

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 269/RPR/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Mohini Devi Agarwal
L/h of Late Shri Kishan Lal Agrawal
H. No.28/03, Lal Bagicha Ward,
Station Road, Dhamtari (C.G.)
PAN : ACHPA6898H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward- Dhamtari (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Siddharth B.S. Meena, Sr. DR

सुनवाई की तारीख / Date of Hearing : 09.09.2022

घोषणा की तारीख / Date of Pronouncement : 23.11.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-1, Raipur, dated 29.09.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 11.08.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

“a) That on the fact and circumstances of the case and in law, learned assessing officer and honorable CIT(A) has been erred in taking long term capital gain on sale of undiverted land at Rs.11,74,870/- instead of long term capital loss of Rs.96,65,875/- as worked out by the appellant, Without appreciating the fact of the case, that the assessee has arrived at the fair market value as on 1/4/1981 by following the govt. guidelines and govt. value prescribed for the area in which the capital asset was located. Whereas the learned assessing officer determined the fair market value purely on arbitrary basis without any fact and basis.

b) That on the fact and circumstances of the case and in law, the learned assessing officer and the honorable CIT(A) has, without appreciating the fact of the case, been erred for relying on the documents without providing the copy of the same to the appellant.

c) That on the fact and circumstances of the case and in law, the learned assessing officer and the honorable CIT(A) has been erred for passing an order without giving sufficient opportunity of being heard to the appellant

The appellant craves leave to substantiate above ground at the time of hearing.”

2. Succinctly stated, the assessee who is deriving income from petty job works and other sources had filed her return of income for the assessment year 2014-15 on 28.03.2015, declaring an income of Rs.1,20,000/-. The return of income filed by the assessee was processed as such u/s.143(1) of the Act. Subsequently the case of the assessee was selected for limited scrutiny u/s. 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had, inter alia, disclosed Long Term Capital Gain (LTCG) and Short-Term Capital Loss (STCL) on sale of property as under:

“(A) Capital Gain on sale of land- ½ Share Hatkeshher 1.440 Hec (155000 Sft.)

Sale/transfer Price as on 11/06/2013	12,50,000/-
Value adopted or assessed by Stamp Valuation Authority	12,50,000/-
Deemed value of the asset being greater of the above Two (Sec. 50C)	12,50,000/-
Less- Indexed Cost of Acquisition (11,62,500/- x 939/100)	<u>1,09,15,875/-</u>
(Cost as on 01/04/1981 Rs.11,62,500/-)	
Long Term Capital Loss	: 96,65,875/-

(B) Capital Gain on sale of land-1/2 share Hatkeshar 0.818 Hec (88048 Sft)

Sale/transfer price as on 20/06/2013	98,20,000/-
Value adopted or assessed by Stamp Valuation Authority	98,20,000/-
Deemed value of the asset being greater of the above Two (Sec. 50C)	98,20,000/-
Less- Indexed Cost of Acquisition (8,27,651/- x 939/100)	77,71,643/-
(Cost as on 01/04/1981 : Rs.8,27,651/-)	
Expenses on transfer	7,90,645/-
	<u>85,62,288/-</u>

Long Term Capital Gain **12,57,712/-**

Long Term Capital Loss to be C/forward (96,65,875/- (-) 12,57,712/-) = 84,08,163/-"

The assessee on being called upon to justify her claim of LTCL of Rs.84,08,163/- on sale of 1/2th share in land at Hatkeshwar, Ward : Dhamtari on the basis of supporting documentary evidences filed with the A.O copies of sale deed, Patwari report and copies of guideline rates issued by the Dy. Registrar, Dhamtari on 18.04.2016. Also, the guideline rates issued by Dy. Registrar for F.Y.1985-86 and those for F.Y 2013-14 were filed by the assessee. As the property under consideration was acquired way back even prior to 1981, therefore, the A.O vide his notice u/s.133(6) called upon the Dy. Registrar, Dhamtari (C.G.) to provide the guideline rates that were issued by his office as on 01.04.1981 and F.Y.2013-14. However, the Dy. Registrar, Dhamtari (C.G.) informed the A.O that the guideline rates for F.Y. 1981-82 were not readily available, and thus, supplied those for FY 1985-86 and F.Y 2013-14. On a perusal of the guideline rates issued for A.Y.1985-86, it was observed by the A.O that the rates for non-irrigated land per Acre for Dhamtari were as under:

