

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.657/Bang/2019
Assessment Year: 2014-15

Mr. Naveen Cariappa #33/4, Thyagaraja Layout Maruthi Seva Nagar Bengaluru 560 033 PAN NO : AEOPC5555N	Vs.	ITO Ward-1(2)(4) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri K.Y. Ningoji Rao, A.R.
Respondent by	:	Shri Sunil Kumar Agarwal, D.R.

Date of Hearing	:	03.03.2021
Date of Pronouncement	:	03.03.2021

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the CIT(A) Bengaluru dated 13.2.2019 for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- 1. The impugned order of the CIT(A)-1, Bengaluru is liable to set aside in so far as the upholding of the additions and disallowances made by the respondent officer are incorrect, improper, unlawful and opposed to facts of the case and law.*
- 2. The Ld. CIT(A)-1 erred in upholding the assessment of 50% of the sum of Rs.65,53,068/- as income in the hands of the appellant u/s 56(2)(vii) of the Income Tax Act.*

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3. *The Ld. Appellate Commissioner erred in upholding that the provisions contained u/s 56(2)(vii) of the Income Tax Act is applicable to the case of the appellant.*
4. *The Ld. Appellate Commissioner erred in upholding the impugned addition even though the case of the appellant did not fall within the gamut of section 56(2)(vii) of the Income Tax Act.*
5. *The Ld. Appellate Commissioner erred in disregarding the valuation report and other evidences adduced by the appellant and in dismissing the contention of the appellant that the respondent officer was bound to refer to the valuation machinery provided under the Act before he could drag the appellant within the gamut of section 56(2)(vii) of the Income Tax Act.*
6. *The Ld. Appellate Commissioner erred in upholding impugned addition even though the same is opposed to the facts of the case and also opposed to the law and hence the same do not fall within the ambit of section 5 of the Income Tax Act.*
7. *The Ld. Appellate Commissioner erred in upholding interest levied by the respondent officer under section 234B of the Income Tax Act, 1961.*

2. At the time of hearing, the assessee primarily objected that applying the provisions of section 50C of the Income-tax Act, 1961 [the Act' for short] is not proper without referring the valuation of asset to the valuation cell. It was submitted that the Ld. CIT(A) has wrongly observed that the assessee has not made any statement that market value was less than the guidance value, the question of referring it to the valuation cell by A.O. does not arise. It was submitted that in all fairness, the A.O. himself ought to have referred the matter to the valuation cell to determine the fair market value of the property and he cannot solely go by the sale value mentioned in the sale deed, so as to bring the difference between value mentioned in the sale deed and stamp duty valuation adopted for registration of said property.

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3. On the other hand, the Ld. D.R. strongly opposed the argument of the assessee's counsel and submitted that when the assessee makes request for reference to the valuation cell, then only the A.O. could refer the matter to the valuation cell in terms of section 50C(2) of the Act. Further, it was submitted that the word mentioned in Section 50C(2) of the Act is that the A.O. may refer the valuation of the capital asset to valuation officer and it is not "shall" according to him it is only discretionary of the A.O. to refer the matter to the valuation cell to determine the fair market value of the capital asset. He relied on the order of the Ld. CIT(A).

4. We have heard the rival submissions, perused the materials available record and gone through the orders of the authorities below. From the orders of the lower authorities, it is apparent that the A.O. has not referred the matter to the DVO for valuing the property as per section 50C(2) of the Act. The assessee made a request for referring the matter to the valuation cell for valuing the property, so as to determine the FMV of the property before CIT(A). However, CIT(A) rejected the claim of the assessee stating that the assessee not able to show that market value adopted was less than the guidance value. According to the CIT(A), there was no question to make a reference to the valuation cell by the A.O. This finding of the CIT(A) is not proper. In our opinion, when the assessee has challenged the value determined by the registration authority, it is the primary duty of the A.O. to refer the matter to Ld. DVO for valuation of the capital asset. Since the assessee has not made a request before A.O. it won't disentitle the assessee to make the same claim before the first appellate authority. The Ld. CIT(A) simply brushed aside the request of the assessee by stating in his order that the assessee has not made any request to the A.O. to refer the matter to the DVO and also observed that the assessee not shown that the market value of the

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property was less than the guidance value of said property. Considering the facts and circumstances of the case, we are of the opinion that in the interest of justice, the matter has to be referred back to the file of A.O. with the direction to refer the matter to the Ld. DVO and thereafter, pass an appropriate order as per law and on merit after affording sufficient opportunity of hearing to the assessee. Since we have remitted the matter back to the file of the A.O. for fresh consideration at this time, we refrain from going into other grounds of appeal raised by the assessee.

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

Order pronounced in the open court on 3rd Mar, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 3rd Mar, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.