

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri S.S.Godara, JM & Hon’ble Shri M.Balaganesh, AM]

I.T.A No. 2410/Kol/2017

Assessment Year : 2014-15

Shahin Akhtar
[PAN: AKNPA 4249 C]
(Appellant)

-vs-

ITO, Ward-2(4), Uttar Dinajpur
(Respondent)

For the Appellant : Shri R.K. Saha, Advocate

For the Respondent : Shri Sankar Halder, Addl. CIT Sr. DR

Date of Hearing : 26.12.2018

Date of Pronouncement : 01.01.2019

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-Jalpaiguri [in short the ld CIT(A)] in Appeal No.51/CIT(A)/JAL/2016-17 dated 30.08.2017 against the order passed by ITO, Ward-2(4), Uttar Dinajpur[in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 30.08.2016 for the Assessment Year 2014-15.

2. The only effective issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in upholding the addition made u/s 56(2)(vii) of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee purchased three plots of lands adjacent to each other as per details below:

| Details of Land | Area of Land Sold | Assessed Value | Purchase Value | Registration Date and deed no. |
|---|--------------------------|-----------------------|-----------------------|--|
| 4.Area:0.64 Acre PlotNo.- 218/214/227 Khatian no. RS- 28, 181, LR-295 | 1.14 Acre | 595,806.00 | 595,806.00 | Date:29/04/2014 Deed no.-2358 |
| 5. Plot No.- 929/930/931 | 1.40 Acre | 5,886,967.00 | 30,00,000.00 | Date:13/02/2014 Deed no.- 00664/14 |
| 6. Plot no.-01 | 0.14 Acre | 924,000.00 | 5,00,000.00 | Date:17/02/2014 |

The Id. A.O. adopted the value determined by the Stamp Valuation Authority and proceeded to add the difference in consideration of Rs. 33,10,967/- in the assessment by invoking the provision of 56(2)(vii)(b) of the Act. The Id. A.O. observed that the provision of 56(2)(vii)(b) of the Act would apply to the assessment year under consideration wherein the Act specifically provides for making the addition in the hands of the purchaser if there is a difference between the purchase consideration reflected in the sale deed and purchase consideration fixed by the Stamp Valuation authority for the purpose of levy of stamp duty. This addition was upheld by the Id. CIT(A). Aggrieved the assessee is in appeal before us.

4. We find that the assessee had purchased lands on which a petrol pump was previously functioning. It was pleaded by the assessee that the purchase consideration of petrol pump land would always be lower than the actual market value and the circle rate fixed by the Stamp Valuation Authority. The Id. AR before us stated that this fact was duly brought to the notice of lower authorities and an observation in this regard is also made by the Id. CIT(A) in pages 4 and 5 of his order. The Id. AR argued that in such a

scenario, the Id. A.O. ought to have referred the valuation of the land to Departmental Valuation Officer in terms of section 50C(2) of the Act which also is incorporated in proviso to section 56(2)(vii)(b) for determination of fair market value of the property. We find lot of force in this argument of the Id. AR. We have gone through the provision of section 56(2)(vii)(b) of the Act together with its proviso which reads as under:

“Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections:”

In view of the aforesaid specific provision contained in section 56(2)(vii)(b) the revenue ought to have referred the valuation of the land to the DVO for determination of fair market value of the property. Accordingly, we direct the Id. A.O. to refer the case to DVO for determination of fair market value of the land and decide the quantum of addition, if any, in terms of proviso to section 56(2)(vii)(b) of the Act. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the Court on 01.01.2019

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 01.01.2019

SB, Sr. PS

Copy of the order forwarded to:

1. Shahin Akhtar, Ward-2(4), Jharbari Chopra.
2. CIT(A)-Jal.
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches