

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "G" NEW DELHI

BEFORE SHRI J.SUDHAKAR REDDY ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No: 3866/Del/2013
AY : - 2009-10

Income Tax Officer vs. Shriyansh Prasad Jain
Ward-47 (2) Overnite Express Ltd.
New Delhi. Overnite House, Patel Nagar
New Delhi – 110 008

(Appellant) (PAN AATPJ1544M)
(Respondent)

Appellant by : Shri Sujit Kumar, Sr. DR
Respondent by : Shri Sunil Kumar Tayagi, CA

Date of Hearing : 10.9.2015
Date of pronouncement : 30.9.2015

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

The present appeal has been filed by the Department against the order dated 26.04.2013, passed by the Ld. Commissioner of Income Tax (Appeals) - XXX, New Delhi . The brief facts of the case, as borne out from the records, are that order u/s 143(3) was passed on 29.12.2011 at an assessed income of Rs. 37,01,410/- against the returned income of Rs. 9,85,831/-. An addition of Rs. 27,15,579/- was made by the AO u/s 50C of the Income Tax Act, 1961 (hereinafter called the Act). The AO had observed that the assessee had sold a co-owned property for a total sale consideration of Rs. 1,20,00, 000/- vide sale deed executed on 27.12.2008.

This property was co-owned by the assessee with a 50% share therein. The market value of the property was Rs. 1,55,52,000/- for the purposes of stamp duty valuation. During the course of assessment proceedings, the assessee sought a referral to the DVO for valuation of the property and on his request the matter was referred to the DVO u/s 50C(2) of the Act. The DVO in his valuation report calculated the value of the property sold at Rs. 62,63,250/-, as against Rs. 60,00,000/- declared by the assessee, being one-half of his share in the joint property. The AO however ignored the report of the DVO and took the value of sale consideration for 50% share of the assessee at Rs.77,76,000/- u/s 50C of the Act. The AO was of the opinion that section 50C of the Act makes it obligatory to treat the value adopted by the stamp valuation authority as the deemed sale consideration received/accrued as a result of transfer. Accordingly a long term capital gain of Rs. 27,15,579/- was calculated and added to the income of the assessee.

2. On appeal, the Ld. CIT(A), after considering the submissions made by the assessee, directed the AO to take the value of sale consideration at Rs. 62,63,250/- on the basis of the DVO report. The CIT(A) also noted that the same value was taken and accepted by Ld. CIT(A), Jaipur in the case of Mrs. Sunita Jain, the other co-owner of the property. In the appeal before us, it is the Department's contention that the Ld. CIT(A) has erred in accepting the valuation made by the DVO in respect of another portion of the property owned by the co-owner and in reducing the addition to Rs. 2,63,250/- on account of long term capital gains as per provisions of 50C of the Act. The Ld. AR on the other hand has argued that assessee had declared the sale consideration of Rs. 60,00,000/- as per the sale deed. The stamp duty

authority had valued the same at Rs. 77,76,000/- and when the assessee disputed the same, the matter was referred to the DVO by the AO. It was also submitted that valuation is a subjective matter and different values could be arrived at by different valuers and since section 50C is a deeming provision, the assessee should not be denied the benefit of a lower valuation.

3. We have duly considered the facts of the case and the surrounding circumstances. It is undisputed that the assessee did object to the action of the AO and accordingly the matter was referred to the DVO. In our considered opinion, once the assessee has raised objections against the value adopted by the stamp duty authority and the AO has referred the matter to the DVO at his instance, the report of the DVO cannot be ignored and the AO is duty bound to adopt lower of either the valuation made by the DVO or that of the stamp duty authority. As per section 50C(1), the valuation as fixed by the stamp valuation authority is taken as a bench mark. As per section 50C(2), the bench mark can be reviewed by making a reference to the valuation officer if the assessee claims that such value exceeds the fair market value. As per section 50C(3), if the valuation as arrived at by the DVO is found to be higher than the value as fixed by the stamp valuation authority, then the value as fixed by the stamp valuation authority being the lower of the two is to be applied. On a similar footing, where the valuation, as arrived at by the DVO, is less than the valuation as per the stamp duty authority, the valuation as per the DVO should be adopted. The learned CIT(A) has adjudicated the issue on similar lines. We also find from records that the Learned CIT(A) - II, Jaipur has also discussed the same issue in his order dated 30/08/2012 in Appeal No. 531/11-12, in which the case of the other co-owner Mrs. Sunita Jain was considered and he has also pegged

the valuation at Rs.62,63,250/- being the value of the other half of the property. Therefore, in the circumstances of the case, it is our considered opinion that the Ld. CIT(A)'s action in taking the value calculated by the DVO for calculation of long term capital gains is perfectly in order. We accordingly uphold the order of the Ld. CIT(A) and decline to interfere.

4. In the result the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 30th September, 2015.

sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: the 30. 9. 2015

'veena'

Copy of the Order forwarded to:

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

By order
Dy. Registrar

Sl. No.	Description	Date
1.	Date of dictation by the Author	11.9.2015
2.	Draft placed before the Dictating Member	11.9.2015
3.	Draft placed before the Second Member	
4.	Draft approved by the Second Member	
5.	Date of approved order comes to the Sr. PS	
6.	Date of pronouncement of order	

7.	Date of file sent to the Bench Clerk	
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	