

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMC', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1603/CHD/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Devinder Singh Vohra, C/o Corner Hotel, Near Bus Stand, Patiala	Vs. बनाम	The ITO, Ward-4, Patiala
स्थायी लेखा सं./PAN NO: AAJPV1687K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri K.P.Bajaj, Advocate

राजस्व की ओर से/ Revenue by : Sh. Manjit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 22.07.2019

उद्घोषणा की तारीख/Date of Pronouncement : 22.07.2019

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 22.10.2018 of the Commissioner of Income Tax (Appeals), Patiala [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the Ld. CIT(A) is not justified in upholding the validity of the notice u/s 148.*
2. *That the Ld. CIT(A) is not justified in holding that report of Departmental Valuation officer is applicable in matters of determination of market value of the property u/s 50 of the Income Tax Act in dis-regard to the sale instances.*

3. That on the facts and circumstances of the case, the Ld. CIT(A) is not justified in up-holding the addition of Rs. 9,34,000/-

3. The sole issue raised by the assessee through the grounds of appeal is against the addition made by the lower authorities of Rs. 9.34 lacs on account of difference between the registered sale deed price and the value of the property as per report of the Departmental Valuation Officer.

4. The assessment for the year under consideration was reopened by the Assessing Officer on the ground that a survey action was carried out at the premises of the assessee and during the survey action it was found that the assessee had sold certain properties for a total consideration of Rs. 35 lacs. However, in the return of income, the assessee had shown sale consideration at Rs. 9,36,265/- only. The Assessing Officer, therefore, noted that the sale consideration has been shown less by the assessee at Rs. 25,63,735/-. He, therefore, observed that the assessee had understated the value of the Long Term Capital Gains. The Assessing Officer further noted that as per the information available on record, the assessee had purchased a property bearing No. 146, Punjabi Bagh, Patiala for a sum of Rs. 45 lacs and further a sum of Rs. 3,37,500/- was incurred as registration expenses, thus, the total investment in the purchase of the said property was made at Rs. 48,37,500/-, whereas, the assessee had shown the consideration at Rs.

35 lacs. He, therefore, observed that the assessee had made unexplained investment of Rs. 13,37,500/-. He, therefore, reopened the assessment.

In the reopened assessment proceedings, the assessee explained that the assessee had not sold the property at Rs. 35 lacs, as alleged by the Assessing Officer, whereas, the total sale consideration received by the assessee was at Rs. 9,36,265/- whereupon a deduction u/s 54 of the Act was claimed as per law. That thereafter the assessee along with his wife had purchased House No. 146, Punjabi Bagh, Patiala, wherein, the assessee had only 50% share. That the total purchase consideration of the said house was at Rs. 45 lacs, out of which the assessee's share of investment in the said house was at Rs. 22.50 lacs. The Assessing Officer, however, was of the view that the assessee had shown the purchased price at a lower side. He, accordingly referred the matter to the valuation officer who estimated the value of the property at Rs. 63,68,000/- calculating assessee's 50% share in the said investment, the Assessing Officer observed that the assessee had shown a less purchase consideration of Rs. 9.34 lacs, which the Assessing Officer considered as out of unexplained income of the assessee. He, accordingly made the impugned addition.

5. I have considered the rival contentions and have also given through the record. A perusal of the reasons recorded by the Assessing

Officer reveal that the Assessing Officer noted that during the survey action it was found that the assessee had sold his two properties at Rs. 35 lacs, whereas, the assessee had shown the sale consideration in the sale deed at a total amount of Rs. 9,36,265/-. However, a perusal of the assessment order reveals that the Assessing Officer has not touched this point. What was the information available to the Assessing Officer that the property of the assessee was sold at Rs. 35 lacs has not been brought before us. Even the Assessing Officer has not discussed this issue at all in the assessment order and no evidence has been pointed out either in the assessment order or in the appellate order of the CIT(A) in this respect. Even no additions have been made on this issue. It seems that the lower authorities just assumed that the property was sold at Rs. 35 lacs as no evidences have been brought to our knowledge which were available to the Assessing Officer to form this belief. Even there is no whisper of source of any information in this respect on the basis of which the Assessing Officer formed an opinion that the value of the property / house purchased by the assessee along with his wife was higher than that was shown in the sale deed. The assessment was reopened on this issue only on assumption basis as there was no reason for the Assessing Officer to form this belief in the absence of any evidence on the file. The sole reason for making the addition on this issue is the report of the Valuation Officer which was obtained by the Assessing Officer after reopening of the assessment. However, before the reopening of the assessment, there was no information available to

the Assessing Officer to form the belief that the assessee has purchased the house at higher price involving his unexplained investments. Even a perusal of the valuation report also reveals that the same is cryptic. The Valuation Officer has not mentioned the instances or the reasons on the basis of which he formed the belief that the valuation of the property was higher than that was mentioned in the sale deed. Though, it has been mentioned in the valuation report that the Valuation Officer has taken note of the sale deed / data provided by the Sub-Registrar, but there is no mention in the report as to what were the instances of other similar situated properties that were sold at higher rate. The report of the Valuation officer also seems to be based on conjecture and surmises.

In view of the above discussion, the assessee succeeded on both the counts i.e. on the legal ground of validity of the reopening of the assessment as well as on merits. The impugned addition made by the lower authorities is, therefore, set aside and the appeal of the assessee stands allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 22. 07.2019
“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar