

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.83/PAT/2020  
Assessment Year: 2014-15**

Ajay Kumar, Nalanda (PAN: AHGPK5624B))	Vs.	Income-tax Officer, Ward-2(3), Bihar Sharif.
(Appellant)		(Respondent)

**Present for:**

Appellant by : Shri A. K. Rastogi, Sr. Advocate, & Rakesh Kumar, Adv.  
Respondent by : Shri Sanjay Mukherjee, CIT(DR)

Date of Hearing : 23.03.2022  
Date of Pronouncement : 26.05.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal by the assessee is directed against the order of Id. CIT(A), Patna - 1 in appeal No. ITBA/APL/S/250/2020-21/1027321580(1) dated 17.06.2020 for A.Y. 2014-15 passed against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-2(4), Bihar Sharif, dated 29.12.2016.

2. Appeal of assessee is time barred by 57 days. A condonation petition has been placed on record explaining the reasons for the delay stating that the order of Id. CIT(A) dated 17.06.2020 was uploaded on the e-portal during the lockdown period of COVID-19 pandemic. Therefore, due to restrictions imposed on the movement during the lockdown period, assessee could not contact the counsel which could be done only after returning of normalcy. Hence, requested that since the assessee is prevented by sufficient and reasonable cause, the delay of 57 days in filing the appeal may be condoned and the appeal be admitted for meritorious disposal. We have heard both the sides and find that vide order dated 10.01.2022, the Hon'ble Supreme Court has

directed that the period from 15.03.2020 to 28.02.2022 is to be excluded for the purpose of computing the limitation period during the COVID-19 pandemic. Further, a period of 90 days is allowed after 28.02.2022 vide same order. Considering the facts and the explanation of the assessee, we condone the delay in filing the appeal and admit it for adjudication.

3. Ground nos. 6 and 7 are general in nature and do not require any adjudication.

4. Though the assessee has raised as many as five grounds of appeal, the sole issue involved in this appeal of assessee is against the action of the ld. CIT(A) in confirming the addition of Rs.11,47,400/- made u/s. 56(2)(vii)(b) of the Act, being the difference between actual purchase consideration and the value determined by the Department Valuation Officer (DVO).

5. Briefly stated, facts are that the assessee is an individual and deriving income from tyre shop and supply of construction material. He filed his return of income for AY 2014-15 on 28.03.2015 reporting total income at Rs.6,51,120/-. During the course of scrutiny proceedings, ld. AO found from the AIR information that the assessee has invested in the land property registered with Sub-registrar, Chandauli, Uttar Pradesh. Accordingly, ld. AO issued notice u/s. 133(6) of the Act to the Sub-registrar, Chandauli relating to the registered sale deed of this property. Assessee was also asked vide notice u/s. 142(1) of the Act to furnish details of all the investment made by him in the immovable property. Subsequently, ld. AO received the required registered sale deed of land from both, i.e. from the office of Sub-registrar and the assessee. On perusal of the same, ld. AO found that the assessee had paid Rs.30,00,000/- towards the land situated at Village Alinagar, Pargana Dhut, Dist. Chandauli, U.P. measuring an area 1675.71 square meter which was found registered by the assessee on 30.10.2013 i.e. relevant to the assessment year under appeal i.e. AY 2014-15. According to the ld. AO, the value of land for the purpose of stamp duty as

recorded in the registered sale deed was Rs.75,41,000/-. Notices u/s. 142(1) dated 22.08.2016 along with the show cause letter was issued by the ld. AO to the assessee to explain the source of Rs.30,00,000/- being the amount paid towards the above stated land along with the relevant evidences. Further, ld. AO noted that there being a difference of Rs.45,41,000/- between the actual sale consideration of Rs.30,00,000/- and the value of the property for the purpose of stamp duty of Rs.75,41,000/-, the said difference of Rs.45,41,000/- (Rs.75,41,000-Rs.30,00,000) is liable to be added in the assessee's total income u/s. 56(2)(vii)(b) of the Act as income from other sources.

6. According to ld. AO, the assessee has objected to valuation for the purpose of stamp duty citing the reason that it is on an extremely higher side. On his objection, the case was referred by the ld. AO to the Asstt. Valuation Officer of the Department at Allahabad, for the purpose of valuation of the impugned land. The Asst. Valuation Officer, Allahabad estimated the value of the said land at Rs.41,47,400/- against the actual transacted value of the property at Rs.30,00,000/-. Accordingly, the assessee was show caused as to why not the difference of Rs.11,47,400/- (Rs.41,47,400- Rs.30,00,000) be taken as the income of the assessee from other sources considering the provisions of section 56(2)(vii)(b) of the Act. Considering the reply of the assessee, the ld. AO made an addition of Rs.11,47,400/- being the difference of the value of the land estimated by the ld. DVO and the actual cost of the land by treating this difference as the income of the assessee from other sources. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of ld. AO.

7. Aggrieved, assessee is in appeal before the Tribunal.

8. We have heard the rival submissions and perused the material available on record. Ld. Counsel for the assessee, Shri A.K. Rastogi, Sr. Advocate pointed

out that the valuation report by the DVO has estimated the fair market value (FMV) merely on *ipse dixit* and by ignoring the comparable sale instance by the same vendor of the adjacent land, more particularly relating to subsequent year i.e. 2015-16. According to the Id. Counsel for the assessee, the DVO has issued the report dt. 26/12/2016 which is placed in the paper book at page 15, without taking into account all the relevant material. Ld. Counsel for the assessee strongly submitted that the report itself does not disclose what material was gathered by the DVO which was relied upon to arrive at a value of Rs.41,47,400/-. He drew our attention to the mandatory provision of Section 142A of the Act which requires that the valuation officer shall estimate the value of the asset, property/investment after taking into account such evidence as the assessee may produce and any other evidence gathered by him which are in his possession.


8.1 He further submitted that section 142A of the Act also contemplates that in case the assessee does not co-operate or comply to the directions of the valuation officer, then, the valuation officer can make estimate of the value to the best of his judgment. In the instant case, according to the Id. Counsel, there is no charge of non-cooperation on the assessee by the valuation officer.

8.2 According to him, section 142A(4) of the Act provides that the valuation officer shall estimate the value after taking into account such evidences as the assessee made produce and any other evidence in his possession gathered by the valuation officer by giving an opportunity of being heard to the assessee. In this context, we refer to the notice dated 20.12.2016 issued by the valuation officer requiring the assessee to submit his objections on the estimation proposed by the valuation officer at Rs.41,47,400/-, fixing the date on 26.12.2016. It was brought to the notice of the Bench that the notice was received by the assessee on 24/122016, which was complied by the assessee by furnishing the comparable sale instance of the same seller in respect of the

adjacent land sold in the year 2015-16. The scanned copy of the notice is reproduced for the ease of reference:-

①

Patna Bench, Patna  
Date of hearing:- 23/12/21  
STANO- 83/PAT/20

  
Government of India  
Income Tax Department  
O/o the Assistant Valuation Officer  
38, M.G.Marg, Civil Lines, Allahabad-211001

NS-6

F. No: 66/AVO/ITD/ALLD/2016-17/23 Date: 23.12.2016

Notice under Section 56(2) of the Income Tax Act, 1961 for valuation of fair market value of property known as land at Village-Alinagar, Pargana-Dhut, District-Chandauli measuring 1675.71 Sqm.

To,  
Shri Ajay Kumar,  
S/o Late Shri Ashok Kumar Singh,  
Bengali Para, Rajgir, Nalanda,  
Bihar-803116.

Subject: The Determination of the Fair Market Value of the property known as land at Village-Alinagar, Pargana-Dhut, District-Chandauli measuring 1675.71 Sqm.

Amount (Dec. Value) Rs. 30,00,000/-	As on 30.10.2013
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The case is referred to me by ITO-2(4), Bihar Sharif, Nalanda has made a reference to this office vide his letter no. ITO/W-2(4)/BHR/2016-17/840 dated: 09.11.2016. The property was inspected by undersigned along with my technical staff on 12.12.2016. I have perused the relevant documents produced before me.  
Having considered the relevant circumstances of the case, I propose to estimate the Fair Market Value of the said property:

Amount (F.M.V) Rs. 41,47,400/-	As on 30.10.2013
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You are hereby called upon to state your objections if any, to the above estimate in writing on or before 26.12.2016 any documentary evidence on which you may wish to rely in support of your objections should also be produced along with your written objections.  
If alternative you wish to state your objections in person or through a duly authorized representative you may do so on 26.12.2016 at 11:00AM. You may produce or cause to be produced on that date and time any evidence you may wish to rely in support of your objection.

②

Annexure 'A'

Assessee:- Shri Ajay Kumar  
Property:- Land at Village-Alinagar, Pargana-Dhut, District-Chandauli measuring 1675.71 Sqm.

Fair Market Value  
(as on 30.10.2013)

S.No.	Description	Quantity	Unit	Rate(Rs.)	Amount (Rs.)
1.0	Land (As per Sale deed)	1675.71	Sqm	2475	4147382

Say Rs. 41,47,400/-


F.M.V. of the property as on 30.10.2013 Say Rs. 41,47,400/-

Asstt. Valuation Officer  
Income Tax Department  
Allahabad

8.3 Ld. Counsel for the assessee pointed out that in the present case, the assessee has brought on record the comparable sale instance by the same seller, of the adjacent land sold in the year 2015-16 to support the actual purchase cost of Rs.30,00,000/- paid by the assessee. According to him, the valuation has to be ascertained by considering the sale of similar property in the same neighborhood.

15

RS-7

  
 Government of India  
 Income Tax Department  
 O/o the Assistant Valuation Officer  
 38, M.G.Marg, Civil Lines, Allahabad-211001

F. No. 66/AVO/ITD/ALLD/2016-17/29 Date: 24.12.2016

**Notice under Section 56(2) of the Income Tax Act, 1961 Read with section 16-A (4) of the Wealth Tax Act 1957.**

Whereas the determination of fair market value of the property known as land at Village-Allnagar, Pargana-Dhut, District-Chandauli measuring 1675.71 Sqm was referred to me by ITO-2(4), Bihar Sharif, Nalanda under section 56(2) of the Income Tax Act 1961 vide letter no. ITO/W-2(4)/BHR/2016-17/840 dated: 09.11.2016.

Whereas a notice was issued to Shri Ajay Kumar, S/o Late Shri Ashok Kumar Singh, Bengali Para, Rajgir, Nalanda, Bihar-803116 (Assessee) of my proposed estimating the value.

<u>Estimated Value (Rs.)</u> Rs. 41,47,400/-	<u>As on</u> 30.10.2013	<u>Declared Value (Rs.)</u> Rs. 30,00,000/-
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Vide letter no. 66/AVO/ITD/ALLD/2016-17/23 Date: 29.12.2016

Having considered the evidence produced by the assessee and having taken into account all the relevant materials gathered by me. I estimate the fair market value of the said property in respect of Shri Ajay Kumar follows:-

<u>Fair Market Value (Rs.)</u> Rs. 41,47,400/-	<u>As on</u> 30.10.2013	<u>Assessment Year</u> 2013-14
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Asstt. Valuation Officer,  
Income Tax Department,  
Allahabad

**Copy along with copy of valuation report to:**

1. The District Valuation Officer, Income Tax Deptt. , Kanpur.
2. The Valuation Officer, Income Tax Deptt. , Allahabad.
3. The ITO-2(4), Bihar Sharif, Nalanda.
4. Shri Ajay Kumar, S/o Late Shri Ashok Kumar Singh, Bengali Para, Rajgir, Nalanda, Bihar-803116.

Certified to be true  
06/31/18  
कार्यालय असीलक  
बार्ड-2(4)  
आयकर कार्यालय  
बिहारशरीफ (नालन्दा)

Asstt. Valuation Officer  
Allahabad

8.4 From the report of the valuation officer dated 26.12.2016, it is noted that the valuation officer has mentioned that he has considered the evidence produced by the assessee and had taken into account all the relevant materials gathered by him and arrived at the estimate of the FMV at Rs.41,47,400/- as on 30.10.2013. From the proceedings before the Valuation Officer and the report issued by him thereon, it is not discernible as to what material was gathered and how the evidence produced by the assessee was considered in arriving at the estimate of FMV of Rs.41,47,400/-.

9. Section 142A of the Act provides for the process which needs to be complied with while estimating the value of assets by the valuation officer. For ease of reference section 142A prior to substitution by Finance (No. 2) Act, 2014 w.e.f. 01.10.2014, as inserted by the Finance (No. 2) Act, 2004, w.r.e.f. 15-11-1972 and amended by the Finance Act, 2010, w.e.f. 1-7-2010, read as under:-

*“142A. Estimate by Valuation Officer in certain cases. –*

*(1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B or fair market value of any property referred to in sub-section (2) of section 56 is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.*

*(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).*

*(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:*

*Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.*

*Explanation. – In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."*

10. From the plain reading of section 142A of the Act, we find that the report issued by the valuation officer in the present case does not reflect the compliance of the process of estimation of value as enunciated in the said section. In the interest of justice and fair play, we find it fit to remit the matter back to the file of the ld. AO for the limited purpose of arriving at a proper and fair estimation of the value by the valuation officer by considering the comparable sale instance furnished by the assessee and also by providing the material gathered by the valuation officer to the assessee for his rebuttal, if any. Further, ld. AO is directed to ensure the compliance of section 142A of the Act and complete the assessment on this limited issue in accordance with applicable law. Needless to say that assessee be given reasonable opportunity of being heard and permitted to make necessary submissions in this respect. The assessee is also directed to cooperate and comply with the notices issued by the DVO and/or AO for the expeditious disposal of the matter.

11. In the result, appeal of the assessee is allowed for statistical purpose, based on above stated terms.

**Order pronounced in the open court on 26.05.2022.**

**Sd/-**  
**(RAJPAL YADAV)**  
**VICE-PRESIDENT**

Kolkata, Dated: 26.05.2022

SC, Sr. P.S.

Copy to:

1. The Appellant: Shri Ajay Kumar, Prop. M/s. Tutu Tyre, Bangali Para, Rajgir, Nalanda-803116, Bihar
2. The Respondent: ITO, Ward-2(3), PatnaBihar Sharif
3. The CIT,
4. The CIT (A) Patna-1, Patna
5. The DR, ITAT, Patna Bench, Patna

//True Copy//

**Sd/-**  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

By Order

Assistant Registrar/DDO  
 ITAT, Patna Benches, Patna