office of the sub- Registrar and found that the sale deed was registered on 23/06/2010, wherein the total sale consideration of the property exchanged between the seller and buyer was recorded at ₹ 1,56,24,200/-. In the said sale deed, the assessee has been represented by her special power of attorney holder Sh. HP Singh.

6.2 In view of the above facts, the Assessing Officer was of the view that the assessee had received 50% share out of the sale consideration recorded in the sale deed, which amounted to ₹ 78,12,100/-, however, the assessee had declared sale consideration of only ₹ 30,00,000/-and, therefore, he made addition for the balance amount of ₹ 48,12,100/-. The finding of the Assessing Officer is reproduced as under:

“3.3 The reply of the assessee has been considered. The assessee has been evasive on this issue since beginning of the assessment proceedings. The assessee did not submit copy of sale deed despite being asked to do so on several occasions. The assessee did not even submit copy of the said power of attorney executed by her in favour of Sh. H.P. Singh. What assessee has submitted is only an agreement to sell which is not registered not even notarized and looks like a self serving document. The modus operandi of assessee is very clear. Instead of executing conveyance deed directly in the favour of purchaser, she has given her power of attorney to Sh. H.P. Singh for purpose of executing the conveyance deed on her behalf. It has been clearly mentioned in the conveyance deed that Smt. Alka Jain alongwith others are the vendor of the property and they have

sold the property to M/s. Anushna Estates Pvt. Ltd. for a consideration of Rs.1,56,24,200/- which has already been received by the Vendor. The assessee has tried to shield herself from the grip of Income Tax Department and has also avoided payment of capital gain on the profit arisen from the sale of the said land. In view of the above the sale consideration of the above said land is taken at Rs.1,56,24,200/- and since assessee is owner of half share of this property, the sale consideration in the hands of the assessee comes to Rs.78,12,100/-. However, the assessee has declared sale consideration of only Rs.30,00,000/-, therefore addition of Rs.48,12,100/- is made to the income of the assessee on account of LTCG.”

6.3 Alternatively, according to the Assessing Officer, in view of the provisions of section 50C of the Act, the assessee was required to declare the long-term capital gain on the 50% amount of the deemed sale consideration of ₹ 1,56,24,200/- i.e. the amount at which the property was registered for the purpose of the stamp valuation, and therefore also this addition of ₹ 48,12,100/-was justified.

6.4 Before the Ld. CIT(A), the assessee submitted that the other Co-owners of the property and the order of attorney holder had cheated the assessee, therefore, the assessee has pursued legal remedy against all those persons in a court of law. In view of the legal proceedings, those persons have entered into a settlement agreement with the assessee, wherein they have admitted to their crime and considered the harm caused to the assessee. In nutshell, the contention of the assessee was that the property was registered through a special power of attorney dated 06/04/2009, which was fraudulently got signed from the assessee.

6.4 The Ld. CIT(A) admitted the additional evidences filed by the assessee, however, upheld the addition made by the Assessing Officer.

6.5 Before us, the learned Counsel of the assessee has filed paper-book containing pages 1 to 172 . He referred to the copy of agreement to sell available on page 7 to 9 of the paper-book, copy of receipt of ₹ 60 lakhs issued to buyers available on page 10, copy of possession letter issued to buyer of land available on page 11, copy of general power of attorney dated 28/03/2009 available on page 12 to 14, copy of a special power of attorney dated 28/03/2009 available on page 15 to 17, copy of affidavit by the co-owners available on page 18 to 19, copy of special power of attorney dated 06/04/2009 by the assessee in favour of Sh. H.P. Singh available on page 20 to 22.

6.6 According to the learned Counsel of the assessee, the assessee has sold her 50% share in the agriculture land at ₹ 30 lakh by way of agreement to sell only and she did not issue power of Attorney dated 06/04/2009 in favour of Sh. H.P. Singh for registration of the said property for a value recorded in the agreement to sale. According to the learned Counsel, the power of attorney dated 06/04/2009 was fraudulently got signed by the assessee for registration of the property for sale consideration of ₹ 1,56,24,430/-. The Learned Counsel drawn our attention to copy of the sale deed available on page 26 to 31 of the paper-book and submitted that no description of the mode of receipt of ₹ 1,56,24,200/- has been mentioned in the said sale deed, which also support the contention of the assessee that no such amount was received by the assessee as recorded in the registered sale deed.

6.7 On the issue of the application of the provision of section 50C of the Act, the learned Counsel submitted that said provisions were not applicable on the assessee during relevant period. He

submitted that under the provisions of section 50C the word “ assessable” after the word “ assessed” has been inserted with effect from 01/10/2009. According to the learnedCounsel, the word “assessable” inserted in section 50C with effect from 01/10/2009 is prospective and not applicable in the case of the assessee as the property has been transferred by way of agreement to sell dated 01/04/2009 and the property had not been registered nor evaluated for the purpose of the stamp duty by the stamp valuation authority at the time of the execution of the said agreement. In support of his contention, the LearnedCounsel relied on the CBDT circular No. 5/2010 dated 03/06/2010. The learnedCounsel also relied on the following judicial pronouncement:

- i. *Commissioner of Income Tax, Jaipur-II Vs.. Satya Dev Sharma [2017] 86 taxmann.com 150 (Rajasthan)*
- ii. *Commissioner of Income Tax-I, Coimbatore Vs. R. Sugantha Ravindran [2013] 352 ITR 488 (Madras)*
- iii. *Krishna Enterprises Vs. Additional Commissioner of Income Tax [2017] 88 taxmann.com 849 (Mumbai-Trib.)*
- iv. *Ramesh Verma Vs. Deputy Commissioner of Income-tax, Circle, Yamuna Nagar [2017] 163 ITD 421 (Chandigarh –Trib.)*
- v. *Income-tax Officer, Ward 6(l), Jaipur Vs. Tara Chand Jain [2015] 155 ITD 956 (Jaipur-Trib.)*
- vi. *Smt. Sowcar Janaki Vs. Income-tax Officer [2013] 27 ITR(T) 226 (Chennai-Trib.)*
- vii. *Ran Mal Bhansali Vs. Assistant Commissioner of Income-tax [2012] 25 taxmann.com 149 (Jodhpur-Trib.)*
- viii. *Smt. Vijay Laxmi Dhaddha Vs. ITO [2009] 20 DTR (AT) 365 (Jaipur)*
- ix. *Without prejudice to above, the income declared in the return is Rs.25,02,300/-. However, the Ld. AO has wrongly mentioned it as Rs.27,61,600/- in the assessment order and computed tax on Rs.27,61,600/-*

6.8 The learned DR on the other hand relied on the order of the lower authorities and submitted that in view of the Power of attorney dated 06/04/2009 and the registered sale deed, the

property has been transferred at recorded sale consideration of ₹ 1,56,24,200/-and therefore, the assessee was liable for long-term capital gain on sale of shares the property on the sale consideration value recorded in registered sale deed.

6.9 We have heard rival submission of the parties on the issue dispute and perused the relevant material on record. The claim of the assessee is that the property had been sold by way of agreement to sell dated 01/04/2009 for a sum of ₹ 60,000 and sale consideration for 1/2th share of the property is ₹ 30,000 in the hands of the assessee. The Assessing Officer has raised doubt on the genuineness of this agreement to sale dated 01/04/2009. According to the Assessing Officer, the agreement to sell is neither registered nor notarized and therefore, it is a self serving document. In such circumstances, two situations arises i.e. first , the agreement to sale dated 01/04/2009 is not genuine and second, the agreement is genuine.

6.10 If we consider, the agreement as not genuine then the sale of the property has to be considered as per the registered deed, which has been executed on 23/06/2010, which falls in assessment year 2011-12 in and thus taxing of capital gain on sale of the property cannot be assessed in the year under consideration.

6.11 If we consider, the agreement as genuine, then two issues arises. The first issue arise as what is the amount of sale consideration in the hands of the assessee.. According to the assessee, it has received ₹ 30 lakh as sale consideration. But according to the Revenue, assessee has received 50% share of ₹ 1.56 crore as mentioned in the registered sale deed. In the said sale deed, it is claimed that the property was handed over at that

time and sale consideration of Rs. 1,56,24,200/- was paid by the sellers to the buyer, though manner of the same has not been recorded. The relevant clauses of the sale deed are reproduced as under:

"1. That in consideration of the sum of Rs. 1,56,24,200/- (Rupees one crores fifty six lakh twenty four thousand and two hundred only) which has already been received by the Vendor from the Vendee, in the following manner; the receipt of which the Vendor hereby admits and acknowledges, in full and final settlement, the Vendor doth hereby sell, convey and transfer the said land to the Vendee, who shall hereafter be the absolute owner/bhumidar of the same and shall enjoy all rights of ownership, possession, privileges, easements and appurtenances whatsoever of the said land, unto the Vendee, absolutely and forever.

2. That the actual physical vacant possession of the said land has been delivered by the Vendor to the Vendee, on the spot, at the time of registration of this sale deed."

6.12 So if we read, the entire registered sale deed as a whole, then we cannot import part related to sale consideration only as in view of the other part, sale of the property would be taxable in the hands of the assessee in subsequent assessment year. Thus, we can't take the sale value shown in registered sale deed as sale consideration while treating the agreement to sale as genuine document.

6.13 The second issue would be the applicability of section 50C on the agreement to sell. Regarding this situation, the relevant provision of section 50C are reproduced as under:

"Special provision for full value of consideration in certain cases.

50C. (1) *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 account⁵⁹[or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:

⁶⁰[**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, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

6.13 We find that the word “assessable” has been inserted in section 50C w.e.f. 01/10/2009. Thus, prior to 01/10/2009, the section 50C was applicable over the sale of properties, which were sold by of the registered deed where the stamp value was assessed by the registration authorities and the section 50C was not applicable, where the properties were sold otherwise than by registered sale deed. The Hon’ble Rajasthan High Court in the case of Satya dev sharma (supra) has held insertion of the word “assessable” by way of Finance Act 2009 with effect from 01/10/2009 as having prospective in nature. The finding of the Coordinate bench of Tribunal in the case of Tara chand Jain (supra), is also reproduced as under:

“22. In Paper Products Ltd. v. CCE [2001] 247 ITR 128 (SC) ; [1999] 7 SCC 84), while interpreting section 37B of the Central Excise Act, 1944, which is in parimateria with section 28A of the TNGST Act, this court had held that the circulars issued by the Central Board of Excise and Customs are binding on the Department and the Department is pre cluded from challenging the correctness of the said circulars, even on the ground of the same being inconsistent with the statutory provision. It was further held that the Department is precluded from the right to file an appeal against the correctness of the binding nature of the circulars and the Department's action has to be consistent with the circular which is in force at the relevant point of time.”

10. Even otherwise, we are of the firm view that the insertion of the words "or assessable" by amending section 50C with effect from October 1, 2009, is neither a clarification nor an explanation to the already existing provision and it is only an inclusion of new class of transactions, namely, the transfers of properties without or before registration. Before introducing the said amendment, only the transfers of properties where the value adopted or ITA No. 566 & 578/JP/2012 ITO Vs Tara Chand Jain assessed by the stamp valuation authority were subjected to section 50C application. However, after introduction of the words "or assessable" after the words "adopted or assessed", such transfers where the value assessable by the stamp valuation authority are also brought into the ambit of section 50C. Thus, such introduction of new set of class of transfer would certainly have the prospective application only and

not otherwise. Hence, the assessee's transfer admittedly made earlier to such amendment cannot be brought under section 50C ."

Thus it is clear that the amended provision of section 50C is not applicable to the transfer which had already taken place prior to the amendment. In the present case the assessee has transferred the capital asset for a consideration of Rs. 74,91,000/- and the document was neither registered nor evaluated for the purpose of stamp duty purposes by the Stamp Valuation Authority at the time of execution of said document . Therefore, there was no evaluation of stamp duty payable on the document. Thus in our view the deeming provision of section 50C do not come in to play thereby replacing the full valuation of consideration of the document with the value calculated by the Stamp Valuation Authority / registering Authority. In the absence of any adoption or assessment by the authority of state government for the purposes of the Stamp duty in respect of subject transfer (as the document was not registered), there was no occasion for the AO to either refer the matter to the Registering Authority or to the Stamp Valuation Authority for the purpose of arriving at the valuation of the property."

6.14 In the instant case, if we consider the agreement to sale as genuine, then provisions of section 50C are not applicable and in such circumstances, the deemed sale consideration as per the stamp valuation authorities cannot be invoked in the case of the assessee.

6.15 In view of the above discussion, in our opinion, in both the situation whether the agreement to sale is genuine or not, deemed sale consideration of ₹ 1.56 crore cannot be invoked and thus finding of the lower authorities on the issue in dispute are accordingly set aside. The ground of the appeal of the assessee is accordingly allowed.

7. The ground No. 3 of the appeal relates to loss on sale of the shares held by the lower authorities as not genuine and not allowing set-off of the same against the long-term capital gains.

