

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA Nos.365/COCH/2015
Assessment Year:2007-08

Dy.C.I.T., Central Circle, Trivandrum.	Vs	Late C. P. Vasudevan Nair, Rep. by POA holder Ms. Deepa Nair, Sreeparameswaram, Kumarapuram Trivandrum. PAN:AEKPP 3128 D
(Appellant)		(Respondent)

Appellant by	Shri A. Dhanraj, Sr. D. R.
Respondent by	None
Date of hearing	05/10/2017
Date of pronouncement	05/10/2017

ORDER

PER P. K. BANSAL, V.P.

This appeal has been filed by the Revenue against the order of CIT(A) dated 30/03/2015 by taking the following common grounds of appeal:

- "1. *The order of the Commissioner of Income Tax (Appeals)-IV, Kochi is opposed to law, weight of evidence and facts of the case.*
2. *In view of the facts & circumstances of the case, the learned CIT(A) erred in directing the assessing officer to refer the sale of property for valuation u/ s 50C(2) as the assessee did not avail the opportunity to do*

valuation u/s 50C(2) during the assessment proceedings.

3. *The Learned CIT(A) should have considered the fact that during the assessment proceedings the assessee has been given sufficient opportunities to state any objection for adopting the value adopted by SRO.*
4. *The Learned CIT(A) ought to have noticed that the DVO has not given any reason for the huge difference of Rs.3,55,00,000/- in the valuation."*

2. The facts of the case, in brief, are that the assessee, in response to the notice under section 153A, filed his return on 15/05/2008 showing capital gain on the sale of 695 cents of the land to M/s Parthas Infopark (P) Ltd. at Rs.25,82,850/- after claiming the exemption under section 54C at Rs.50 lakhs. The assessee admitted the sale consideration at Rs.6,94,65,000/- as valued by the Sub Registrar Office @Rs.1,00,000/- per cent. Subsequently, the SRO vide letter No.222/2009 dated 29/05/2009 communicated that he has adopted the value at Rs.10,50,00,000/- as sale consideration for the purpose of stamp duty therefore, the Assessing Officer after giving an opportunity to the assessee computed the capital gain by taking value of the sale consideration at Rs.10,50,00,000/- in accordance with the provisions of section 50C and computed the capital gain at Rs.8,74,95,792/-. The assessee went in appeal before the CIT(A). The CIT(A) referred the matter to the District Valuation Officer under section 50C(2). The District Valuation Officer, vide its report dated 14/03/2014, valued the impugned property sold by the assessee @Rs.1,00,000/- per cent admeasuring 694.65 cent at Rs.6,94,65,000/-. The CIT(A) therefore, directed the Assessing Officer to compute the capital gain by taking the full value of the consideration at Rs.6,94,65,000/- in place of Rs.10,50,00,000/-. The Revenue has come in appeal before us. The only question before us is whether the CIT(A) has rightly directed the District Valuation Officer to

make the valuation under section 50C(2) and also directed the Assessing Officer to adopt the value of the sale consideration at Rs.6,94,65,000/- as valued by the District Valuation Officer in place of Rs.10,50,00,000/- for capital gain computation.

3. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We have also gone through the provisions of section 50C and noted that no doubt the provision of section 50C(1) empowers the Assessing Officer to take the stamp valuation to be the full value of the consideration for the purpose of section 48 but section 50C(2) entrusts upon the obligation on the Assessing Officer to refer the valuation of the capital asset to the DVO in case the assessee claims that the stamp valuation as taken under section 50C exceeds the fair market value of the property as on the date of the transfer and where any such reference is made, the provision of sub section 2,3,4,5 and 6 of section 16A of the Wealth Tax Act shall, with necessary modification, apply along with provisions of section 23(1), (6) & (7), section 24(5), section 34AA, section 35 & 37 of the Wealth Tax Act shall also be applicable with reference to such reference. In the impugned case, we noted the assessee has not objected the stamp valuation before the Assessing Officer but has objected the same before the CIT(A). The CIT(A) has co-terminus power with the Assessing Officer. The CIT(A) after entertaining the objection of the assessee referred the matter to the DVO and DVO has valued the impugned capital asset at Rs.6,94,65,000/- vide report dated 14/03/2014 and accordingly, the CIT(A) has directed the Assessing Officer to compute the capital gain by taking the sale consideration of the said capital asset at Rs.6,94,65,000/- in place of Rs.10,50,00,000/-. Learned D. R. in this regard agitated before us while learned A.R. before us relied on the order of Hon'ble

Allahabad High Court in the case of CIT vs. Dr. Indra Swaroop Bhatnagar [2012] 349 ITR 210 (All) in which we noted that the Hon'ble High Court relying on the decision given under the Wealth Tax Act in the case of CWD vs. Dr. H. Rahman 189 ITR 307 held that when the Assessing Officer has obtained the DVO report, the same is binding. In the instant case also, we noted that CIT(A), who has coterminous power with the Assessing Officer, has obtained the DVO report therefore, the value worked out by the DVO, in our view, will be binding on the Assessing Officer. No contrary decision was brought to our knowledge. In view of this we do not find any illegality or infirmity in the order of CIT(A) directing the Assessing Officer to take the value of the sale consideration for computation of capital gain under section 48 at Rs.6,94,65,000/- in place of Rs.10,50,00,000/-. We, therefore, dismiss the appeal taken by the Revenue.

4. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 05/10/2017)

Sd/.
(GEORGE GEORGE K.)
Judicial Member

Sd/.
(P. K. BANSAL)
Vice President

Dated:05/10/2017
***Singh**

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
5. D.R., I.T.A.T., Cochin

Asstt. Registrar