

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT

AND

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

IT.A.No.5331/De/2012

Assessment Year : 2009-10

Shri Anil Kumar Jain, vs Income Tax Officer,

Ward-29(3),

New Delhi.

1748, Bhagirath Palace,

S.K. Jain Distributors,

Chandni Chowk,

Delhi-110006

(PAN: AALPJ3174B)

(Appellant)

(Respondent)

Appellant by: Shri Ved Jain, Smt. Rano Jain

Respondent by: Smt. Sumana Sen, Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order dated

05.09.2012 for AY 2009-10 of the CIT(A)-XXV, New Delhi in Appeal

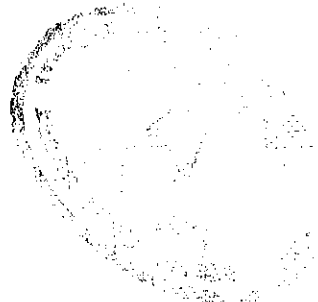
No.71/2011-12 for AY 2009-10.

2. Grounds no. 1 and 4 are general in nature which need no adjudication

and we dismiss the same. The remaining grounds for adjudication read as

under:-

"2 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in



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confirming an addition of RS.11,55,000/- made by AO on short term capital on sale of property.

(ii) That the above addition has been made by taking the amount of sale consideration as RS.39,05,000/- as against RS.27,59,000/- declared by the assessee.

(iii) That the above addition has been made rejecting the contention of the assessee that the sale price taken by her is the actual price of property and no artificial income not earned by the assessee can be taxable.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO has erred in not making a reference to the valuation officer, despite the assessee claiming before the AO that the value adopted by the stamp valuation authority under section 50c(i) of the Act exceeds the fair market value of the property as on the date of transfer".

3. Briefly stated, the facts giving rise to this appeal are that the case of

the assessee was selected for scrutiny through CASS. Notices u/s 143(2)

and 142(1) of the Income Tax Act, 1961 (for short the Act) were served on

the assessee and Shri Sunil Jain, brother of the assessee attended the

proceedings. The Assessing Officer observed that the assessee has shown

short term capital gain of Rs.1,98,250 on sale of property at Indirapuram and

Vaishali. From the perusal of the sale deed, the Assessing Officer noted that

the stamp duty on the sale of the property has been paid on Rs.78,10,000/- as

per circle rate of the area at the time of sale. The Assessing Officer took a

view that as per provisions of section 50C(1) of the Act for calculating

capital gain, the sale price of the property was to be deducted on which stamp duty has been paid and on the half share of the assessee, the value of the property for calculating capital gain was taken at Rs.39,05,000/-.

4. With the above observation and findings, the Assessing Officer made

an addition of Rs.13,53,250/- as short term capital gain and computed the total taxable income at Rs.15,28,160. Being aggrieved by the above

assessment order, the assessee filed an appeal before the Commissioner of

Income Tax(A), New Delhi but remained empty handed. The Commissioner

of Income Tax(A) confirmed addition made by the Assessing Officer with

an observation that the assessee has not brought any substantial material to

controvert the finding of the Assessing Officer and the addition made by the

Assessing Officer under deeming provision of section 50C(1) of the Act was

confirmed by the impugned order. Now, the assessee is before this Tribunal

in the second appeal with the ground as mentioned hereinabove.

### Ground no.3

5. Apopos ground no.3, Id. counsel of the assessee submitted that in

reply to the notice issued by the Assessing Officer, the assessee vehemently

claimed that the value adopted or assessed by the stamp valuation authority

under sub-section (1) of section 50C of the Act exceeds the fair market value

of the property. Therefore, the Assessing Officer should have referred the

The matter to the Valuation officer for determination of fair market value. The counsel further submitted that the Assessing Officer ignored the submission and contentions of the assessee and finalized the assessment on the value adopted and assessed by the stamp valuation authority and a vital right of the assessee was denied. Replying to the above, DR submitted that the assessee was provided due opportunity of hearing and he could have made specific request to the Assessing Officer to refer the matter to the Valuation Officer. The DR further stated that if this Tribunal finds it appropriate that the Assessing Officer should have referred the matter to the Valuation Officer, then he has no serious objection to restore the matter to the file of the Assessing Officer.

6. The counsel of the assessee has placed his reliance on the judgment of

ITAT Jodhpur Bench in the case of Meghraj Baid vs. 2008) 114

TTJ(JD) 841 where in it has been held as under:-

"After examining the provision extracted hereinabove in its letters and we are of the opinion that in case the AO does not agree with the explanation of the assessee with regard to lower consideration disclosed by him then he should refer the matter to DVO for getting its market rate established as on date of the sale to arrive at the correct sale consideration. If this provision is read in the sense that if the AO is not satisfied with the explanation of the assessee then he 'may' or 'may not' send the matter for valuation to the DVO then in that case this provision be rendered redundant. The word 'may' used in this sub-section signifies that in case learned AO is not satisfied with the explanation of the

7. We have heard both the parties and carefully gone through the orders

*assesse, he 'should' refer the matter to the DVO for the mentioned purpose."*

of the authorities below. The first and foremost point that arises for consideration is as to whether the Assessing Officer should have referred the matter to the Valuation Officer u/s 50C(2) of the Act to determine the fair market value before invoking provisions of section 50C(1) of the Act. From careful perusal of the assessment order, we find that the Assessing Officer has acknowledged the reply of the assessee vide letter dated 12.11.2011, 14.11.2011 and 18.11.2011 (Paper Book page no. 13 to 17) wherein the assessee has emphasized the fact that circle rate i.e. value adopted by stamp valuation authority under sub-section (1) of section 50C in respect to the property sold is much higher than the actual fair market value and the property has been sold on the consideration as stipulated in the sale deed. In the last operative part of the assessment order, the Assessing Officer held that the assessee has not given any explanation in respect of applicability of provisions of section 50C(1) of the Act, therefore, for calculating short term capital gain, the value of half share of the property is taken at Rs.39,05,000 as per value adopted by stamp valuation authority while registering the sale deed.

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8. From this finding recorded by the Assessing Officer, it is clear that the assessee made a claim before the Assessing Officer that the circle rate was much higher than actual market value of the property. In this situation, section 50C(2) provides that without prejudice to the provision of sub-section (1) where the assessee claims before any Assessing Officer or authority that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer and the value so adopted and assessed by the stamp valuation authority has not been disputed in any appeal or revision or any 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 in that event, relevant and corresponding provisions of the Wealth Tax Act shall, with necessary modifications, will apply.

9. In the present case, it is not in dispute that the assessee has made a claim before the Assessing Officer that the value adopted or assessed by the stamp valuation authority was higher than the fair market value. From the replies filed by the assessee, we also observe that it is also not the case whether the value adopted by the stamp valuation authority has ever been disputed by the assessee in any appeal or revision or otherwise as referred to in section 50C(2) of the Act. In these circumstances, it was incumbent upon

the Assessing Officer to refer the matter for valuation to a Valuation Officer

has provided in sub-section 50C(2) of the Act.

10. On the basis of foregoing discussion and factual matrix of the present

case, we hold that the view taken by the Assessing Officer as well as confirmed by the Commissioner of Income Tax(A) is not correct. Since the Assessing Officer failed to refer the matter to the valuation officer u/s

50C(2) of the Act, we find it fit and proper to restore the matter back to the file of the Assessing Officer for a fresh adjudication after referring the matter to the Valuation Officer u/s 50C(2) of the Act. The Assessing Officer

shall provide reasonable opportunity of being heard to the assessee and then decide the issue accordingly. We also make it clear that the matter with regard to the determination of sale consideration and capital gain shall

remain open before the Assessing Officer and both the parties shall be at liberty to raise any other contention submitted by any other document or evidence as they may think fit and proper under the law. The Assessing

Officer will consider all the contentions and evidence placed before him and decide the issue de novo by passing a speaking and well-reasoned order.

11. Ground no. 3 of the assessee is allowed with the directions to the Assessing Officer as indicated above.

Ground no. 2(i), (ii) and (iii)

12. Apropos ground no. 2, we are of the view that since by allowing

ground no. 3, the matter of determination of fair market value of the sold

property and short term capital earned thereon by the assessee has been

restored to the file of the Assessing Officer. Therefore, ground no. 2 needs

no adjudication by us at this stage. Accordingly, ground nos. 2(i), (ii) and

(iii) are dismissed as premature.

13. In the result, the appeal of the assessee is disposed of as indicated

above and may be treated as allowed for statistical purposes.

Order pronounced in the open court on 26/11/13

(G.D. AGRAWAL)

VICE PRESIDENT

DT. 26 APRIL 2013

Copy forwarded to:-

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

*(Signature)*

Asstt Registrar

Registrar  
Asstt Registrar  
Asstt Registrar

Assessment Appeal Journal

Assessment, New Delhi

By order

(CHANDRA MOHAN GARG)

JUDICIAL MEMBER

*(Signature)*

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