

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**BEFORE SH. R.K. PAND, ACCOUNTANT MEMBER**

ITA No.6713/Del/2018  
Assessment Year: 2013-14

<b>Archana Lal B-107, Ram Vihar, Sector- 30, Noida PAN : ABQPL0533Q (APPELLANT)</b>	<b>Vs</b>	<b>ACIT Circle-1 Noida (RESPONDENT)</b>
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Appellant by	Sh. Rajesh Gupta, FCA
Respondent by	Sh. P.S. Thungaleng, Sr DR

Date of hearing:	10/12/2018
Date of Pronouncement:	26/12/2018

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 29.06.2018 passed by the CIT (A)-1, New Delhi relating to A. Y. 2013-14.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT(A) directing the Assessing Officer to adopt the value adopted by the Stamp valuation authority at Rs.1,40,50,000/-as against the value of Rs.95,07,272/- determined by the DVO and actual sale consideration of Rs.90 lacs.

3. This is the second round of litigation before the Tribunal. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 28.07.2013 declaring total income of Rs.13,20,030/-. Subsequently the return was revised on 31.07.2013 declaring the same income. The case of the assessee was selected for scrutiny. During the assessment proceedings the Assessing Officer observed that the assessee had purchased an urban agricultural land in Kanjhawala, Delhi on 21.02.2007 for Rs.2,80,000/- and the same was sold on 09.10.2012 for sale consideration of Rs.90 lacs. The Stamp Valuation Authority adopted the valuation of Rs.1,40,50,000/- for the purpose of payment of Stamp Duty. The Assessing Officer applying the provisions of section 50 C of the Income tax Act adopted the value of Rs.1,40,50,000/- as adopted by the Stamp Valuation authority as the value of sale consideration for the purpose of computation of long term capital gain as against the actual sale consideration of Rs. 90 lacs.

4. The assessee filed an appeal before the CIT(A) who dismissed the appeal filed by the assessee vide order dated 30.09.2017. On further appeal by the assessee, the Tribunal vide ITA No.5861/Del/2016 order dated 10.01.2017 set aside the matter to the Assessing Officer to refer the matter to the valuation officer for valuation purpose. Pursuant to reference by the Assessing Officer, the valuation officer vide his order dated 31.08.2017 determined the fair market value at Rs.95,07,272/-. Accordingly the Assessing Officer passed the order u/s 143 (3)/254 dated 05.10.2017 wherein he considered the value of Rs.95,07,272/- as the sale consideration for the purpose of computation of long term capital gain. The assessee filed appeal before the CIT(A) against the addition of Rs.5,07,272/- made by the Assessing Officer on the ground that the actual sale consideration of Rs.90 lacs should be adopted since the valuation officer has ignored the value of those properties which were less than the sale value of the assessee.

5. However, the Ld. CIT(A) instead of giving any relief to the assessee enhanced the assessment by directing the Assessing Officer to substitute the value of Rs.1,40,50,000/-adopted by the Stamp Valuation authority for stamp duty as the deemed sale consideration for the purpose of computing the long term capital gain.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset referred to the CBDT Circular No.8/2002 dated 27.08.2002 and drew the attention of the bench to the relevant extracts which read as under :-

*Computation of capital gains in real estate transactions.*

*37.1 The Finance Act, 2002, has inserted a new section 50C in the Income tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property.*

*37.2 It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration, and capital gains shall be computed accordingly under section 48 of the Income tax Act.*

*37.3 It is further provided that where the assessee claims that the value adopted or assessed for stamp duty purposes exceeds the fair market value of the property as on the date of transfer, and he has not disputed the value so adopted or assessed in any appeal or revision or reference before any authority or Court, the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the Income, tax Act. If the fair market value determined by the Valuation Officer is*

*less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be the full value of consideration (emphasis supplied). **However, if the fair market value determined is more than the value adopted or assessed for stamp duty purposes, the Assessing Officer shall not adopt such fair market value and shall take the full value of consideration to be the value or assessed for Stamp duty purpose.***

*37.4 This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003 04 and subsequent years (emphasis supplied. ”*

8. Referring to the above he submitted that in view of the CBDT circular which is binding at the department, the Ld. CIT (A) could not have directed the Assessing Officer to adopt the value adopted by the stamp valuation authority for the purpose of determining the long term capital gain. So far as the value adopted by the Assessing Officer is concerned he submitted that the DVO in his order has taken the land rate as per sale instances of nearby properties sold vide sale deeds dated 19.12.2013 and 03.01.2013 which varies from 9044.50 to 11,861 per square meter. Since the assessee has adopted the value of Rs.10,000/- per square meter, therefore, the value adopted by the DVO being on the higher side should be rejected and the value adopted by the assessee as per registered valuer should be accepted. He submitted that in land transactions of higher value, the price variance between the transactions are a certainty and the value adopted by two different valuers usually differs and there is no evidence with the department that the assessee has received more than what has been mentioned in the sale deed i.e. Rs.90,000/-. Therefore, no further addition should be made.

9. The Ld. DR on the other hand heavily relied on the order of the CIT(A).

10. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the Tribunal in the instant case had restored the matter to the file of the Assessing Officer with a direction to refer the matter to the DVO for the purpose of determination of fair market value of the land. I find the DVO in his report has determined the fair market value of the property at Rs.95,07,272/- which has been adopted by the Assessing Officer as the sale consideration as per provision of section 50 C of the IT Act. The CBDT Circular no.8/2002 dated 27.08.2002 mandates the Assessing Officer to adopt the value determined by the DVO if the FMV so determined is more than the actual sale consideration but less than the value adopted by the stamp valuation authority and the assessee has challenged such valuation by stamp valuation authority before the Assessing Officer. I, therefore, find merit in the submissions of the Ld. Counsel for the assessee that the Ld. CIT(A) should not have enhanced the income of the assessee by directing the Assessing Officer to replace the value adopted by the Stamp Valuation Authority at Rs. 1,40,50,000/- for determining the long term capital gain. So far as the argument of the Ld. Counsel for the assessee that the DVO has not considered the actual sale consideration received in certain other properties the rates of which are less than the rate adopted by the assessee in the instant case is concerned, the same in our opinion is without any merit. The DVO in the instant case after considering the totality of the facts of the case and after considering the surrounding circumstances and different other facts and circumstances as mentioned in the valuation report has determined the value of the property at Rs.95,07,272/-. Under these circumstances and in the light of our observations above I am of the opinion that the value adopted by the Assessing Officer on the basis of the report of the DVO at Rs.95,07,272/- as against the actual sale consideration of Rs.90 lacs and as against valuation by stamp valuation authority at Rs.1,40,50,000/- is correct. Accordingly, the order of the CIT(A) is modified and the action of the Assessing Officer in adopting the value of Rs.95,07,272/- as the sale consideration for the purpose of

computation of capital gain u/s 50 C is upheld. The grounds raised by the assessee are partly allowed.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26.12.2018.

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

*\*NEHA\**

*Date:- 26 .12.2018*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	17.12.2018
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	26.12.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	