

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

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER**

**ITA No.-2934/Del/2018  
(Assessment Year: 2008-09)**

Jagmal Joshi Gautam Budh Nagar Ward No. 1, Mohalla Rawatian PAN : AKRPJ4481H	vs	ITO, Ward-1(5), Noida
<b>Assessee by</b>		<b>Shri Jagdeep Gautam, CA</b>
<b>Revenue by</b>		<b>Shri S.L.Anuragi, Sr. DR</b>

<b>Date of Hearing</b>	<b>27.12.2018</b>
<b>Date of Pronouncement</b>	<b>28.12.2018</b>

**ORDER**

**PER N.S.SAINI, ACCOUNTANT MEMBER :**

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-I, Noida dated 28.02.2018 for assessment year 2008-09.

2. The sole issue involved in this appeal is that the Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer making addition for Rs. 11,09,350/- under the head 'long term capital gain' for sale of land ignoring the report of Registered Valuation Officer who valued the Property at Rs. 15,23,200/- in place of the stamp duty value of Rs. 51,46,000/-.

3. The brief facts of the case are that the assessee sold immovable property for a consideration of Rs. 15,00,000. The assessee relied on the valuation report of the Valuation Officer, Meerut contending that the value of the property sold was Rs. 15,23,200/-. The Assessing Officer did not accepted the contention of the assessee and adopted stamp duty value of Rs. 51,46,000/-

and considering the share of the assessee in the said property at 23.7% adopted the sale consideration of Rs. 12,19,600/- and after allowing deduction for cost of acquisition for Rs. 1,10,250/- determined the long term capital gains in the hands of the assessee at Rs. 11,09,350/- and brought the same to tax.

4. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) who dismissed the appeal of the assessee.

5. Before me the assessee has filed copy of assessment order in the case of Shri Ashok Kumar Gupta passed u/s 143(3) of the Act dated 26.03.2006 who was 50% co-owner of the property and contended that in the said assessment the Assessing Officer has accepted the registered valuer valuation report who valued the property at Rs. 15,23,200/- and has taxed 50% of the said amount in the hands of this assessee. Therefore, in the case of the assessee the Assessing Officer cannot turn around and take different stand by not accepting the valuation report of the registered valuer.

6. The Departmental Representative Shri S.L.Anuragi, Sr. DR would not controvert the above contention of the Authorised Representative of the assessee, however, he supported the order of the lower authorities.

7. In the above facts and circumstances of the case, I am of the considered view that the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Kaumudini Narayan Dalal and Anrs. [2001] 249 ITR 219 (SC) has held as under :

*"In PRADIP RAMANLAL SHETH v. UNION OF INDIA [1993] 204 ITR 866, the Guja-rat High Court had decided, inter alia, that the appropriate authority had no power, authority or jurisdiction, in ascertaining the discounted value of the apparent consideration, under section 269UD of the Income-tax Act, 1961, to deduct from the total amount of the consideration, any sum on the supposition that if the sale had taken place the seller would have been out of pocket to the*

*extent of 50 per cent. of the total registration fees and stamp duty, because he had agreed that these expenses would be shared equally between the seller and buyer. In a subsequent case relating to other parties the Guja-rat High Court followed its earlier decision. The Department preferred an appeal to the Supreme Court from the later decision of the High Court. The Department was unable to explain what was the fate of the appeal filed against the decision in PRADIP RAMANLAL SHETH v. UNION OF INDIA , if filed, or why no appeal was filed against that decision. The Supreme Court dismissed this appeal holding that it was not open to the Revenue to accept the earlier judgment in the case of one assessee and challenge its correctness without just cause in the case of other assessees."*

8. Further the Hon'ble Supreme Court in the case of CIT vs. Shivsagar Estate [2002] 257 ITR 59 (SC) has held as under :-

*"Following its decision for an earlier year (see [1993] 201 ITR 953) the High Court held for certain subsequent years that the income from property held by 65 co-owners had to be assessed separately in the hands of the individual co-owners and not in the hands of an association of persons. The Department preferred appeals and special leave petitions to the Supreme Court. The Supreme Court dismissed the appeals and petitions on the ground that no appeal had been taken to the Supreme Court for the earlier year."*

9. In view of the above decisions of the Hon'ble Supreme Court in our considered opinion it is not open for the department to take two different stand in case of two different assessee's on exactly same facts.

10. In our view after accepting the sale value of property at Rs. 15,23,200/- during the year under consideration in the case of Shri Ashok Kumar Gupta it was not open to not to accept the same in the hands of the assessee.

11. I, therefore, set aside the orders of the lower authorities and direct the Assessing Officer to verify the fact whether the sale value of the property was accepted by the department at Rs. 15,23,200/- in the hands of Shri Ashok Kumar Gupta in the final assessment. If the same

has been found to have been accepted by the department and that decision has become final then the same view has to be adopted in the instant case also.

12. Needless to mention that sufficient opportunity of hearing shall be allowed to the assessee before passing the order afresh by the Assessing Officer in light of the discussions made hereinabove. Thus, the grounds of appeal of the assessee are allowed for statistical purposes.

13. In the result appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Open Court on 28<sup>th</sup>  
December, 2018 at New Delhi.**

**Sd/-**

**(N.S.SAINI)  
ACCOUNTANT MEMBER**

Dated:  
.12.2018  
\*BR\*

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Copy forwarded to:

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

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ITAT NEW DELHI

Date of dictation	27.12.2018
Date on which the typed draft is placed before the dictating Member	27.12.2018
Date on which the typed draft is placed before the Other Member	.12.2018
Date on which the approved draft comes to the Sr. PS/PS	12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	.12.2018
Date on which the fair order comes back to the Sr. PS/PS	.12.2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	