

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I2 + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1432/DEL/2018 (A.Y 2009-10)

Indu Tyagi 19, Navyug Market, 2 nd Floor, Ghaziabad Uttar Pradesh AHTPL2342J (APPELLANT)	Vs	ITO Ward-1(3) Ghaziabad (RESPONDENT)
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Appellant by	Sh. Raj Kumar Agarwal, CA
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	26.02.2020
Date of Pronouncement	02 .03.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 30/11/2017 passed by CIT(A)-Ghaziabad for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

1. *"The order passed by the A.O is in bad in law and against the cannon of taxation.*

1. *The A.O. has ignored of law and interpreted wrongly.*

2. *The A.O. has vitiated by the fact, finding and reached on assessment only on the presumption and assumptions and not based on any relevant evidences or circumstances.*

3. *The AO has not provided the opportunity of being heard.*

4. *The assessee is a individual (widow) and don't have any source of*

income except savings bank interest.

5. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts the CIT(A)/AO has taken circle value of Rs. 1,08,51,000/- as per section 50C while sale consideration is Rs. 45,91,000/-.*

6. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts The CIT(A)/AO has taken the circle value of Rs 1,08,51,000/- as per Sec 50C while the sale consideration is Rs 45,91,000/- whose 1/4th share comes to Rs 11,47,750/-.*

7. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts the CIT(A)/AO has taken circle value of Rs. 1,08,51,000/- as per section 50C while sale consideration is Rs. 45,91,000/- which is prevailing market value rate. The AO has not get it valued from valuation officer.*

8. *The AO has not provided the reason for issuing notice u/s 148. Thus the proceeding u/s 147 is illegal & void-ab-intio.”*

3. The assessee is a individual and during the year the assessee had sold immovable property, for Rs. 45,91,000/- (Jointly owned by four person in equal share. Which comes to Rs. 11,47,750/- of assessee's share) & value as per circle rate is Rs 1.08,50,320/-. The return was filed on 01-09-2016 for the said year. The assessment u/s 147/143(3) was completed on 10/10/2016 for A.Y. 2009-10 and income was assessed at Rs.12, 25,360/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the addition made by the Assessing Officer is only on the presumption and assumption basis and relevant evidences were not taken into account as related to circle value of Rs. 1,08,51,000/- as per Section 50C of the Income Tax Act, while sale consideration is Rs. 45,91,000/-. The Ld. AR further submitted that as the assessee is having only one fourth

share of the property as the said property is jointly own by the assessee with his brothers. Therefore, one fourth share comes to Rs. 11,47,750/-. Thus, the Ld. AR submitted that the Assessing Officer as well as the CIT(A) was not correct in making addition.

6. The Ld. DR submitted that the CIT(A) has categorically given the finding that the Assessing Officer has correctly adopted the value as per circle rate for computation of capital gain considering full value of consideration as per provision of Section 50C applicable during the year. Thus, the Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard the Ld. DR and perused the material available on record. It is pertinent to mention that the CIT(A) while confirming the order of the Assessing Officer has not at all given the reason as to how the Assessing Officer has rightly adopted the value as per circle rate for computation. The CIT(A) also has not taken cognizance of the evidences filed by the assessee before the Assessing Officer as well as the CIT(A). Therefore, it will be appropriate to remand back this matter to the file of the CIT(A) for fresh adjudication after taking cognizance of the evidences before the Revenue authorities. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 02nd March, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 02/03/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.02.2020
Date on which the typed draft is placed before the dictating Member	27.02.2020
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	02.03.2020
Date on which the final order is uploaded on the website of ITAT	02.03.2020
Date on which the file goes to the Bench Clerk	02.03.2020
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	