

**IN THE INCOME TAX APPELLATE TRIBUNAL
Camp Bench at Jalandhar**

**Before Shri. N.K. Saini, Vice President
and Shri. Ravish Sood, Judicial Member**

**ITA No. 493/Asr/2018
(Assessment Year: 2015-16)**

Sh. Dev Brat Sharma, Income Tax Officer,
62, New Rajinder Nagar, Vs. Ward-3(1)
Near New Court, Jalandhar.
Jalandhar

PAN – ACUPS6682E
(Appellant)

(Respondent)

Assessee by: Shri. Sandeep Vijn, CA
Revenue by: Shri M.S. Parmar, D.R
Date of Hearing: 15.01.2019
Date of Pronouncement: 17.01.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT (Appeals)-2, Jalandhar, dated 27.07.2018, which in turn arises from the assessment framed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'I.T. Act'), dated 15.12.2017 for A.Y. 2015-16. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:-

- 1. The learned Commissioner of Income Tax (Appeals), has erred in sustaining an order which is bad in law.*
- 2. The learned Commissioner of Income Tax (Appeals), has erred in upholding the addition towards Long Term Capital Gain at Rs. 72,00,000/- which was bad in law.*
- 3. The learned Commissioner of Income Tax (Appeals) has erred in upholding the computation of Long Term Capital Gain at Rs. 74,61,158/- as against the returned figure of Rs. 26,158/-. The legal as well as the factual position has not been appreciated.*

2. Briefly stated, the assessee had e-filed his return of income for A.Y. 2015-16 on 24.03.2017, declaring an income of Rs. 10,89,140/-. The return of income filed by the assessee was processed as such under section 143(1) of the I.T. Act. Subsequently, the case of the assessee was selected for scrutiny assessment under section 143(2).

3. During the course of assessment proceedings it was observed by the A.O that the assessee had during the year under consideration sold a property on 19.03.2015 for a consideration of Rs. 28,00,000/-. In respect of the sale of the aforementioned property the assessee had returned a 'Long term capital gain' (for short 'LTCG') of Rs.2,61,158/-. It was noticed by the A.O that the 'stamp duty' in respect of the aforesaid sale transaction was paid on the circle value/segment rate of Rs. 1 crore of the property under consideration. In the course of the assessment proceedings, it was submitted by the assessee that as an 'agreement to sell', dated 20.11.2002 was executed in respect of the property under consideration, therefore, the sale value was to be fixed as per the value therein taken and not as per that adopted by the sub-registrar for the purpose of payment of stamp duty. In the backdrop of his aforesaid contention, it was averred by the ld. A.R that the LTCG on the sale of the property under consideration was to be worked out as per the *first* and *second* proviso of Sec. 50C(1), which though was inserted vide the Finance Act, 2016 w.e.f 01.04.2017, but was to be given a retrospective effect.

4. The A.O after deliberating on the aforesaid contentions of the assessee was however not persuaded to accept the same, and called upon him to explain as to why the circle value/segment rate of Rs. 1 crore may not be adopted in terms of Sec. 50C(1) for working out the LTCG on the sale of the property under consideration. In reply, the assessee in order to impress upon the A.O that the circle

value/segment rate of the property under consideration could not be adopted for computing the 'capital gains', therein submitted that the property under consideration suffered from locational disadvantages and also did not have proper frontage. It was the claim of the assessee that the front portion of the property was blocked by two shops which covered 24 feet (out of the total front width of 58 feet). Further, it was submitted by the assessee that the property sold by him was a basement property which had a much lower value as compared to the ground floor. Apart therefrom, it was submitted by him that as the front portion of the property was blocked, therefore, the entire building was not visible from the road end. In order to fortify his aforesaid claim, the assessee had also placed on record the drawing of the plot and the photographs in support thereof. In sum and substance, the assessee taking support of the locational and other disadvantages suffered by the property under consideration had objected to the adoption of the circle value/segment rate for the purpose of computing the LTCG on the sale of the same. However, the AO not finding favour with the aforesaid contentions advanced by the assessee adopted the circle value/segment rate of Rs. 1 crore of the aforementioned property as the deemed sale consideration, and reworked the LTCG in respect of the same at Rs. 74,61,158/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee did not find favour with the same and upheld the order passed by the A.O and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short A.R) for the assessee submitted, that the assessee had in his 'return of income' rightly adopted the actual sale

consideration of Rs. 28,00,000/- for working out the LTCG on the sale of the said property. In order to fortify the aforesaid claim, the ld. A.R drew our attention to the relevant extract of the 'return of income' that was e-filed by the assessee i.e Page no. 34 of the assessee's 'Paper book' (for short 'APB'). On a perusal of the aforesaid extract, it stands revealed that the assessee after disclosing that the circle value/segment rate of the property under consideration was Rs. 1 crore, had however adopted the actual sale consideration of Rs. 28,00,000/- for the purpose of computing the LTCG on the sale of the same. The ld. A.R submitted that the assessee in the course of the assessment proceedings, had on the basis of specific reasons objected to the proposed adoption of the circle value/segment rate by the A.O for computing the LTCG on the sale of the property under consideration. It was the contention of the ld. A.R, that the A.O who though in the backdrop of the reasoned objections raised by the assessee to the proposed adoption of the circle value/segment rate remained under a statutory obligation to have referred the valuation of the same to the Valuation Officer under section 50C(2)(a), however, had most arbitrarily bypassed the said statutory requirement and had worked out the LTCG by adopting the circle value/segment rate as the full value of consideration. The learned A.R in order to drive home his claim that in the backdrop of the aforesaid factual matrix, it was obligatory on the part of the A.O to have referred the matter to the valuation cell, therein relied upon an order of a coordinate Bench of the Tribunal viz., ITAT Delhi Bench "A", New Delhi in the case of ITO, Ward 2(1), Moradabad vs. M/s Aditya Narayan Verma (HUF) [ITA N. 4166/Del/2013; dated 07.06.2017]. It was submitted by the learned A.R that in the aforementioned order the Tribunal while upholding the order of the CIT(A) had observed that if the A.O despite specific objection raised by the assessee that the value adopted or assessed by

the stamp valuation authority under sub-section (1) exceeded the 'Fair market Value' of the property as on the date of transfer, however fails to refer the matter for valuation to the Valuation Officer, then the order of the A.O would be invalid to the said extent.

7. Per contra, the learned Departmental Representative (for short D.R) relied on the order passed by the lower authorities. It was submitted by the learned D.R that the lower authorities had rightly adopted the circle value/segment rate of the aforementioned property for computing the 'capital gain' under Sec. 50C of the I.T Act. It was averred by the learned D.R that as the order passed by the CIT(A) did not suffer from any infirmity, thus the appeal of the assessee being devoid of any merit was liable to be dismissed.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on the record. Admittedly, the assessee had sold the property under consideration for Rs. 28 lac. Insofar, the circle value/segment rate of the property under consideration is concerned, the same was Rs. 1 crore and stamp duty was paid on the said value. In the 'return of income' for the year under consideration, the assessee after specifically referring to the circle value/segment rate of the property, had however adopted the actual sale consideration of Rs. 28 lac for the purpose of computing the LTCG on the sale of the same. Apart therefrom, we find from a perusal of the orders of the lower authorities that the assessee after referring to the locational disadvantages of the property under consideration, had in the course of the assessment proceedings objected to the proposed adoption of the circle value/segment rate by the A.O as the deemed 'sale consideration' for the purpose of computing the LTCG on the sale of the same. Rather, as a matter of fact, documentary evidence in the shape of drawings of

the plot and photographs of the property were placed on the record by the assessee in order to fortify his claim that the property under consideration was disadvantageously located. Be that as it may, it remains as a matter of fact borne from the records that the assessee had claimed before the A.O that the value adopted by the stamp valuation authority exceeded the fair market value of the property under consideration. However, we find that the objection raised by the assessee to the proposed adoption of the circle value/segment rate by the A.O for the purpose of computing the LTCG on the sale of the property was however bypassed by the A.O, who reworked the LTCG by adopting the circle value/segment rate as the deemed 'sale consideration'.

9. As per the mandate of clause (a) of sub-section (2) to section 50C, in case an assessee claims before the A.O. that the value adopted by the stamp valuation authority exceeds the fair market value of the property, then it is obligatory for the A.O to refer the matter to a valuation officer for ascertaining the same. However, in the case before us, we find that the A.O despite a specific objection to the said effect having been raised by the assessee in the course of the assessment proceedings, however dispensed with the said statutory obligation and failed to refer the valuation of the property under consideration to the valuation officer. In our considered view, the aforesaid methodology adopted by the A.O for reworking the LTCG not being in accord with the mandate of law, thus cannot be subscribed to on our part. We find that a similar issue had come up before a coordinate Bench of the Tribunal viz., **ITAT "A" Bench, Delhi** in the case of **ITO, Ward2(1), Moradabad vs. M/s Aditya Narayan Verma (HUF) [ITA N. 4166/Del/2013; dated 07.06.2017]**. As observed by us hereinabove, in the said case, the Tribunal had after deliberating at length on the scope and gamut of section 50C(2) had upheld the order of the CIT(A)

and concluded that if the A.O despite specific objection raised by the assessee that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeded the 'Fair market Value' of the property as on the date of transfer, however fails to refer the matter for valuation to the Valuation Officer, then the order of the A.O would be invalid to the said extent. The Tribunal while concluding as hereinabove had observed as under:

“4.1 On the very perusal of the provisions laid down under section 50C of the Act reproduced hereinabove, we fully concur with the finding of the Id. CIT (Appeals) that when the assessee in the present case had claimed before Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer should have referred the valuation of the capital asset to a valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty. The very purpose of the Legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and is certainly in a better position than the Assessing Officer to determine the valuation. Thus, non-compliance of the provisions laid down under sub section (2) by the Assessing Officer cannot be held valid and justified. The Hon’ble jurisdictional High Court of Allahabad in the case of Shashi Kant Garg (supra) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. Similar view has been expressed by the other decisions cited by the Id. AR in this regard hereinabove. The first appellate order on the issue is thus upheld.”

We have given a thoughtful consideration and concur with the aforesaid view so taken by the Tribunal. In our considered view, now

when the A.O despite specific objection raised by the assessee that the value adopted by the stamp valuation authority exceeded the fair market value of the property under consideration, had however failed to refer the matter to the valuation officer for ascertaining the same, therefore, the reworking of the LTCG by him not being in conformity with the mandate of law cannot be accepted. We thus are of a strong conviction that as the very mandate of law prescribed under the statute had whimsically been bypassed by the A.O, therefore, the consequential addition of Rs. 72,00,000/- made by him on the basis of the *impugned* reworking of the capital gains cannot be sustained, and deserves to be deleted.

10. We thus in terms of the aforesaid observations set aside the order of the learned CIT(A) and delete the addition of Rs. 72,00,000/- made by the A.O.

11. The appeal of the assessee is allowed.

Order pronounced in the open court on 17/01/2019

Sd/-

(N.K. Saini)

VICE PRESIDENT

Place : Jalandhar; Dated 17.01.2019
SH

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. DR, ITAT, Jalandhar
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Jalandhar**

Sr.No.	Details	Date	Initials	Designation
1	Draft dictated on	15.01.2019		Sr.PS/PS
2	Draft Placed before author	17.01.2019		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5	Approved Draft comes to the			Sr.PS/PS
6	Kept for pronouncement on			Sr.PS/PS
7	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date on which file goes to the AR			
10	Date of Dispatch of order			