

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Dr.B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 516/CHD/2018
Assessment Year : 2014-15**

Sh. Ramesh Kumar Goyal,
49-B, Guru Chhaya,
Tagore Nagar,
Ludhiana

Vs. The ITO, Ward 7(3),
Ludhiana

PAN No.

(Appellant)

(Respondent)

Appellant by : Sh. Nikhil Goyal, CA
Sh. Ashok Goyal, CA

Respondent by : Smt.Chanderkanta, Sr.DR
& Sh.Vivek Agrawal (Assistant
Valuation officer, I,T.Dept, Meerut)

Date of Hearing : 13.08.2018

Date of Pronouncement : 04.09. 2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 5.3.2018 of the Commissioner of Income Tax(A)-3, Ludhiana [hereinafter referred to as 'CIT(A)']

2. In this appeal the assessee has raised the following grounds:-

1. *That the Ld. CIT(A)-3, Ludhiana has erred in dismissing the appeal of the assessee, wherein, the addition of Rs. 7,64,000/- was made by the Assessing Officer on the basis of valuation report of Asstt. Valuation Officer.*

2. *That the Ld. CIT(A)-3, Ludhiana has failed to appreciate the fact that the value of plot could not be more than the registered value since neither the possession of the plot nor its demarcation were made available to the Assessee, since its purchase and to the date of sale.*
3. *That the Ld. CIT(A)-3, Ludhiana has erred in relying on the contents written in the normal course in registration deed, than the documentary evidences as placed before the Assessing Officer/CIT(A) about adverse possession of the plots.*
4. *That even, the Valuation Officer has not disputed that the plot was not in the possession of the assessee and which fact has totally been ignored by the Worthy CIT(A)-3, Ludhiana and not even considered the binding observations of the Valuation Officer of the Department.*
5. *That the addition sustained by the CIT(A) is against the facts and circumstances of the case.*

3. The sole issue involved in this appeal is regarding the value of the property sold by the assessee for computation of capital gains tax.

4. The Assessing officer noted that as per the Stamp Valuation Authority / Sub Registrar, the sale value of the land was at Rs. 58,80,000/-. However, the assessee in the return of income had computed the capital gains taking the sale consideration at Rs. 10 lacs. On being asked to explain in this respect, the assessee explained that the assessee had purchased the plot / land in question in Village Chotpur, Tehsil Dadri, Distt.

Ghaziabad, U.P. from one Smt. Neelam Khanna on 17.10.2011 for Rs. 5 lacs. However, later on it was gathered that the said plot was under the illegal possession with some other person and moreover the plot under consideration was situated in catchment area of Hindon river where no construction was permissible. The land was not fulfilling the basic requirements for urbanization. The assessee therefore, was not in a position to use the land. The assessee, therefore, could fetch only Rs. 10 lacs as sale consideration of the said plot and has rightly returned the capital gains. The Assessing officer considering the above submissions, appointed the Valuation Officer to assess the value of the land. The Valuation Officer visited the site and agreed that the land was under illegal occupation and further that the same was situated in catchment area of Hindon River and no construction was allowed at this plot. He also, considering the size of the plot made certain adjustments and thereafter assessed the value of the land at Rs. 17 lacs.

5. The Assessing officer accordingly took the value of land at Rs. 17 lacs and computed the capital gains tax. The assessee unsuccessfully contested the above addition in respect of capital gains before the CIT(A).

6. Before us, Ld. Counsel for the assessee has reiterated his submissions and has submitted that the assessee has rightly returned the capital gains as per the actual sale value received by the assessee.

7. We have heard the Ld. representatives of the parties and the Valuation Officer on this issue. Shri Vivek Agrawal, the Valuation Officer, has submitted that he had estimated the value of the land as per the set guidelines. That as per those guidelines, in respect of the property not in possession of the assessee i.e if illegally occupied by other person, the maximum adjustment that can be allowed is 30% and considering the above guidelines he had given 25% adjustment towards the value of the land. Similarly, the adjustments were made taking into consideration that the construction was not allowed on the land and also in respect of the big size of the plot and thereafter value of the land was calculated at Rs. 17,64,000/-.

8. We have considered the rival submissions. The assessee with positive evidence has proved that the land was under illegal occupation and further construction was not allowed on the said land and further that the location and size of the land was such that it could not fetch the appropriate sale consideration. Perhaps these were factors because of which the assessee could purchase the land at a lower consideration of Rs. 5 lacs only. It is a fact on the file that the assessee has sold the land at the double of the price at which he had purchased. The value of the land estimated by the Valuation Officer in this case is not based on the basis of market value of the land, rather, he had made the adjustment as per the guidelines. In our view, these guidelines are just recommendatory in nature. However, the actual value of the land cannot be ascertained by strictly applying these type of

guidelines. None of the averments made by the assessee regarding the factors diminishing the value / sale consideration of the land have been denied by lower authorities. Under the circumstances, we do not find any justification on the part of the lower authorities for estimating the value of the land at the higher rate than that has been disclosed by the assessee in the return of income which is as per the sale consideration mentioned in the sale deed. In view of this, the addition made by the lower authorities in respect of the capital gains / capital gains tax is hereby set aside and the appeal of the assessee stand allowed.

In the result, appeal of the assessee is hereby allowed.

Order pronounced in the Open Court on 04.09.2018.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated : 04.09.2018
Rkk

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*