

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2972/DEL/2014  
[Assessment Year: 2007-08]

Shri Abhishek Gupta  
35, Raipur Road, Civil Lines  
Delhi

Vs.

The I.T.O  
Ward 20(2)  
New Delhi

PAN: AGRPG 9415 E

[Appellant]

[Respondent]

Date of Hearing : 07.01.2020  
Date of Pronouncement : 08.01.2020

Assessee by : Shri Manu K. Giri, Adv

Revenue by : Shri Ved Prakash Mishra, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - XXII, New Delhi dated 25.02.2014 pertaining to Assessment Year 2007-08.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the action of the Assessing Officer in initiating proceedings u/s 148 of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] thereby confirming the addition of Rs. 1.61 crores u/s 69B of the Act on the basis of valuation report of the Valuation Officer - I, Delhi

3. Briefly stated, the facts of the case are that the assessee had purchased a plot at Civil Lines, Delhi. The cost of acquisition of the plot was declared at Rs. 34 lakhs. The Assessing Officer found that part of the plot was purchased by Smt. Sadhana Gupta, in whose case the matter was referred to the Valuation Officer and on the basis of the report of the Valuation Officer, value of the said property was taken at Rs. 48,762/- per sq yard. Taking a leaf out of the proceedings in the case of Smt. Sadhana Gupta, assessment was reopened.

4. During the course of reassessment proceedings, copy of the valuation report was confronted to the assessee and the assessee was asked to explain as to why the cost of acquisition of the plot may not be taken at Rs. 1.95 crores instead of Rs. 34 lakhs.

5. On receiving no plausible reply, the Assessing Officer made addition of Rs. 1.61 crores.

6. The assessee carried the matter before the Id. CIT(A) but without any success.

7. Before us, the Id. counsel for the assessee vehemently stated that the entire assessment was around the valuation report gathered by the Assessing Officer in the case of Smt. Sadhana Gupta. The Id. counsel for the assessee pointed out that the additions made in the hands of Smt. Sadhana Gupta were deleted by the Tribunal in ITA No. 5266/DEL/2010 which order has been affirmed by the Hon'ble High Court of Delhi in ITA No. 434/2012 vide order dated 06.03.2013.

8. Per contra, the ld. DR could not bring any distinguishing decision in favour of the Revenue.

9. We have given thoughtful consideration to the orders of the authorities below. We find force in the contentions of the ld. counsel for the assessee. The co-ordinate bench in the case of Smt. Sadhana Gupta [supra] vide order dated 30.11.2011, has decided a similar issue in favour of the assessee and against the Revenue. The relevant findings of the co-ordinate bench read as under:

We have considered the facts of the case and submissions made before us. The facts are that the assessee had shown purchase consideration of a property at Rs. 59.50 lakh. A reference was made to the DVO as the purchase consideration appeared to be too low. The DVO valued the property at Rs. 3,41,35,000/-. The difference in the two amounts of Rs. 2,81,83,000/- has been added to the income of the assessee by relying on the provision contained in section 69B. Although a number of cases have been cited before us, we find that the facts of this case are similar to the facts in ITA Nos. 689/to 703/2010 dated 18,08.2011, a

copy of which has been placed before us. The judgment reads as under:-

"Present: Ms. Suruchi Aggarwal, Stf. Standing Counsel for the Revenue  
Mr. Piyush Kaushi, Advocate for the respondent/assessee

IT 689/2010  
ITA 690/2010  
ITA702/2010  
ITA703/2010

(common orders)

In all these cases, assessment was carried out under section 153A of the Income-tax Act pursuant to search at the premises of the assesseees carried out by the Department under section 132 of the Act. While carrying out the assessment, the Assessing Officer found that one of the properties, i.e., 101, Ground floor, Bangala Sahib Road, New Delhi, was acquired by Shri Bhagirath Agrawal and Suraj Devi at a cost of Rs. 62,50,000/-. This property was rented to Indian Overseas Bank. The said property was purchased in the joint names with different shares given to different assesseees. The matter was referred to the Valuation Cell of the Department under section 142(1 A) .of the Act. The valuer valued the property at much higher rate than the consideration shown in the sale deed and on the basis

additions were made in the hands of the assessee, under section 69 of the Act as 'unexplained investment'.

These additions were deleted by the CIT(A) and the order of the CIT(A) has been affirmed by the ITAT. Vide impugned order the ITAT decided the cases of all joint owners who purchased the said property which includes Smt. Suraj Devi, Shri Sushil Kumar Aggarwal, late Shri Shiv Narain Aggarwal etc. The Department had filed appeal in die case of Smt. Suraj Devi under section; 260-A of the Act to this Court which was registered as ITA 811/201Q and; has been dismissed by a Division Bench of this court vide orders dated 13<sup>th</sup> August, **2010** Following that order appeals of other co-owners/assesseees i.e., ITA 155.1/2010, ITA 1370/2010 and IT&16&6/2610 were also dismissed."

Similar is the decision in the case of CIT Vs. Puneet Sabharwal, dated 03.12.2010, 2011-TIOL-348-HC-DEL-IT. It has been held that in absence of any evidence coming into possession regarding payment of extra purchase consideration, the Tribunal was right in holding that no addition can be made notwithstanding the report of the DVO."

10. The order of the Tribunal was challenged by the Revenue before the Hon'ble High Court of Delhi and the Hon'ble High Court, vide judgment dated 06.03.2013 [supra] dismissed the appeal of the Revenue by holding as under:

*"5. The law seems to be well settled that unless and until there is some other evidence to indicate that extra consideration had flowed in the transaction of purchase of property, the report of the DVO cannot form the basis of any addition on the part of the revenue. In the present case there is no evidence other than the report of the DVO and, therefore, the same cannot be relied upon for making an addition. In these circumstances, the question which has been framed is decided in favour of the assessee and against the revenue. The appeal is dismissed."*

11. As mentioned elsewhere, the entire assessment revolves around the findings given in the case of Smt. Sadhana Gupta. Therefore, respectfully following the decision of the coordinate bench and the Hon'ble Jurisdictional High Court of Delhi [supra], we direct the Assessing Officer to delete the impugned addition.

12. In the result, the appeal filed by the assessee in ITA No. 2972/DEL/2014 is allowed.

The order is pronounced in the open court on 08.01.2020.

Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

Sd/-

(N. K. BILLAIYA)  
ACCOUNTANT MEMBER

Dated: 08<sup>th</sup> January, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	