7.1 The facts in brief qua the issue in dispute are that the assessee had purchased 50,000 shares of M/s PSJ Projects and Infrastructure Private Limited (in short 'PSJ') on 16/03/2009 at ₹

10 each with the premium of ₹ 40 each i.e. total purchase consideration of Rs. 25,00,000/- . The assessee sold those shares to Smt Anjali Jain for a consideration of ₹ 50,000 i.e. Rs. 1 per share on 17/09/2009. It was the contention of the assessee that she had known to Sh. Pankaj Jain, who is the director of PSJ and therefore she invested ₹ 25 lakhs in the company. She submitted that she sold the shares to Smt Anjali Jain, due to decline in real estate due to which the share prices of the all real estate companies were came down and the assessee had to exit. On notice issued by the Assessing Officer under section 133(6) of the Act, the company 'PSJ' confirmed the purchase and sale by the assessee. According to the Assessing Officer, the company 'PSJ' has introduced its own unaccounted money and the whole transaction was shame and the loss by the assessee was bogus and therefore he disallowed the loss of ₹ 24, 50,000/-.

7.2 The reason for not allowing the loss by the AO are summarised as under:

- (i) The assessee had not submitted any justification for subscribing to the shares of the new company at such a high premium.
- (ii) No plausible explanation was submitted regarding such sharp decline in the share prices of the company
- (iii) The assessee and her son were directors of 'PSJ' during relevant period and Smt Anjali Jain is wife of director Sh. Pankaj Jain.
- (iv) The shares of the 'PSJ' were not listed on any stock exchange and therefore same are not prone to volatility of the share market

7.3 The Ld. CIT(A) upheld the disallowance of short term capital loss holding that networth of PSJ was not such, which might fetch any premium and any prudent man will not invest in shares of such a company, who has never disclosed any dividend in the past. He further observed that it was not demonstrated how the real estate share prices went up and fell down.

7.4 Before us, the learned Counsel of the assessee submitted that the assessee has discharged her onus by way of furnishing the details of purchase, sale and also details of the buyer. He referred to copy of share certificate available on page 58 of the paper-book. He also referred to copy of cheque used for making the parties, which is available on page 69 of the paperbook. Similarly, he referred to the documents of copy of sale bill and copy of account for cheque of ₹ 50,000/- , which are available on page 63 and 70 of the paperbook.

7.5 The learned Counsel submitted that the Assessing Officer has not prove that the assessee received any consideration in cash from Smt Anjali Jain over and above ₹ 50,000 shown by the assessee.

7.6 The Learned DR, on the other hand, relied on the order of the lower authorities.

7.7 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Assessing Officer has not allowed the claim of the assessee of the short-term capital loss on sale of the shares .The dispute in the case is regarding the value of the purchase as well as value of the sale of shares. The purchase of shares has been made on 16/03/2009, which falls in assessment year 2009-10. In this year sale of the shares has been made. For the purpose of the

computation of the capital gain on transfer of asset, in terms of section 48 of the Act, the cost of acquisition and cost of an improvement of the asset along with any expenditure incurred in connection with such transfer of the asset, are to be reduced from the full value of the consideration received or accrued as a result of the transfer of the capital asset. Thus in the instant case, first issue of dispute is regarding full value of the consideration received or accrued.

7.8 The assessee has explained the consideration received of ₹ 50,000/-. The Revenue has not brought on record whether the assessee received consideration more than ₹ 50,000 or consideration more than ₹ 50,000 will be accrued to the assessee.

7.9 In the relevant year the provision of section 50CB of the Act were also not in existence, which provide for deemed sale consideration in case of the sale of the shares less than fair market value. In the circumstances, there is no other option other than the considering ₹ 50,000 as the sale of consideration for the purpose of section 48 of the Act. Similarly regarding cost of the acquisition also the Assessing Officer has not brought on record any adverse evidence. The contention of the Assessing Officer that the transaction is not genuine is not based on any evidence brought on record. The reliance placed by the lower authorities on the decision of the Hon'ble Supreme Court in the case of Sumati Dayal (supra) and Durga Prasad More (supra) are also out of the context as no surrounding circumstances like accommodation entry providers etc. which could justify human probability, have been brought on record. The addition has been sustained without any documentary evidences on record, accordingly we set aside the finding of the lower authorities on the

issue in dispute. The ground No. 3 of the appeal of the assessee is accordingly allowed.

8. The ground No.4 was not pressed before us and accordingly dismissed as infructuous.

9. The ground No. 3 being general in nature, we are not required to adjudicate upon and accordingly dismissed as infructuous.

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

Order pronounced in the open court on 1st May, 2020.

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 1st May, 2020.

RK/- (DTDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi