

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 359/Del/2013
Asstt. Year: 2007-08

Jawahar Lal Chawla 159-161, 1 st Floor, Katra Baryan, Fatehpuri Delhi PAN AADPL6250	Vs.	ACIT Circle 8(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri K. Sampath, Advocate Shri V.V. Rajkumar, Advocate
Department by :	Shri Amit Jain, Sr. DR
Date of Hearing	25/07/2018
Date of pronouncement	08/08/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 18.10.2012, passed by Ld. CIT(Appeals) XI, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2007-08. This is the second round of proceedings which has been passed in pursuance of the order of the Tribunal, whereby vide order dated 15.10.2010 in ITA No. 3844/Del/2010, Tribunal has restored the matter to the file of the AO for denovo assessment because originally assessment order was passed u/s 144.

2. The facts in brief are that the assessee during the year under consideration had shown short term capital gain of Rs. 4,22,189/- on sale of one lease hold residential plot admeasuring 299 sq. Yard situated at Omaxe, NRI City , Greater Noida. Besides this, assessee had also shown long term capital gain of Rs. 1,39,73,199/- on sale of residential plot which is not in dispute. So far as plot at Omaxe Greater Noida is concerned, it was submitted by the assessee that, this plot was allotted by the Noida Authority which assessee has purchased on 5.5.2005. The original cost of purchase was Rs. 13,74,766/-, thereafter assessee has incurred sum of Rs. 2,03,045/- as cost of improvement and the same was sold on 2.2.2007 at Rs. 20,00,000/-; and accordingly, short term capital gain of Rs. 4,22,189/- was shown. During the course of the assessment proceedings the assessee submitted that it has transferred the right in the property for a total consideration of Rs. 20,00,000/- vide agreement to sale dated 2.2.2007 and such right was acquired through endorsement which has been transferred to the buyer. This right during endorsement was acquired on 5.5.2005. However, AO held that it is neither a transfer nor a sale of plot, because income has arisen out to endorsement of right and assessee was never in a possession of property and therefore, it cannot be held that there is any transfer of immovable property. The AO conducted inquiry together the prevailing market rate and found that market rate as on 2.2.2007 at Omaxe NRI Greater Noida was Rs. 25,000/- to Rs. 27,000/- per sq. Yard. Based on this ITI report, he held that there is a suppression of sale consideration to the tune of Rs. 54,75,000/- which was calculated in the following manner :-

299 sq. yards x Rs. 25,000/-	=	Rs. 54,75,000/-
Deduct	=	Rs. 20,75,000/-
Addition	=	Rs. 54,75,000/-

3. Before the Ld. CIT (A), assessee has made detailed submissions that the definition of transfer in relation to capital asset in section 2(47) also includes sale, exchange or relinquishment of the asset; or the extinguishments of any rights therein. The word 'capital asset' means property of any kind which has the widest amplitude and even the right in the property is an asset and therefore, any transfer of right in capital has to be reckoned of transfer of capital asset. Here in this case the assessee was allotted a plot for which he has paid purchase price and also incurred certain improvement of cost. The assessee had acquired the right through endorsement documents and such endorsement was further transferred to the buyer from Shri Rajinder Bansal. Since he was beneficial owner of the said property, therefore, there was no requirement of registration of immovable property. Even the value adopted by the AO is arbitrary, because he has taken a market value which is applicable for the purpose of registration as given in section 50C.

4. Ld. CIT (A) held that transfer of right amounts to transfer of immovable property, because there is a right in immovable property, hence, any transfer of right to make such property is transferred to immovable property only. Thus, he concluded that transfer of right to work property was a sale and therefore, market value has rightly been taken by the AO and it should be taxed as capital gain and not as income from other source.

5. Before us Ld. Counsel for the assessee, Shri K Sampath after explaining the entire facts, submitted that the assessee has transferred the right in the plot through endorsement for which there is no determination of stamp value by the stamp valuation/ registration authority and therefore, taking a market value in terms of section 50C is not tenable. Here in this case the lump sum value as

per the stamp valuation has not been taken but it has been taken as per the ITI report which cannot be substitute either for the purpose of stamp valuation or price which assessee has actually received for transfer of right to endorsement. Thus, such valuation done by the AO and confirmed by the Ld. CIT (A) cannot be sustained.

6. On the other hand Ld. DR strongly relying upon the order of the Ld. CIT (A) submitted that, once it is accepted that it is a transfer of immovable property, that is, the sale of property, then market value has to be determined. He submitted that if the ITI report is not accepted, then the matter should be remanded back to the AO to determine the fair market value as per the circle rate / stamp value rate.

7. We have heard the rival submission and also perused the relevant finding given in the impugned order. It is not disputed by the revenue authorities that the transfer of right over the plot admeasuring 299 sq. yds amounts to transfer of a capital asset in terms of section 2(47). The assessee had acquired the plot in question by way of allotment and had acquired the right through endorsement document. This endorsement document has been further transferred to another buyer, because he was the beneficial owner of the said property in which he had the right. It is not a case that any registration has been done in the favour of the assessee for the allotment of the plot. Even the assessee has transferred his right on the plot to another buyer for again there is no registration of the said transfer and consequently there is no value adopted or assessed by any authority of the State Government or Stamp Valuation Authority. The deeming fiction for taking the full value of consideration in respect of transfer of a capital asset u/s 50C is applicable where the value is assessed by stamp valuation authority, then such a value is deemed

to be the full value of the consideration receipt or accruing as a result of such transfer. The word 'assessable' in section 50C at the time of transfer was inserted w.e.f. 1.10.2009 and therefore, in the assessment year 2007-08 the assessable value at the time of transfer cannot be taken as full value of the consideration. Either at the time of agreement or at the time of transfer there was no value assessed or assessable by the stamp valuation authority or therefore, the market value based on some ITI inquiry cannot be substituted with the actual consideration received by the assessee. Thus, the difference as worked out by the AO on the basis of un authenticated ITI report cannot be added; and accordingly, amount of Rs. 54,20,000/- is directed to be deleted.

8. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 8th August, 2018.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 08/08/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

		Date
1.	Draft dictated on (Direct on computer)	01.08.2018
2.	Draft placed before author	06.08.2018
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10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	