

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" : DELHI.

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA No.141/Del./2019  
Assessment Year 2012-13

AKG Consultants Private Limited, 14-Ratan Mahal, 15/197 Civil Lines, Kanpur. Uttar Pradesh. PIN 208001 PAN AABCA7844C	vs.,	The ACIT, Central Circle, ARA Centre, Jhandewalan Extension, New Delhi PIN 110 055
(Applicant)		(Respondent)

For Assessee :	Shri Sandeep Chadha, C.A.
For Revenue :	Shri M.K. Jain, Sr. D.R.

Date of Hearing :	11.04.2022
Date of Pronouncement :	11.04.2022

**ORDER**

**PER R.K. PANDA, A.M.**

This appeal filed by the assessee is directed against the order dated 31.12.2018 of the Ld. CIT(A)-25, New Delhi, relating to the A.Y. 2012-2013.

2. The grounds raised by the assessee are as under :

1. *The learned Commissioner of Income Tax (CIT) (Appeals) has erred in law and on facts in confirming the disallowance of Rs.1,16,484/- under Sec-14A of the Income Tax Act on the taxable income yielding assets held by the assessee company, i.e. Mutual Funds, Investments in LLP, Investments in Debentures and Investments in Art Fund etc.*
2. *The learned CIT (A) has erred in law and on facts in confirming the addition of Rs.33,18,001/- under Sec-50C and to held that the appellant did not seek reference to Valuation Officer before the learned Assessing Officer by ignoring our request letter before the learned AO which was placed on record.*
3. *The learned CIT (A) has failed to adjudicate Ground No.4 before him with regard to application of normal rate of 30% to income chargeable under the head capital gains of Rs.88,66,540/- instead of @ 20% in accordance with the provisions of Sec-112 of the Income Tax Act, 1961.*

*4. Any other relief which may crave in and-deem fit during the course of Appellate Proceedings.”*

3. Learned Counsel for the Assessee at the time of hearing did not press grounds of appeal numbers 1 and 3, for which, the Ld. D.R. has no objection. Accordingly, these grounds are dismissed as not pressed.

4. Ground of appeal number-4 being general in nature is dismissed.

5. So far as the ground of appeal number-2 is concerned, the facts of the case, in brief, are that the assessee is a Private Limited Company and filed its return of income on 01.10.2013 declaring total income of Rs.1,04,81,220/-. During the course of assessment proceedings, the assessee-company has sold an office space No.F-7 on 1<sup>st</sup> Floor, in Chintels House at 16, Station Road, Lucknow measuring 1600 sq. ft. including common area and common facility for Rs.67,20,000/- showing the capital gain of Rs.54,95,102/-. However, on perusal of the registered sale agreement dated 13.04.2011, Lucknow, the

value as per value of the property for purpose of stamp duty is calculated @ Rs.225/- per sq. meter, which comes to Rs.1,00,37,183/- over which the stamp duty of Rs.7,02,700/- was paid.

5.1. The A.O, therefore, asked the assessee to explain as to why the full value of consideration of property sold should not be considered as per stamp duty valuation as per the provisions of Section 50C of the I.T. Act, 1961. The assessee replied that the sale was a distress sale as per prevailing market conditions.

5.2. However, the A.O. was not satisfied with the arguments advanced by the assessee. According to him, in no certain conditions a person with sound market knowledge would like to sell his or her property at a rate which is almost 33% less than the rates which has been assessed by the State Government of Uttar Pradesh for the purpose of stamp duty valuation. Applying the provisions of Section 50C and rejecting the explanation given by the assessee, the A.O. computed the capital gain at Rs.88,13,101.53 by computing as under :

Consideration		Rs.1,00,38,000/-
Cost	Rs. 6,33,514.37	
Indexed cost	Rs.12,24,898.47	Rs.12,24,898.47
785/406		Rs.88,13,101.53

5.3. After deducting the capital gain already computed by the assessee at Rs.54,95,101/-, the A.O. made addition of Rs.33,18,001/- to the total income of the assessee.

6. In appeal, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

*“Addition per section 50C-*

*The appellant has affected sale of property at price less than the bench mark price by, the registrar concerned.*

*The matter has been considered. It is seen from the facts that the appellant did not seek reference to the*

*Valuation Officer before the AO. It is only now that the appellant is seeking to invoke the reference request. The*

*appellant could not demonstrate any valid reason as to why such a reference could not be made before the AO.*

*The self serving approach now cannot be invoked to cover up a lapse of registering the property at price less*

*than the circle rate. This is a clear case of suppression as is the rampant tendency in this arena.*

*The action of the AO is within scope of law and the procedure. The same is upheld. This ground is dismissed basis discussions above.”*

7. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

7.1. Learned Counsel for the Assessee referring to the letter addressed to the A.O. during the course of assessment proceedings submitted that assessee had explained the reason for difference in value as per stamp duty valuation and actual sale consideration. It was alternatively argued before the A.O. that the matter may be referred to the DVO for determination of fair market value of the property as per provisions of Section 50C(2) of the I.T. Act, 1961. However, the A.O. without referring the matter to the DVO made the addition on the basis of the difference in sale price and the stamp duty valuation and the Ld. CIT(A) without

considering the submission of the assessee before the A.O. has upheld the addition made by the A.O.

7.2. Referring to the decision of Hon'ble Madras High Court in the case of S. Muthuraja vs., CIT, Coimbatore [2013] 37 taxmann.com 352 (Madras), he submitted that in the said decision it was held that in case assessee objects to the value of asset adopted by the A.O. for computing the capital gain, the A.O. ought to refer valuation of the asset to the Valuation Officer. Relying on the following decisions placed in the case law compilation, he submitted that the A.O. should have referred the matter to the DVO for determination of the fair market value.

1. ATE Enterprises (P.) Ltd., vs., DCIT, Range-2(1) [2012] 28 taxmann.com 289 (Mum.).
2. Mrs. Arlette Rodrigues vs., ITO, Ward-15(2)(2), Matru Mandir, Tardeo, Mumbai [2011] 10 taxmann.com 235 (Mumbai.)
3. ITO, Ward-1(4), Udaipur vs., Shiv Kumar Rangwani [2013] 40 taxmann.com 323 (Jodhpur-Trib.)

4. Govind Ganpatlal Thakkar vs. ACIT, Circle-10 [2022] 134 taxmann.com 92 (Ahmedabad-Trib.).
5. Jagannathan Sailaja Chitta vs., ITO, International Taxation 2(2),Chennai [2019] 104 taxmann.com 131 (Mad.) (HC).
6. Raj Kumari Agarwal vs., DCIT, Circle-2, Agra, ITAT, Agra Bench [2014] 47 taxmann.com 88 (Agra-Tribu.)
7. Mrs. Anjali Bharat Kabra vs., ITO, Ward-2(2), Jalgaon, ITAT, Pune Bench 'A'[2016] 75 taxmann.com 5 (Pune-Trib.).

7.3. In his alternate contention, he submitted that he has no objection if the matter is referred to the file of A.O. with a direction to refer the matter to the DVO for determination of fair market value and decide the issue as per fact and law.

8. The Ld. D.R. on the other hand, heavily relied on the order of the A.O. and the Ld. CIT(A).

9. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case made addition of Rs.33,18,001/- by invoking the provisions of Section 50C of the I.T. Act, 1961 being the difference between the sale consideration and the value adopted by the stamp valuation authority as per the provisions of Section 50C of the I.T. Act, 1961. We find the Ld. CIT(A) upheld the action of the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that despite request made before the A.O. to refer the matter to DVO for determination of the fair market value as per the provisions of Section 50C(2) of the I.T. Act, 1961, the A.O. did not refer the matter to the DVO and the Ld. CIT(A) without considering such request made before the A.O. dismissed the appeal filed by the assessee on the ground that assessee did not seek any reference to the DVO before the A.O. Perusal of the paper book filed by the assessee

clearly shows that, the assessee, during the course of assessment proceedings, had categorically requested the A.O. to refer the matter to the DVO where it has been mentioned as under –

*“However, alternatively, in case your honour is not to accept the claim that the value adopted by the stamp valuation authority exceeds the fair market value of the property, we request your honour to kindly refer the matter for valuation in accordance with the provisions of Section 50C(2) of the Act.”*

9.1. It has been held in various decisions that when the assessee makes a specific request before the A.O. to refer the matter to the DVO due to difference between the actual sale consideration and the value adopted by the stamp valuation authority, the A.O. should refer the matter to the DVO before making any addition. Since the A.O. in the instant case has not made any reference to the DVO for determination of the fair market value, despite specific request made by the assessee, therefore, we deem it proper

to restore the issue to the file of A.O. with a direction to refer the matter to the DVO for determination of the fair market value of the property and decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Grounds of appeal number. 2 raised by the assessee is accordingly allowed for statistical purposes.

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

Order pronounced in the open court at the time of hearing itself i.e., on 11.04.2022.

Sd/-  
[N.K. CHOUDHARY]  
JUDICIAL MEMBER

Sd/-  
[R.K.PANDA]  
ACCOUNTANT MEMBER

Delhi; Dated 11<sup>th</sup> April, 2022.

VBP/-

Copy to

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

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.