

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 4877/Del/2018

Assessment Year: 2015-16

SATISH KUMAR TANDON,
B-56, 2ND FLOOR,
ASHOK VIHAR, PHASE-1,
DELHI – 110 052
(PAN : ABSPT7855P)

(ASSESSEE)

VS. ITO, WARD 34(3),
NEW DELHI
ROOM NO. 808,
E-2 BLOCK,
CIVIC CENTRE,
MINTO ROAD,
NEW DELHI

(RESPONDENT)

Assessee by: Sh. Deepak Jain, CA

Revenue by: Sh. SL Anuragi, Sr. DR.

ORDER

This appeal is filed by assessee against the Order passed by the Ld. CIT(A)-12, New Delhi relating to Assessment Year 2015-16 on the following grounds:-

- i) Because the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 16,69,167/- made by the AO in computing the Long Term Capital Gain on sale of shops.
- ii) Because the Ld. CIT(A) has erred in law and on facts in confirming the order passed by the AO replacing the actual sales consideration of shops of Rs. 32,50,000/- which was the fair market value as on

the date of sale by the circle rate of Rs. 55,20,000/- for the purpose of calculation of capital gain.

- iii) Because the Ld. CIT(A) has erred in law and on facts in confirming the order of the AO completing the assessment without making reference to the valuation officer u/s. 50(C)(2) when a specific claim u/s. 50(C)(2)(a) has been made by the assessee during the assessment.
- iv) Because the Ld. CIT(A) has erred in law and on facts in holding that reference to the valuation officer in this case could not be mandatory as the procedure is to be applied only after the appreciation of relevant facts of the case.
- v) The appellant craves leave to add or amend any ground of appeal.

2. The brief facts of the case are that the assessee filed his return of income on 27.7.2015 declaring total income of Rs. 10,80,350/-, the same was duly processed u/s. 143(1) of the Act. Subsequently the case of the assessee was selected for scrutiny through CASS to examine the sale consideration of property is less than the value as per stamp authority. Notice u/s. 143(2) of the Income Tax Act, 1961 was issued on 26.7.2016 and subsequently, statutory notices u/s. 142(1) of the I.T. Act, 1961 were issued and in response to the same,

the assessee has opted for E-scrutiny proceedings and filed necessary details which have been examined. During the year under consideration, the assessee is in an individual and has shown income from house property, capital gain and other sources. AO observed that assessee has sold 11 shops situated at Sadar Bazar, Delhi and the sale value adopted for stamp duty is more than the sale consideration on which the shops were claimed to be sold. AO asked the assessee to explain the difference in the value adopted for stamp duty purposes and sale consideration declared in the return. The Assessee did not furnish any evidence to support the price at which the shops were sold which were less than the rates for stamp duty purposes. Therefore, the AO rejected the contention of the assessee that the matter should be referred to the DVO u/s. 50C(2) of the Act. The AO referred to the provisions u/s. 50C(1) of the Act and held that the value adopted for stamp duty purposes shall be deemed to be the full value of the consideration received as a result of such transfer. Hence, the AO assessed full value of the consideration as per the circuel rates and added Rs. 16,69,167/- to the total income of the assessee and assessed the income at Rs. 27,49,520/- vide order dated 26.12.2017. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 23.5.2018 has dismissed the appeal of the assessee and confirmed the

addition. Aggrieved with the impugned order, the assessee is in appeal before the Tribunal.

3. During the hearing, Ld. A.R. of the assessee stated that assessee made a specific claim u/s. 50C(2)(a) that the circle rate of the shops exceeded the fair market value of the shops and a reference may kindly be made to the Valuation Officer. However, AO without making reference to the Valuation Officer to determine the fair market value of those properties and completed the assessment by considering the circle rate of these properties and made an addition of Rs. 16,69,167/- and raised a demand of Rs. 3,43,850/-. He further stated that once the assessee makes a request for reference to DVO, it is necessary to refer the matter to DVO as per 3rd proviso to section 56(2) r/w section 50C(2). Hence, he requested that the assessment order passed by the AO making the addition of Rs. 16,69,167/- by replacing the actual sale consideration of shops of Rs. 35,25,000/- which was the fair market value as on the date of sale by the circle rate of Rs. 55,20,000/- for the purpose of calculation of capital gain is bad in law and facts and need to be quashed.

4. On the contrary, Ld. DR relied upon the orders of the authorities below. He stated that on this technical irregularity assessment cannot be quashed as held by the Hon'ble Supreme Court of India in its order dated 18.5.2018 the case of Home Finders Housing Ltd. vs. ITO, Corporate Ward 2(3) (2018) 94 taxmann.com 84 (SC). He has

filed the copy of the order dated 18.5.2018 of the Hon'ble Supreme Court of India (Supra). Hence, he requested to set aside the issue in dispute to the AO with the directions to refer the same to the DVO to determine the fair market value of the properties.

5. I have heard both the parties and perused the records especially the assessment and appellate orders and the case laws relied upon by the Ld. DR. I find that assessee has sold 11 shops situated at Sadar Bazar, Delhi and the sale value adopted for stamp duty is more than the sale consideration on which the shops were claimed to be sold. AO asked the assessee to explain the difference in the value adopted for stamp duty purposes and sale consideration declared in the return. The AO rejected the contention of the assessee that the matter should be referred to the DVO u/s. 50C(2) of the Act. The AO referred to the provisions u/s. 50C(1) of the Act and held that the value adopted for stamp duty purposes shall be deemed to be the full value of the consideration received as a result of such transfer. Hence, the AO assessed full value of the consideration as per the circle rates and added Rs. 16,69,167/- to the total income of the assessee and similarly, Ld. CIT(A) has held that AO was fully justified in taking the full value of the consideration as per the value adopted for stamp duty purposes, as the assessee failed to substantiate the claim of distressing circumstances and also held on the issue of reference that it is not mandatory for the A.O. to refer the matter to DVO

mandatorily, which in my opinion, is not sustainable in the eyes of law and against the law laid down by the Hon'ble Supreme Court of India in its order dated 18.5.2018 the case of Home Finders Housing Ltd. vs. ITO, Corporate Ward 2(3) (2018) 94 taxmann.com 84 (SC) wherein the Hon'ble Supreme Court in the Heads Notes had observed as under:-

“Section 148, read with section 147, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (General) - Assessing Officer noticed that income chargeable to tax had escaped assessment and he initiated reassessment under section 147 - Assessee raised objections - However, Assessing Officer without giving disposal to objections of assessee, passed reassessment order - Assessee challenged reassessment order before High Court on ground that by not passing a specific order after receiving objections, Assessing Officer violated law declared by Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 that Assessing Officer should pass a speaking order taking into account objections for re-opening assessment under section 147, and resultantly, order was bad in law - High Court held that non-compliance of procedure indicated by Supreme Court would not make order void or non est and such a

violation was a procedural irregularity which could be cured by remitting matter to authority - Whether SLP against impugned order was to be dismissed - Held, yes favour of revenue]”

5.1 Respectfully following the aforesaid precedent and in the interest of justice, I set aside the issue in dispute to the AO with the directions to refer the matter to the DVO for valuation and DVO should allow full opportunity of hearing to the assessee, as per law and submit the Report to the AO. Thereafter, the AO shall decide the matter in dispute afresh, after considering the Report of the DVO and give adequate opportunity of being heard to the assessee, as per law.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 04/01/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 04/01/2019

“SRBHATNAGAR”
Copy forwarded to: -

1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches