



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
HYDERABAD 'A' BENCH, HYDERABAD**

**BEFORE S/SHRI A .MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.1839/Hyd/2017**

Assessment Year : 2010-2011

ITO, Ward -15(1), Hyderabad	Vs.	Smt Vankayalapati Kiranmayee, Plot No.60-A, 263, Eshwarapuri Colony, Sainikpuri, Secunderabad
PAN/GIR No.AEWPV 0473 L		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No.2126/Hyd/2017**

Assessment Year : 2009-2010

Smt Vankayalapati Kiranmayee, Plot No.60-A, 263, Eshwarapuri Colony, Sainikpuri, Secunderabad	Vs.	ITO, Ward -15(1), Hyderabad
PAN/GIR No.AEWPV 0473 L		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri K.C.Devdas, AR  
Revenue by : Shri T. Sunil Goutham CIT (DR)

**Date of Hearing : 12 /10/ 2021**  
**Date of Pronouncement : 06/01/2022**

**ORDER**

**Per Bench**

**ITA No.1839/H/17** is filed by the revenue against the order of the  
CIT(A)-7, Hyderabad dated 14.6.2017 for the assessment year 2010-2011.

2. **ITA No.2126/H/2017** is filed by the assessee against the order of the Id CIT(A)-7, Hyderabad dated 14.6.2017 for the assessment year 2009-2010.

3. First, we take up for adjudication of the revenue's appeal for the assessment year 2010-2011.

4. The grounds of appeal raised by the revenue are as under:

“1. The Id CIT(A) erred both on facts and law of the case.

2. The Id CIT(A) erred in not appreciating the fact that the assessee did not appear during the assessment proceedings and did not raise any objection against valuation adopted by the AO.

3. The Id CIT(A) erred in not appreciating the fact that the assessee never disputed the valuation before the AO and claimed that due to litigation the market value of the property was lower than the value adopted by Registration Authorities.”

5. Facts of the case are that the assessee is an individual. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had purchased a house property in the year 2008 from D.Shyamala for a consideration of Rs.75,00,000/-. Later on, the assessee has entered into a sale deed for a consideration of Rs.1,00,00,000/- for sale of the above property as against market value of the property at Rs.3,05,58,000/-, on which stamp duty is paid. The Assessing Officer opined that the assessee is liable for short term capital gains tax as per provisions of section 50C of the Act. Since, the assessee has not filed

income tax return, the AO issued notice u/s.148 of the Act to the assessee to explain the above position. Since, there was no response from the side of the assessee, the AO completed the assessment u/s.144 r.w.s 147 of the Act determining the short term capital gains at Rs.2,30,58,000/-.

6. Aggrieved by the action of the AO, the assessee carried the matter in appeal before the Id CIT(A). Before the Id CIT(A), the assessee filed additional evidence regarding the reasons for adopting different value from market value of the property, which was forwarded to the AO for a remand report. The Assessing Officer vide her remand report stated that since the assessee did not present before the AO to putforth the grievance that the market rate is lower than the stamp valuation authority, the contention of the assessee is not acceptable. Thereafter, the Id CIT(A) forwarded the remand report of the AO to the assessee to submit her comments and the assessee replied the circumstances under which, she could not present before the AO and also submitted as to why the market rate is lower than the SVO. She also replied that the facts mentioned by the AO by referring other decisions in her remand report is fully distinguishable on facts of the present case. The Id CIT(A) after considering the remand report and the submission of the assessee, deleted the addition made by the AO, inter alia, observing as under:

“ I have considered the assessment order, submission of the assessee, the remand report and the material placed before me. On

examination of the above alongwith the provisions of section 50C, the following position emerges:

1. The assessee during the appellate proceedings, placed on record documents to show that the title to the property under dispute and the dispute was only pertaining to period prior to purchase by the assessee.
  2. Sec.50C mandates that, the AO 'may' refer to valuation to the departmental valuer, if the assessee objects to the value adopted by the registration authorities. The 'may' has been interpreted as 'shall' by various appellate authorities.
    - a) Mrs Nandita Khosla vs CIT, 11 Taxmann.com 344 (Mum)
    - b) Meghraj Baid vs CIT, 23 sot 24 (Del)
    - c) Ito VS Manju Rani Jain, 24 SOT 24 (Del)
    - d) Ajmal Fragrances & Fashions Pvt Ltd vs ACIT, 34 SOT 57 (Mum)
  3. The documents produced during the appellate proceedings and the submissions of the assessee clearly show that the assessee objected to the value adopted by Registration Authorities as 'market value'
  4. The AO during the remand proceedings did not refer the same to Valuation Officer as mandated by the provision of section 50C(2).
  5. The AO's reliance on the decision in the case of mrs Parvathavarndini and not referring the matter to the Valuation Officer for determining market value cannot be upheld. The AO is duty bound to refer to the Valuation Officer once the assessee objects to the value adopted by the 'Registration authorities". The facts of the case are different as the ITAT in the case of mrs Parvathavardini (supra) has held that the assessee did not seek reference to Valuation Officer but in the present case, the assessee has objected to the Valuation and submitted documents to claim that because of litigation to the title of property, the market value would be lower.
  6. In view of the factual and legal position as above, the addition made by the AO, invoking section 50C is not tenable and the same is liable to be deleted. Accordingly, the same is deleted.
7. Ld DR supported the order of the Assessing Officer and produced a decision of ITAT, Hyderabad Bench in the case of ITO vs Smt. Chitti

Parvatha Vardhanamma I in ITA No.1085/Hyd/2013 for A.Y. 2005-06 order dated 12.3.2014. Whereas Id A.R.supported the order of the Id CIT(A).

8. We have heard the rival submissions of both the sides and perused the record of the case. There is no dispute to the fact that the assessee had purchased the property for a consideration of Rs.75,00,000/- and later on entered into a sale deed with Shri U Chandramohan & others to sell the property for a consideration of Rs.1,00,00,000/-. It is the contention of the assessee that due to dispute in the property, she was compelled to dispose the property lower than the value adopted by the Stamp Valuation Authorities. However, the AO opined that the market value of the property is Rs.3,05,58,000/- as per stamp valuation authority. It is a fact that the assessment was completed u/s.144/147 of the Act due to non-appearance of the assessee before the AO. However, during the first appellate proceedings, the assessee appeared and made submissions as to why the property was sold at a lesser price than the rate fixed by the Stamp Valuation Authority, which was referred to the AO for her comments./remand report. The Remand report was forwarded to the assessee for clarification to the report of the AO. Only after considering the rival submissions/report, the Id CIT(A) deleted the addition made by the AO.

9. In this regard, we refer to [Section 50C\(2\)](#) of the Income Tax Act, 1961, which clearly provides that the AO may refer the valuation of the capital assets to a Valuation Officer, if demands by the assessee. In the

present case, if the AO finds that the value adopted by the assessee is lesser than the Stamp Valuation Authority due to the specific reasons, the AO was required to refer the matter to the DVO to ascertain the market value of the property. But the AO did not adopt the said procedure as mandated under section 50C(2) of the Act. The assessee, all along, has objected to the valuation and submitted the required documents to prove that the market value of the property is lesser than the Stamp Valuation Authority.

10. On being asked by the bench, Id DR could not controvert the above position as to why the matter was not referred to the DVO for ascertaining the market value of the property at the relevant time. In the case of Smt. Chitti Parvatha Vardhanamma (supra), the assessee did not ask the AO to refer the matter to the DVO, hence, the AO was compelled to complete the assessment by adopting the guidelines value considered by the SRO. But in the present case, the assessment was completed u/s.144/147 of the Act in the absence of the assessee. Only when the matter carried to first appellate stage, the assessee objected to the value adopted by the AO without referring the matter to the DVO by giving the detailed reasons as to why the sale consideration was lesser amount. Hence, the decision relied by Id DR is distinguishable on facts. In view of above, we do not find any infirmity in the findings of the Id CIT(A) to interfere and, accordingly, dismiss the grounds of the revenue.

