

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.158/Del./2020  
Assessment Year 2016-2017

Smt. Arti Devi Chand, D-39, South Extension, Part-II, New Delhi. PAN AAOPC5972B	vs.	The Income Tax Officer, Ward – 53(5), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Satyeh Sethi, Advocate.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	22.10.2020
Date of Pronouncement :	23.10.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-23, New Delhi, Dated 26.11.2019, for the A.Y. 2016-2017, challenging the addition of Rs.64,24,710/- on account of capital gains and addition of Rs.1,22,76,000/- under section 50C of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. The facts of the case are that assessee is an individual and filed return of income at Rs.9,24,280/-. The assessee has claimed sale consideration of Rs.65 lakhs as exempt on sale of land which the assessee has claimed as agricultural land. The assessee was specifically asked to furnish supportive documents in respect of agricultural land for which assessee claimed exemption and also provide relevant documents which substantiate that assessee is owner of the land over which have clear title over the agricultural land. In response, the assessee has furnished copy of the sale deed and copy of the valuation report from Shri D.R. Sharma and Associates along with proof of agricultural land. On going through the submissions of the assessee and from the sale deed, A.O. observed that the so-called agricultural land was having the specification i.e., foundation as cement concrete, super structure has load bearing wall, walls are of stone and brick masonry in

cement, cement flooring and RCC slab roof. A.O, therefore, issued show cause notice to the assessee based on valuation report and sale deed and above specifications in the property under consideration that built-up area of Ground Floor is 675.00sq. metres. Therefore, it is clear that the land aforementioned is not an agricultural land. It is much built-up residential property. Therefore, show caused the assessee why the exempt income of Rs.65 lakhs as claimed by assessee may not be disallowed and added to the income on account of long term capital gains.

3.1. The assessee filed reply which is reproduced in the assessment order in which the assessee briefly explained that construction with regard to land as mentioned in the show cause notice is not residential property. In the case of assessee, the construction were done to hoard and up-keep and to save them from the horticultural insect pests viz., aphids and other Hemipteran pests, trips, ants, cockroaches etc., which cause structural damage and crop damage. The part area is used to provide shelter to the live stock. The assessee without prejudice to

the above explanation also submitted that in case the property in question is considered as non-agricultural land as mentioned in the notice, the assessee would suffered huge capital loss, the computation of which is attached and referred to in the assessment order claiming capital loss of Rs.1,60,17,230/-. The A.O. also reproduced the valuation report in the assessment order in which total value of the land + construction was valued by the Valuer at Rs.20,83,000/- [Rs.75,090/- + Rs.20,07,495.00].

3.2. The A.O. however, did not accept the contention of assessee and noted that assessee has deliberately furnished inaccurate particulars. The assessee initially claimed the property in question as agricultural land, but, later on changed the stand and claimed as capital asset and long term capital loss on the sale of the property at Rs.1,60,17,230/-. Thus, the assessee wanted to avoid taxation. In valuation report property is described as immovable property. The assessee has not filed any revised return to claim the above capital loss. The A.O. found that

the property in question is residential property of double-storied. The A.O, therefore, computed the capital gain of the assessee without allowing the amount of construction for indexation, because assessee has never disclosed the subject land is an agricultural land or residential property. The A.O. also noted that it is clear that assessee has also invested cost of construction from her undisclosed source of income. The assessee also failed to provide Purchase Deed of the subject matter property. The A.O. considering the rate of land furnished by the Valuer in his valuation report at Rs.75,090/- and reducing the same from the sale consideration of Rs.65 lakhs, made the addition of Rs.64,24,710/- on account of long term capital gains.

3.3. The A.O. on perusal of the sale deed found that Circle Rate of the property is Rs.1,87,76,000/- and sale consideration have been shown at Rs.65 lakhs only which is less than the Circle Rate of the property. A show cause notice was issued to the assessee that Section 50C of the I.T. Act applies in this case, therefore, difference amount of

Rs.1,22,76,000/- should be added to the income of the assessee. The assessee in reply to the show cause notice filed reply which is reproduced in the assessment order in which the assessee again reiterated the fact that the property in question is agricultural land and as such Section 50C would not apply. In alternate contention, it was also contended that if the value of Rs.1,87,76,000/- is considered for stamp valuation and treated as sale consideration, capital gain on sale of agricultural land will result in capital loss of Rs.37,41,230/- by giving benefit of indexed cost. The A.O. however, did not accept the contention of assessee because subject land is not agricultural land, but, is a well built-up residential property. Therefore, difference amount of Rs.1,22,76,000/- [Rs.1,87,76,000/- (-) Rs.65,00,000/-] was added to the income of assessee under section 50C of the I.T. Act, 1961.

3.4. The assessee challenged the additions before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order, the Ld. CIT(A) was,

however, not agreeable to the contention of the assessee and dismissed the appeal of assessee.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and the assessee has filed an application under Rule 29 of the I.T.A.T. Rules, 1963 for admission of the additional evidence. Such additional evidence are **(1)** Intkal (Mutation) Dated 21.03.1981 of land at Mohal Dhagog, Tehsil Simla [Rural] **(2)** Jamabandi for the year 1977-78 of land at Mohal Dhagog, Tehsil, Simla (Rural) **(3)** Affidavit of Assessee Dated 19.08.2020. Learned Counsel for the Assessee submitted that these additional evidences are necessary for deciding the issue involved in the present appeal, therefore, same may be admitted in the interest of justice.

4.1. Learned Counsel for the Assessee also submitted that A.O. has not given any benefit of indexed cost of the construction raised in the property. He has submitted that it is not in dispute that during assessment year under appeal assessee has sold her 1/3<sup>rd</sup> share in the land in

question for a sum of Rs.65 lakhs. There existed a building (residential) that was constructed prior to 1980 which fact is mentioned in the sale deed as well as in the Nakal Intkal. The land was acquired by assessee's father late Shri Aridaman Nath vide registered Sale Deed No.519 Dated 11.12.1975, but, mutation of the land was made in the Revenue Record on 21.03.1981. Assessee's father constructed the residential house on the said land which is clear from the Jamabandi which records entry of "*Gair Mumkin Abadi*" on a part of land which would mean that rural land on which building is constructed for residential purposes. Father of the assessee expired on 07.08.2011 and 1/3<sup>rd</sup> share in the property came into the share of the assessee. The land was agricultural land which was sold to an agriculturist. Therefore, capital gain was exempt. He has submitted that merely because there exist a residential house on a small portion of the land, it would not mean that property was residential property and it would not cease to be an agricultural land. The A.O. should have reduced the cost of construction by giving benefit of indexation and no

addition could be made against the assessee. The valuation report of the Registered Valuer was filed which is not appreciated by the authorities below. He has further submitted that A.O. has not made any reference to the Valuation Officer under section 50C of the I.T. Act. He has relied upon the Order of the ITAT in the case of ITO vs., Aditya Narain Verma (HUF) [2017] 57 ITR (T) 449 (Delhi-Tribu.) and Order of ITAT, Chandigarh Bench in the case of Shri Barjinder Singh Bhatti, Chandigarh vs., ITO, Ward-4(1), Chandigarh in ITA.No.1101/CHD/2014, Dated 15.07.2015 and Order of ITAT, Delhi E-Bench, Delhi in the case of ACIT, Circle-45(1), New Delhi vs., M/s. Modern Lace House, New Delhi, in ITA.No.1032/Del./2015 Dated 28.05.2018, in which assessments were quashed because reference to DVO was not made. Without prejudice to the above submissions, Learned Counsel for the Assessee submitted that assessee filed report of the Registered Valuer to the stamp duty, therefore, it can be said that assessee did object to the same valuation and relied upon decision of the Calcutta High Court in the case of Shri Sunil Kumar

Agarwal vs., CIT, Siliguri [2015] 372 ITR 83 (Calcutta) in which it was held that “A.O. was obliged to make a reference to the DVO”. He has also referred to Notification of the State Government of Himachal Pradesh to show that no addition shall have to be made against the assessee.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and referred to valuation report submitted by assessee [PB-16] in which Valuer has mentioned year of construction as 1980 approximately and at PB-16 Valuer has mentioned “*Report of valuation of immovable [other than agricultural land, plantations, forest, mines and quarries].*” He has, therefore, submitted that since the Valuation Officer himself has mentioned in a report of the valuation of “immovable property other than agricultural land”, therefore, assessee has no case seeking for deletion of the addition. The Ld. D.R. submitted that assessee has not objected to the stamp valuation mentioned in the Sale Deed under section 50C of the I.T. Act, therefore,

there were no need for the A.O. to make any reference to the DVO.

6. We have considered the rival submissions and perused the material on record.

7. The assessee filed an application for admission of the additional evidences above. It is well settled Law that if additional evidences are relevant to the matter in issue and goes to the root of the matter, such, additional evidences could be admitted for the purpose of disposal of the appeal. However, in the present case such ingredients are not satisfied by the assessee. The assessee has filed additional evidences i.e., affidavit of the assessee in which assessee merely explained that property in question was purchased by her father through registered sale deed No.519 Dated 11.12.1975 and that her father has constructed residential house in the land so purchased. However, the assessee failed to produce the Purchase Deed of the property before the authorities below as well as did not provide any evidence of construction, if any, raised by father of the assessee in

the property in question. Likewise assessee filed Intkal (Mutation) and Jamabandi of the land in question which did not reveal as to in which year the residential house have been constructed by father of the assessee and what is the source of construction raised in the property in question by father of the assessee. It merely says that property in question have been mutated in the name of father of assessee after purchasing the same. These facts clearly show that assessee never disclosed that property in question is agricultural land. Assessee never produced the Purchase Deed of the property in question of father of the assessee and assessee never produced any evidence if father of the assessee has invested in cost of construction from his own source. Therefore, none of the above additional evidences are relevant to the matter in issue and would not prove the case of the assessee in any manner with reference to the matter in issue for calculation of the capital gain. None of these additional evidences goes to the root of the matter. Therefore, we are not inclined to admit these additional evidences for the purpose of disposal of the

appeal. Application for admission of additional evidences is accordingly rejected.

8. The first issue is with regard to computation of capital gain on which A.O. made addition of Rs.64,24,710/-. The A.O. found that assessee has received sale consideration of Rs.65 lakhs on sale of the property in question. The assessee claimed it to be an agricultural land. Assessee filed valuation report of Shri D.R. Sharma and Associated which clearly show that the property in question is constructed by cement concrete and superstructure has load bearing wall, walls are made of stone and brick masonry in cement. Flooring is of cement concrete and roof is made of RCC slab. Thus, the property in question can never be considered as an agricultural land. The assessee further claimed that the property in question have been constructed by father of the assessee, but, did not disclose as to in which year the property have been constructed by father of the assessee and no source of the investment in property have been explained. The valuation report filed by

assessee shows year of construction as 1975, but, the Valuer has opined that year of commencement of construction is the year 1980 approximately. It is not clarified by Learned Counsel for the Assessee as to how the Valuer has reported that the property in question have been constructed in the year 1980. It may also be noted here that in the Sale Deed Dated 11.01.2016, through which property was sold by assessee, it is mentioned that the structure in the property have been built before 1990. Thus, there is a vague statement made at every stage with regard to construction raised in the property in question. There is a difference in the value of the land and cost of construction as mentioned in the valuation report submitted by assessee and the Sale Deed. Nothing is, therefore, established by assessee as to when the construction was raised in the property and by whom and by which source. Therefore, report of the Valuer could not have been relied upon in favour of the assessee. Further, the assessee claimed the land in question as an agricultural land, but, the valuation report submitted by assessee clearly show that this report

pertains to immovable property other than agricultural land. Therefore, it clearly did not support the claim of assessee that it was an agricultural land which was sold by assessee in assessment year under appeal. The contention of Learned Counsel for the Assessee had been that no benefit of indexed cost of construction have been given to the assessee. According to Section 48 of the I.T. Act, 1961 while computing capital gains, assessee would be entitled for the deduction on account of cost of acquisition of asset and cost of any improvement. However, assessee failed to produce both the evidences before the A.O. The assessee has not produced copy of the Purchase Deed of the property in question by father of the assessee despite it was a registered document. Therefore, cost of acquisition of asset is not proved by assessee. Further, no evidence have been produced by assessee to prove cost of the improvement in the property either by the assessee or by her father. Therefore, no benefit under section 48 of the I.T. Act, 1961, could be given to the assessee. Therefore, claim of assessee that assessee suffered capital loss on sale of the property in

question cannot be accepted in any manner. Therefore, A.O. has rightly computed the capital gain on sale of transfer of capital asset in a sum of Rs.64,24,710/-.

