

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.600/Del/2019  
(Assessment Year: 2010-11)**

Smt. Sushma Devi Jain,  
4327, Gali Bahuji, Bahadur Garh  
Road, Sadar Bazar, Delhi.  
PAN: ADBPJ3890P

**Appellant**

Vs. Income-tax Officer,  
Ward 63(2), New Delhi.

**Respondent**

Revenue by :	Ms Ekta Vishnoi, Sr. DR
Assessee by:	Shri Rajesh Dureja, CA
Date of Hearing	16.10.2019
Date of pronouncement	30.10.2019

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Aggrieved by the order dated 16.11.2018 passed by the learned Commissioner of Income Tax (Appeals)- 20, New Delhi ("Ld. CIT(A)"), the assessee filed this appeal for the Assessment year 2010-11.

2. Brief facts of the case are that the assessee is an individual and filed her return of income for the Asstt. Year 2010-11. On information received regarding the sale of property at Rs.21,25,000/- from the Investigation Wing, the case was examined and the learned AO found that the assessee had declared sale consideration of house property at Rs.9,80,000/- whereas the information regarding sale of the said property was Rs.21.25 lacs. Learned AO, therefore, doubted the

genuineness of the transaction and issued notice u/s 148 of the Income-tax Act, 1961 (“the Act”).

3. Assessee has sold 100 sq. yards of property bearing No.4311 at ground floor, 58.52 sq. mt. at first floor and 37.62 sq. mts. at second floor situated at Sadar Bazar, Pahari Dheeraj, Delhi on 2.7.2009 for Rs.9.8 lacs whereas the stamp duty paid was Rs.85,000/- for a consideration amount of Rs.21.25 lacs. Assessee submitted before the learned AO that the property was sold below the circle rate because the property located in narrow lane in which hand rickshaw cannot operate. Learned AO did not accept the contention of the assessee and proceeded to make the addition basing on the full value of consideration/circle rate.

4. When the assessee preferred appeal before the learned CIT(A), the same plea was reiterated but the learned CIT(A) did not find any substance in the argument of the assessee and upheld that the assessment order is not bad for non-service of notice u/s 143(2) of the Act. Learned CIT(A) rejected the same holding that the assessee appeared before the AO and submitted the details and participated in the proceedings and, therefore, there is no substance in contending that for want of notice u/s 143(2), the assessment order is bad.

5. It is argued before us by the learned AR that the non-issuance of notice u/s 143(2) of the Act prejudice case of the assessee and rendered the impugned assessment order void ab initio. It is further contended that voluminous evidence was produced before the AO justifying the contention of the assessee that the property was sold below the circle rate because the property located in narrow lane in

which hand rickshaw cannot operate. Learned AR submitted that once the assessee objected to the circle rate and submitted that the value adopted by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer, in all fairness, Id. AO should have referred the valuation of the asset to the Valuation officer and not doing so caused prejudice to the case of the assessee.

6. Per contra, Id. DR vehemently relied upon the orders of the authorities below more particularly stating that the assessee did not request the matter to be referred to the Valuation Officer.

7. We have gone through the record in the light of the submissions made on either side. Assessment order itself speaks that before the Id. AO the assessee had taken the plea that the property was sold below the circle rate because property is located in a narrow lane in which rickshaw also cannot operate. This clearly shows that the assessee had taken the plea that the value adopted by the Stamp Valuation officer exceeds fair market value of the property as on the date of transfer and the assessee also pleaded the reason for that the property is situated in such a narrow lane which even a rickshaw cannot operate. In such a situation, in all fairness, the AO should have referred the matter u/s 50C (2) to the DVO for valuation. On this ground, we find that the assessment order cannot sustain as it is and the impugned order has to be set aside.

8. With this view of the matter, we set aside the impugned order and remand the issue to the file of the AO to refer the matter to the DVO u/s 50C(2) of the Act for determination of the value and to take

a view basing on the report, after affording an opportunity to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 30<sup>th</sup> October, 2019.**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**  
**Dated: 30<sup>th</sup> October, 2019.**

**sd/-**  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

**VJ**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR**  
**ITAT, New Delhi**

Date of dictation	17.10.2019
Date on which the typed draft is placed before the dictating member	17.10.2019
Date on which the typed draft is placed before the other member	.10.2019
Date on which the approved draft comes to the Sr. PS/ PS	.10.2019
Date on which the fair order is placed before the dictating member for pronouncement	.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	.10.2019
Date on which the final order is uploaded on the website of ITAT	.10.2019
date on which the file goes to the Bench Clerk	.10.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	