

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1329/Kol/2017
Assessment Year :2012-13

Sonali Roy V-5, Block-B, Meena Residency, Baguihati, Kolkata-59 [PAN No.AFPPR 4436 P]	V/s.	Pr. Commissioner of Income Tax-17, Maniktala, Uttarapan Complex, Civic Centre, Kolkata-54
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Manish Tiwari, AR
प्रत्यर्थी की ओर से/By Respondent	Shri G. Mallikarjuna, CIT-DR
सुनवाई की तारीख/Date of Hearing	10-01-2018
घोषणा की तारीख/Date of Pronouncement	28-02-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

The assessee has filed this appeal dispute the order of Pr. Commissioner of Income Tax-17, Kolkata passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.03.2017 set aside the assessment order dated 25.03.2015 u/s 143(3) of the Act for assessment year 2012-13 with a direction to re-do the assessment in respect of issue therein.

The assessee has raised following grounds:-

- “1. That the findings of Ld. Pr. CIT Kolkata-17 that Assessing Officer first recorded his decision of referring the matter to ova in the order sheet and then passing of order u/s 143(3) was recorded do not support the languages used in section 55A of IT Act, 1961 which speaks for actual reference to DVO but not "**decision**" to make reference.*
- 2. That the Ld. Pr. CIT, Kolkata-17 having admitted that reference to DVO and passing of order u/s 143(3) had been done on the same day is wrong and unjustified in drawing conclusion that the decision for referring to DVO was taken before passing order u/s 143(3) without any other supporting evidence.*

3. That on the facts and in the circumstances of the case, Ld. Pr. CIT-Kol-17 is wrong and unjustified in concluding that decision to refer to ova was taken before passing order u/s 143(3) since the language used in section 55A of IT Act, 1961 speaks for actual reference to ova and not so called as "**decision**" for making reference.

4. That on the facts and in the circumstances of the case, Ld. Pr. CIT, Kolkata-17 has erred in holding that reference to ova was made first and then order u/s 143(3) was passed without mentioning the actual date on which A.O's reference u/s 55A reached the office of DVO.

5. (i) That on the facts and in the circumstances of the case, Ld. CIT Kolkata-17 is wrong in relying upon the note (not for the assessee) alleged to be attached with assessment order which clearly establish that everything is concluded and stage managed.

(ii) That the said note which admits issue of letter No. 465 dated 25.03.2015 for valuation of property u/s 55A also read as "the reply in compliance to the said letter has not yet been received at this end" which is simply absurd, fanciful and ridiculous.

6. That in the absence of any proof that reference u/s 55A of IT Act, 1961 contained in A.O.'s letter No. 465 dated 25.03.2015 actually reached the office of DVO prior to the date of assessment, the so called report of ova dated 22.02.2016 cannot be said as valid one; Hence the action of Ld. Pr. CIT, Kol-17 setting aside order u/s 143(3) dated 25.03.2015 for fresh adjudication is invalid in law.

7. That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal."

Shri Manish Tiwari, Ld. Authorized Representative appeared on behalf of assessee and Shri G.Mallikarjuna, Ld. Departmental Representative appeared on behalf Revenue.

2. Though assessee has raised as many as seven grounds of appeal, however, as per our considered view the sole and substantial ground of appeal is that Ld. Pr. CIT u/s 263 of the Act erred in holding the order of Assessing Officer erroneous in so far as prejudicial to the interest of revenue.

3. Briefly stated facts are that assessee in the present case is an individual and declared her income under the head Long Term Capital Gains and other source for ₹1,07,394/- only. The assessee, during the year has sold her property for a consideration of ₹1.60 crores and assessee has shows its cost of acquisition after indexation at ₹89,76,971/- only. The details of cost of acquisition with indexation stands as under:-

Cost of acquisition with indexation					
Year	Particulars	Cost	Index of year	Index of year	Index value

			of purchase	of sale i.e. FY 11-12	
83-84	Land and land development	2,40,000	116	785	16,2,137.93
84-85	Ground floor	4,25,000	125	785	26,69,000.00
87-88	1 st floor	8,95,000	150	785	46,83,833.33
Total cost of consideration		15,60,000			89,76,971.00

However, the AO was not satisfied with the cost of acquisition of the property as declared by assessee, therefore, he referred the matter to the District Valuation Officer vide letter No. ITO, Ward-49(4)/Kol/Valuation/u/s.55A/2014-15/465 dated 25.03.2015 but AO could not received the valuation report prior to the completion of assessment. Being time barring case, the AO has taken the cost of acquisition of property as declared by assessee in her income tax return and accordingly assessment was framed by AO vide order dated 25.03.2015 at ₹1,41,332/- only/-. Subsequently on examination of the record, Ld. Pr.CIT observed that there is a report of DVO dated 22.02.2016 which has not been considered by the AO during the course of assessment proceedings due to the fact that it was received much after completion of assessment. As per the valuation report, the value for the cost of acquisition after indexation should have been ₹16,82,535/-only. The valuation determined by the DVO for the cost of acquisition of asset and indexation cost stand as under:-

Cost of acquisition with indexation					
Year	Particulars	Cost	Index of year of purchase	Index of year of sale i.e. FY 11-12	Index value
83-84	Land and land development	34,663.00	116	785	2,34,573.00
84-85	Ground floor	1,56,228.00	125	785	9,81,112,000
87-88	1 st floor	89,207.00	150	785	4,66,850.00
Total cost of consideration		2,80,098.00			16,82,535.00

Thus, the Ld. Pr.CIT observed that the LTCG arisen to assessee from the transfer of capital asset should have been at ₹1,43,17,456/- (1.60 crores – 16,82,535) only. However, assessee has shown capital gains of ₹70,56,967/- only. Thus, there was less income declared by the assessee on account of transfer of capital asset by ₹72,60,498/- only which has escaped assessment.

In view of above, Ld. Pr.CIT was of the view that a mistake apparent in the order of AO has occurred. Accordingly, a notice u/s. 263 of the Act vide letter No. Pr.CIT-17/Tech/u/s263/2016-17/1000 dated 25.03.2015 was issued for seeking clarification from assessee on account of under reporting of income.

The assessee in compliance thereto, submitted that the report obtained from DVO vide dated 22.02.2016 is not a valid report as the order was passed by the AO on 25.03.2015 and on the same date the matter was referred to DVO. Thus, the order was completed without finding out any defect in the valuation report furnished by assessee during the course of assessment with regard to declaration of profit under the head LTCG.

3.1 The valuation report was received on 22.02.2016 subsequent to the order of assessment therefore the same cannot be relied upon upholding the order as erroneous in so far as prejudicial to the interest of revenue. The assessee in support of her claim also relied on the judgment of jurisdictional High Court in the case of *Reliance Jute & Industries Ltd. Vs. ITI* reported (1984) 150 ITR 643 (Cal), wherein the Hon'ble court has held:-

“The purpose for which alone a valuation report can be utilized, namely, for completion of the assessment in conformity with the valuation report is no longer existence, the assessment having been completed in the meantime. In such circumstances, to allow the assailed valuation proceeding to continue would militate against well-known canons of strict construction of taxing statutes.”

The necessary documents declaring the cost of acquisition was duly furnished during the course of assessment proceedings. The AO after applying his mind has chosen not to make any addition under the head “capital gains”.

The instant matter was referred to the DVO against the provision of Section 55A of the Act as the matter can be referred to DVO for the determination of fair market value if the value declared by assessee is less than the fair market value. In the instant case, the assessee has declared higher value than the value determined by the DVO. Therefore, the provision of Section 55A of the

Act cannot be applied to the instant facts of the case. The assessee before Ld. Pr. CIT also submitted that no opportunity of being heard was given by DVO while determining the value of impugned property.

However, Ld. Pr.CIT disregarded the contention of assessee and held that the order passed by AO is erroneous in so far as prejudicial to the interest of revenue by observing as under:-

*"I have considered the argument of the Ld. AR challenging the legal validity of making reference to Valuation Officer u/s.55A for determining the cost of acquisition of the property sold and using such legally invalid valuation report for initiating proceeding u/s.263 has not been correct. I do not find force in this argument because PCIT while initiating proceeding u/s.263, can examine all documents available in record at that time and when I examined the record, this valuation report was available on record but could not be considered by the AO as it was received after assessment order was passed. Therefore, I initiated proceeding u/s.263 based on this valuation report. As far as the allegation of the Id. AR of making reference to DVO u/s.55A for determining the cost of acquisition after completion his assessment order is concerned, from the assessment record, I find that the AO has first made reference to the DVO and thereafter, order u/s.143(3) has been passed. The reference to DVO and passing of the order u/s.143(3) has been done on same day i.e. on 25/03/2015 but the decision for referring the matter to DVO has been taken by the AO before the assessment order u/s.143(3) is passed. Therefore, first he has recorded his decision of referring the matter to DVO in order sheet and then passing of order u/s.143(3) has been recorded. In view of the above fact, though the decision of referring the valuation of the property to DVO for determining the cost of acquisition and passing of order u/s.143(3) is done on the same day, it is not correct to say that the decision of referring the valuation to DVO is afterthought by the AO after completion of assessment proceeding. This decision has also been recorded by the AO in his **"note (not for the assessee)"** attached with the assessment order. This note as attached with the assessment order is reproduced under ;-*

"Letter was issued to the Districe Valuation Officer, Valuation Cell, 54, Rafi Ahmed Kidwai Road, Kolkata-700016 vide this office letter No.ITO Ward-49(4)/Kol/Valuation u/s.55A/2014-15/465 dated 25.03.2015 for valuation of property u/s.55A in respect of the assessee, Smt. Sonali Roy situation at Plot No.371, Block PO, Sector-III, Bidhannagar, Salt Lake City, Kolkata-700064. The reply in compliance to the said letter has not yet been received at this end. If any contrary is found after getting the reply, action as per Act will be taken."

7. Considering the above note of the AO along with the assessment order, it is dear that the AO has decided making reference to DVO before passing of the assessment order. This reference has been necessitated because the assessee has earlier shown the self-estimated cost of acquisition of the property at Rs.15,60,000/- but later on when the valuation report of registered

valuer has been filed, the value has been shown to be Rs.15,53,515/-. Therefore, the Assessing Officer was not sure about the correct value of the cost of acquisition of property and hence, after going through the valuation report of registered valuer, he referred the valuation of the property to the DVO. After going through both valuation reports i.e. the valuation report by registered valuer and the valuation report submitted by the ova, I find that there is wide variation in both the reports. As against the total valuation of the property determined by the DVO at Rs.15,53,515/-, the DVO has determined the total value of property at Rs.2,80,098/-. Therefore, it can be seen that the valuation report of Registered Valuer determining the cost of acquisition of the sold property as being very much inflated and in order to determine the correct value of such property, it was necessary for the AO to have referred this property to ova. Such inflation in the value of property can be seen from the cost of land itself. As per the lease deed allotting the land to the assessee, the cost of land by Govt. of West Bengal has been mentioned at Rs.34,663/- but as against this amount, the Registered Valuer has taken the cost of land at Rs.2,40,000/- by including the extra amount as spent on land development but no details of the amount incurred on land development has been provided. Therefore, the cost of land itself has been found to be inflated, similarly, cost of construction has also been found to be inflated and the same is apparent looking to the valuation report of the DVO. Therefore, decision of the AO, referring the valuation of the property to OVO has been found to be correct, though the decision was delayed but the same was taken before passing the assessment order and hence, legally, there was no infirmity making reference to DVO as objected by the Ld. AR.

8. As per section 55A before 01/07/2012, reference to Valuation Officer could have been made in a case where the value of the asset as claimed by the assessee in accordance with the estimate made by the registered valuer, if the AO is of opinion that the value so claimed is less than its fair market value but now, as per the amendment made by the Finance Act, 2012, w.e.f. 01/07/2012, reference to OVO can be made, if the AO is of the opinion that the value so claimed is at variance with its fair market value. Considering the amended provision also, I find that the reference to DVO made by the AO through letter dated 25/03/2015 is also in accordance with law because there is wide variation between the value estimated by the registered valuer and the value determined by the DVO. As the reference to OVO was made late by the AO, he could not get the correct value of the property to determine the cost of acquisition of the sold property and hence, he ended up in passing of assessment order (which is under review at present) taking high value of the cost of acquisition, resulting into assessing short amount of Long Term Capital Gain on the property sold as I have already discussed in para-1 of this order. Therefore, the assessment order passed by the AO u/s.143 (3) vide order dated 25/02/2015 is erroneous in so far prejudicial to the interest of revenue.

9. The Ld. AR has referred various case laws in his written submission in which, it has been held by the Hon'ble Courts that the report of the DVO is only based on estimate and it can not only be basis for assessing the income of the assessee or even on the basis of such valuation report, a case cannot

be reopened u/s.147. In this regard, it is to be noted that before adopting any ova report, it should be examined vis-a-vis the report of the registered valuer submitted by the assessee. This exercise is done at the time of assessment proceeding. During the assessment proceeding, before adopting valuation report of ova for computation of taxable income of the assessee, he/she is given full opportunity to file objections on merit of valuation report and after dealing with such objections only, the AO can use the findings of valuation report of DVO in the assessment order. In the instant case, I am seized with the issue of only to see whether the AO has committed any error in not taking decision judicially with respect to taking into account the DVO report for computing the correct taxable income of the assessee and not for reopening of the assessment proceeding as per the provision of section 147. The action taken by the AO of referring to DVO establishes that the AO was not satisfied with the value determined by the registered valuer. But because of making such reference very late, he could not consider the value of the property determined by the DVO and hence, an error has occurred in the order of the AO. As I have already given the details in para-1 showing that on the basis of the report of the ova, prima facie the income of the assessee has been assessed by the AO short by an amount of Rs.72,60,498/-, this itself shows that the order passed by the AO under consideration is erroneous and prejudicial to interest of revenue. The inflation in the cost of acquisition based on the value determined by the registered valuer is also clear from the fact that instead of taking actual cost of the land to be Rs.34,663/-, the registered valuer has taken this value at Rs.2,40,000/-. As far as the cost of building construction is concerned, the DVO has determined a very lower value as compared to that is determined by the registered valuer. However, such determination of the value of the cost of construction by DVO vis-a-vis registered valuer can be examined during the assessment proceeding after the assessee is provided an opportunity to examine the report of the ova and give the comments. In view of the above facts and circumstances, I am of the opinion that the assessment order dated 25/03/2015 is erroneous and also prejudicial to the interest of revenue due to income of the assessee being assessed at lower amount and hence, such order is required to be set aside and restored to the file of the AO so that the AO can provide an opportunity to the assessee to examine the report of the DVO and offer her comments and then, he shall take the decision as per law to determine the actual cost of acquisition of the property sold and determine the correct amount of Long Term Capital Gain earned by the assessee on sale of the property.

10. Accordingly, I set aside the order for assessment year 2012-13 passed in this case u/s.143(3) dated 25/03/2015 and restore to the file of the AO to pass a fresh assessment order de novo after examining the report of the DVO dated 22/02/2016 and also providing the opportunity to the assessee to offer her comments on report of the DVO and then the correct value of cost of acquisition of the property sold should be adopted for computing the Long Term Capital Gain on sale of the property as per law and revised assessment order should be passed.”

Aggrieved by the above finding of Ld. Pr. CIT, the assessee is in appeal before the Tribunal.

4. Before us Ld. AR for the assessee submitted that Assessing Officer has passed assessment order after considering the valuation report filed by assessee. There is no mention in the assessment order for making the reference to DVO for the determination of the value of the cost of acquisition declared by assessee. Therefore, no reference to the valuation report received subsequent to the assessment order should be referred for holding the order of AO as erroneous in so far as prejudicial to the interest of revenue. Ld. AR further stated that the AO has not pointed out any defect in the valuation report filed by the assessee. Therefore, the valuation report of DVO cannot be accepted. The AO referred the matter to DVO vide letter dated 25.03.2015 whereas the assessment order passed by AO on the same date i.e. 25.03.2015.

Ld. AR also submitted that the amendment u/s 55A of the Act for referring the matter to the DVO was not applicable to the year under consideration.

On the other hand Ld. DR submitted that the AO was not agreed to the valuation report filed by the assessee therefore the same was referred to DVO. The report obtained from DVO is part of assessment records. Therefore the reference made by Ld. Pr. CIT u/s 263 of the Act is within the provision of law. He vehemently relied on the order of Ld. Pr. CIT.

5. We have heard the rival contentions of both the parties and also gone through the orders of the lower authorities and the case laws relied upon by the assessee. In the instant case, assessee has declared the value for the cost of acquisition for the property at a higher value than the value determined by the DVO.

The first technical issue arose before us is whether the reference made by the AO to the DVO for the valuation of the property is valid for the year under

consideration. In this regard we note there was an amendment u/s 55A of the Act which was effective from 01.07.2012. Prior to the amendment u/s 55A of the Act, the provision of said section reads as under:-

“[Reference to Valuation Officer.

⁵⁸55A. *With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter⁵⁹, the⁶⁰[Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—*

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the⁶⁰[Assessing] Officer is of opinion that the value so claimed is less than its fair market value”

From the above provision we note that the Assessing Officer can refer the valuation of capital asset to a Valuation Officer in a case where the value claimed by the assessee based on the registered valuation report is less than its fair market value. However in the case before us there is no ambiguity that the fair market value as declared by assessee is not less than the value determined by the DVO. Thus, the valuation determined by the DVO cannot be accepted as it is against the provision of Section 55A of the Act as applicable prior to the amendment.

However, there was amendment u/s 55A of the Act with effect from 01.07.2012 which reads as under:-

[Reference to Valuation Officer.

⁷⁸55A. *With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter⁷⁹, the⁸⁰[Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—*

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the⁸⁰[Assessing] Officer is of opinion that the value so claimed^{80a}[is at variance with its fair market value];

There is no doubt that the amendment in section 55A of the Act was effective from 01.07.2012. Now, the issue arises whether amendment u/s 55A of the Act is applicable from the Assessment Year 2012-13 i.e. the year under consideration. It is well settled law that if the amendments are applicable from

the first day of assessment year then it would be applicable from the relevant assessment year.

For example if the amendment under the statute is brought 1.4.2009 then it would be applicable from the AY 2009-10.

Similarly if the amendments are brought on any date other than the 1st day of April then it would be applicable to the subsequent assessment year.

For example if the amendment under the statute is brought 30.9.2009 then it would be applicable from the AY 2010-11.

In holding so, we find support & guidance from the judgment of Hon'ble Supreme Court in the case of *Karimtharuvu Tea Estate Ltd. Vs. State of Kerela* reported in 60 ITR 262 where it was held as under :

“10. Now, it is well-settled that the Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.”

From the above proposition of law, it is clear that the amendments which are being applicable from any date other than first April of assessment year would be applied from the next Assessment Year. For example, in the instant case, the amendment was brought with effect from 01.07.2012. Thus, the amendment would be applicable from the Assessment Year beginning from first April, 2013 i.e. Assessment Year 2013-14. Thus, it is clear that the amendment brought under the statutory provisions of Section 55A of the Act is not applicable in the year under consideration. As the value adopted by assessee is more than the fair market value then no reference to Valuation Officer would have been made as per the provision of Section 55A(a) of the Act as it is administered at the relevant time. Once, we have reached to the conclusion no reference can be made to the DVO for the year under consideration in the given facts and circumstances. Thus on the same basis, the assessment order cannot be held as erroneous in so far as prejudicial to the interest of revenue. Keeping in view all these discussion, as also bearing

in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief accordingly.

6. In the result, assessee's appeal stands allowed.

Order pronounced in the open court 28/02/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)

(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 28/02/2018 कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

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

1. अपीलार्थी/Appellant-Sonali Roy, V-5, Block-B, Meena residency, Bagduihatdi, Kolkata-59
2. प्रत्यर्थी/Respondent-Pr. CIT-17, Maniktala, Uttarapan Complex, Civic Centre, Kolkata-54
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।