11. In the result, appeal of the revenue is dismissed.

**ITA No.2126/H/2017: Assessee's appeal-A.Y. 2009-2010**

12. The assessee in her appeal is aggrieved by the decision of the Id CIT(A) in confirming the addition of Rs.17 lakhs treating the same as unexplained investment.

13. Facts as emanated from the order of the Id CIT(A) are that the assessee is an individual and is not regularly assessed to tax. The assessee has purchased a house property on 25.7.2008 from D.Shyamala for a consideration of Rs.75,00,000/-. The payment towards the cost of house property is Rs.60 lakhs as cash and Rs.15 lakhs by way of demand draft. Since, the AO noticed that the assessee is not filing her income tax return, therefore, the investment of Rs.75,00,000/- remains unexplained. The AO accordingly, issued notice u/s.148 of the Act by recording the reasons. In response to notice u/s.148 of the Act, the assessee did not file the return of income and also did not attend the AO. Finally, a show cause notice was issued to the assessee to explain as to why the investment of Rs.75,00,000/- should not be added to the income of the assessee treating the same as unexplained investment. There was no response from the side of the assessee. Under these circumstances, the AO resorted to complete

the assessment u/s.144/147 of the Act on 13.3.2015 treating the Rs.75,00,000/- as unexplained investment u/s.69 of the Act.

14. On appeal, the Id CIT (A) after considering the remand report of the AO, granted part relief to the assessee by restricting the addition to Rs.17,00,00/-. Hence, the assessee is in further appeal before the Tribunal.

15. We have heard the rival submissions as well as perused the orders of lower authorities. We find that the Id CIT (A) restricted the addition to Rs.17,00,000/-, inter alia, observing as under:

“ I have considered the assessment order, the submissions of the assessee and the remand reports of the AO. The addition made by the AO is on account of unexplained investment of Rs.75,00,000/- by the assessee in purchase of property. During the assessment proceedings, as the assessee has not filed details, the addition was made by the AO. The assessee filed some evidences during the appeal/remand proceedings which are examined by the AO. The position emerging from examination of the evidences and details filed by the assessee is that the payments are made over a period of time from 26.5.2007 to 16.5.2008 and demand draft for Rs.15,00,000/- was dated 2.6.2007 mentioned by the AO in remand report (para 6.2(a)(b), the question arises as to assessability of the amount for the assessment year under consideration. It is seen from the details that payments of Rs.9,00,000/- on 15.5.2008 and Rs.8,00,000/- on 16.5.2008 are only transactions during the relevant period. The investment or payments made during the relevant period are Rs.17,00,000/-. In view of the factual position as above, the addition is restricted to Rs.17,00,000/- and balance addition is deleted.”

16. The above findings of the Id CIT(A) are not controverted by Id A.R. Hence, we are of the considered view that the Id CIT(A) was justified in restricting the addition to Rs.17,00,000/-. Accordingly, grounds of the assessee are rejected.

17. In the result, appeal of the assessee is dismissed.

Order pronounced u/s. 34(4) of I.T.A.T.Rules, 1963 on 06/01/2022.

Sd/-  
**(A .MOHAN ALANKAMONY)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

Hyderabad; Dated 06/01/2022  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant :/Assessee: Smt Vankayalapati  
Kiranmayee,  
Plot No.60-A, 263, Eshwarapuri Colony, Sainikpuri,  
Secunderabad
2. The Respondent/Reevenue: ITO, Ward -15(1),  
Hyderabad
3. The CIT(A)-7, Hyderabad
4. Pr.CIT-7, Hyderabad
5. DR, ITAT, Hyderabad
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**