9. As regards the addition made under section 50C of the I.T. Act, 1961, it is an admitted fact that in the Sale Deed valuation of the property for stamp duty purposes have been mentioned at Rs.1,87,76,000/-. However, the property have been sold for a consideration of Rs.65 lakhs only. Section 50C(1) of the I.T. Act provides as under :

*“50C (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of [section 48](#), be*

*deemed to be the full value of the consideration received or accruing as a result of such transfer .”*

9.1. Sub-Section (2) of Section 50C of the I.T. Act provides 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-sections*

*(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.”*

9.2. The above provisions would clearly show that stamp valuation fixed by the State Government for the purpose of payment of stamp duty in respect of such transfer of property, the value so adopted or assessed or assessable was for the purpose of Section 48 be deemed to be the full value of the consideration received or accruing as a result of such transfer. However, assessee has been given a right to object to such valuation before A.O. and in case assessee claims before A.O. 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, the A.O. may make a reference to the Valuation Officer in order to determine the fair market value of the property. Further when show cause notice was given to the assessee under section 50C of the I.T. Act, 1961, for the purpose of making the addition of Rs.1,22,76,000/-, assessee merely contended before A.O. that since property in question is an agricultural land, therefore, Section 50C of the I.T. Act, is not applicable. The assessee also merely contended that since assessee suffered capital loss, therefore, capital loss shall have to be computed. Thus, assessee never objected to the valuation done by the Stamp Valuation Authority of the State Government while registering the Sale Deed in question. Learned Counsel for the Assessee now contended that since report of the Registered Valuer was filed before A.O, therefore, it may be treated as assessee has objected to the stamp valuation. We have already noted several discrepancies in the report of the Registered Valuer with regard to year of construction in the property and basis of the Registered Valuer to report cost of the construction and

year of construction and the basis thereof, because the assessee never produced Purchase Deed of the property before the authorities below or before the Registered Valuer and no evidence of cost of construction and year of construction have been produced, therefore, there were no reason for the Registered Valuer to report that property was constructed in the year 1980 which itself is contradictory to the fact mentioned in the Sale Deed. Further the Registered Valuer has visited the property on 10.01.2015, but, prepared report in December 2015 and the report bears year 2016. There were no reason for the assessee to remain silent before the Stamp Valuation Authority at the time of registration of the Sale Deed because she could object to the valuation of the property at Rs.1,87,76,000/-. The assessee should have raised an objection in such circumstances before the Sub-Registrar also that valuation of the property for stamp duty purposes would not be same as have been mentioned above. These facts clearly show that assessee has been making different statements at different stages in order to avoid payment of capital gains tax. Since the

assessee has not objected to the stamp valuation under section 50C of the I.T. Act before A.O. when A.O. has given specific show cause notice to the assessee under section 50C of the I.T. Act, A.O. was not obliged to make a reference to the DVO under section 50C of the I.T. Act, 1961. The Orders of the various Tribunals relied upon by Learned Counsel for the Assessee clearly distinguishable on facts in which the assessee has made a specific explanation that valuation adopted for the purpose of stamp valuation does not reflect fair market value. Therefore, same are not applicable to the facts of this case. In the case of Shri Sunil Kumar Agarwal (supra), the Counsel for Assessee has referred to Deed of Conveyance in which it was specifically mentioned that the Vendor finding the price offered by the Purchaser to be highest prevailing in the market agreed to sell. In such circumstances, such explanation was considered to be the highest prevailing market price and as such it was directed that reference should have been made to the DVO under section 50C of the I.T. Act, 1961. However, in the present case of the assessee, the assessee

had made a specific statement before A.O. that since the land in question is an agricultural land or that assessee suffered capital loss, therefore, provisions of Section 50C of the I.T. Act, 1961 are not applicable. The assessee has never pleaded such fact before the A.O. for making any reference to the DVO under section 50C of the I.T. Act, 1961, therefore, this decision would not support the case of the assessee. Considering the totality of the facts and circumstances of the case and in the absence of production of the Purchase Deed and source of construction made on the impugned property, would clearly show that the valuation report have been manipulated by assessee just to avoid payment of capital gains tax to the Revenue Department. The valuation report is of no reliance. Therefore, no interference is called for in the matter. We, accordingly, do not find any justification to interfere with the Orders of the authorities below. Accordingly, appeal of the assessee is stands dismissed.

10. In the result, appeal of the Assessee dismissed.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 23<sup>rd</sup> October, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.