

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.4888/Del/2015  
Assessment Year : 2009-10

Shri Yansh,  
House No.329, Harijan Basti,  
Village & Post Bijwasan,  
New Delhi – 110 061.  
PAN : ACCPY5738K.  
(Appellant)

Vs. Income Tax Officer,  
Ward-27(3),  
New Delhi.  
(Respondent)

Appellant by : Shri Ashwani Kumar, CA.  
Respondent by : Shri N.K. Bansal, Senior DR.

Date of hearing : 06.03.2019  
Date of pronouncement : 06.03.2019

**ORDER**

**PER G.D. AGRAWAL, VICE PRESIDENT :-**

This appeal by the assessee for the assessment year 2009-10 is directed against the order of learned CIT(A)-15, New Delhi dated 6<sup>th</sup> May, 2015.

2. In this appeal, the assessee has raised various grounds. However, they are all against the addition of ₹68,41,372/- made by the Assessing Officer as short term capital gain by applying provisions of Section 50C of the Income-tax Act, 1961.

3. In the arguments of the assessee, one of the main arguments was that the Assessing Officer should have referred the matter to the Valuation Officer under sub-section (2) of Section 50C of the Act. Learned DR stated that the Assessing Officer is supposed to refer the

matter under sub-section (2) of Section 50C only when the assessee claims before the 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. In the rejoinder, the learned counsel for the assessee has referred the assessee's submission before the Assessing Officer which is reproduced at page 3 of the assessment order and he stated that the assessee is an illiterate person and from his letter, it is very evident that he has objected to the valuation by the stamp valuation authority.

4. We have heard the arguments of both the sides and perused the material placed before us. Sub-section (2) of Section 50C reads as under :-

*“(2) Without prejudice to the provisions of sub-section (1), where –*

*(a) the assessee claims before any Assessing Officer that the value adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*

*(b) the value so adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,*

*the Assessing Officer may refer the valuation of the capital asset to a Valuation officer and where any such reference is made, the provisions of sub-section (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*

*[Explanation 1]. – For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).*

*[Explanation 2. – For the purposes of this section, the expression “assessable” means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]”*

5. As per the above Section, where the assessee claims before the Assessing Officer that the value adopted by the valuation authority exceeds the fair market value, the Assessing Officer may refer the value of the capital asset to the Valuation Officer. The assessee’s reply as referred to in the assessment order reads as under :-

*“The assessee has sold the immovable property bearing khasra no.150 for consideration of Rs.8,50,000/- for which stamp duty was paid on value of Rs.75,91,500/-.*

*Sale consideration should be treated as Rs.8,50,000/- because at that time on the basis of information assessee have, the sale value was Rs.8,50,000/-. As per assessee he is illiterate poor farmer belongs to schedule caste and having no knowledge about the change of status of land use. Further assessee was at than time was in need of money. Further assessee has not challenged the stamp duty amount because same is paid by the purchaser of the land.”*

6. In the above reply, the assessee has clearly mentioned that the sale consideration should be treated as ₹8,50,000/- because, at that time, on the basis of assessee’s information, the sale value was ₹8,50,000/-. Thus, the assessee has clearly claimed that the value adopted by the assessee should be accepted, meaning thereby, the value adopted by the stamp valuation authority exceeds the market

value. In view of the above, in our opinion, it would meet the ends of justice if the orders of lower authorities are set aside and the matter sent back to the file of the Assessing Officer for referring to the Valuation Officer within the meaning of sub-section (2) of Section 50C. We order accordingly and set aside the matter to the file of the Assessing Officer and direct him to refer the matter for valuation under sub-section (2) of Section 50C.

7. In the result, the appeal of the assessee is deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 06.03.2019.

Sd/-

**(K. NARASIMHA CHARY)  
JUDICIAL MEMBER**

Sd/-

**(G.D. AGRAWAL)  
VICE PRESIDENT**

VK.

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1. Appellant : **Shri Yansh,  
House No.329, Harijan Basti,  
Village & Post Bijwasan, New Delhi – 110 061.**
2. Respondent : **Income Tax Officer,  
Ward-27(3), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar