

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5736/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

Shri Raj Kumar,  
C/o Shri Vinod Kumar Goel,  
282, Boundary Road, Civil Lines,  
Meerut.

vs. ITO, Ward 2 (2),  
Meerut.

**(PAN : CHCPR9099F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Goel, Advocate  
REVENUE BY : Shri Munshi Ram Bihagra, Senior DR

Date of Hearing : 10.01.2019

Date of Order : 24.01.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant, Shri Raj Kumar (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 22.12.2017 passed by Id. CIT (Appeals), Meerut qua the assessment year 2009-10 on the grounds inter alia that :-

*“1. That the no notice U/s 148/142(1) was served upon the assessee and CIT(A) confirm the same without any basis.*

**2. That the assessee has sold the agriculture land (written as industrial plot) is situated at Village Nizampur, Pargana & Tehsil Khurja, Bulandshar. The land is agriculture land but sale deed was made by the purchaser as industrial land therefore, it cannot be treated as industrial land. CIT(A) confirm the same without appreciated the facts.**

**3. That the cost of acquisition taken by the A.D. and not allowed the indexation. Therefore, assessment made by the A.D. without deducting cost of acquisition is not according to law. CIT(A) has not given any clear finding.**

**4. That the A.O. as well as CIT(A) has not allowed the rebate U/s 54B of I.T. Act 1961 .”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer noticed that the assessee has sold the property with apparent sale consideration of Rs.32,68,000/- as against the circle rate of Rs.68,88,000/-. On failure of the assessee to join the assessment proceedings despite issuance of the notice, AO made an addition of Rs.68,88,000/- by invoking the circle rate of the property in question.

3. Assessee carried the matter by way of an appeal before the Id. CIT (Appeals) who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Bare perusal of the impugned order passed by the Id. CIT (A) shows that during appellate proceedings, the assessee has moved a request for making reference to the DVO to consider the difference between the actual value of the sale consideration and the stamp value of the property, but Id. CIT (A) declined the request of the assessee that this ground must be taken before the AO. But we are of the considered view that when the presence of the assessee could not be procured by the AO despite issuance of notice, the question of taking this ground before the AO by the assessee does not arise.

6. It is the matter of common knowledge that sometimes property is sold below the circle rate due to numerous reasons and when the assessee has got the right to get the fair market value assessed of the property in question from the DVO, the said right cannot be denied merely on the basis of procedural technicalities. To meet with the ends of justice and to reach at the logical conclusion, we are of the considered view that fair market value of the property in question is required to be assessed from the DVO

u/s 50C of the Act. Consequently, present case is set aside to the file of the AO who shall frame the assessment afresh after providing an opportunity of being heard to the assessee by referring the matter to the DVO. So, the appeal filed by the assessee is hereby allowed for statistical purposes.

**Order pronounced in open court on this 24<sup>th</sup> day of January, 2019.**

**Sd/-  
(N.S. SAINI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 24<sup>th</sup> day of January, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**