Non Irrigated land

Dhanha	Bharri	Bhata
Rs.4500/-	Rs.2,000/-	Rs.1,500/-

4. Observing, that as most of the lands at Dhamtari and nearby areas were since long being used for paddy crop, therefore, the A.O was of the view that the guideline rates provided by the Dy. Registrar, Dhamtari for agricultural land at Dhamtari of Rs.4500/- per acre for F.Y.1985-86 could safely be adopted as a yardstick for arriving at the guideline rates as on 01.04.1981. Accordingly, the A.O on the basis of the aforesaid facts took the guideline rate on 01.04.1981 for the agricultural land at Dhamtari at Rs.4500/- per acre. Also, it was observed by the A.O that in case the aforesaid land in question was treated as *Bharri* and *Bhata*, then, the rates of non-agricultural land would be as low as Rs.2000/- per acre and Rs.1500/- per acre in the year 1985-86, i.e., as per guideline rates issued by the Dy. Registrar, Dhamtari, as a result whereof the LTCG would work out at a substantial higher amount. However, the A.O in all fairness by adopting the guideline rate of Rs.4500/- per acre as was provided by the Dy. Registrar, Dhamtari for FY 1985-86, therein, worked out the LTCG on sale of 1.440 hectare of land situated at Hatkeshwar Ward, Dhamtari (C.G.), as under:

“Khasra No. 268 to 269 stated above- Land measuring 1.440 Hectare-

Sale consideration : Rs.25,00,000/-

Less:- Indexed Cost of Acquisition

@ Rs.4500/- per Acre

:Rs.4500/100 x 939 = Rs.42,255/- per acre

1.440 Hectare x 2.47 = 3.556 Acre x Rs. 42,255/- = Rs.1,50,259

Long term Capital Gain-

Rs.23,49,741/-

(50% share of the assessee) Long Term Capital Gain : **Rs.11,74,870/-**

Accordingly, the A.O vide his order passed u/s.143(3), dated 11.08.2016 determined the income of the assessee at Rs.25,52,580/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

7. At the time of hearing of the appeal, it was vehemently averred by the Ld. Authorized Representative (for short 'AR') for the assessee that the A.O had grossly erred in law and facts of the case in relying at the back of the assessee on certain guideline rate that was stated to have been provided by the Dy. Registrar, Dhamtari for the F.Y.1985-86. It was submitted by the Ld. AR that the assessee had repeatedly requested the A.O to provide a copy of the guideline rate that was being acted upon by him, but all his requests had gone in vain. Our attention was drawn by the Ld. AR to a letter dated 14.08.2017, Page 1 of APB wherein the assessee had requested the ITO, Ward: Dhamtari to make available a copy of the guideline rate that was stated by him to have

been obtained from the Sub-registrar, Dhamtari. It was submitted by the Ld. AR that despite repeated requests the copy of the guideline rate was not made available to the assessee, and the A.O had most arbitrarily by relying on such details that were gathered at the back of the assessee drawn adverse inferences in the latter's hands. Rebutting the guideline rate that were applied by the A.O, it was submitted by the Ld. AR that the assessee had computed the indexed cost of acquisition of the agricultural land at Hatkeshwar Ward, Dhamtari on the basis of the guideline rates which were obtained by him from the Dy. Registrar, Dhamtari. The Ld. A.R in order to fortify his aforesaid claim had taken me through a letter dated 29.06.2016 a/w. copy of the extract of the guideline rates that were obtained by the assessee from the Dy. Registrar, Dhamtari, Page 4 to 7 of APB. It was the claim of the Ld. AR that as the A.O had acted upon certain information which was collected at the back of the assessee, i.e, without confronting the same despite persistent requests, therefore, the addition so made by him on such basis could not be sustained and was liable to be vacated.

8. Per contra, the Ld. Departmental Representative (for short 'DR') took me through the relevant extracts of the assessment order. It was submitted by the Ld. DR that though as per the guideline rates obtained by the A.O from the Dy. Registrar, Dhamtari the FMV of the land at Hatkeshwar Ward, Dhamtari during F.Y.1985-86 was 10 paisa

per square feet, but it was beyond comprehension as to how the guidelines rates which the assessee had claimed to have obtained from the Dy. Registrar, Dhamtari the FMV for the same land could be exorbitantly pitched at Rs.4500/- per square feet. It was submitted by the Ld. DR that the aforesaid variance between the guideline rates was beyond comprehension. It was further submitted by the Ld. DR that if the claim of the assessee was to be accepted, then, as observed by the CIT(Appeals) the property which was sold during the year under consideration i.e. A.Y.2014-15 for Rs.12.50 lacs would stand valued at Rs.11,62,500/- in the year even prior to 1981. On the basis of the aforesaid facts, it was submitted by the Ld. DR that as the claim of the assessee was absolutely beyond comprehension, therefore, the same did not merit acceptance.

9. I have given a thoughtful consideration to the issue in hand, and would not mince any words in observing that the FMV of Rs.4500/- per sq. feet of the land at Hatkeshwar Ward, Dhamtari, as had been adopted by the assessee for computing the indexed cost of acquisition, as against the FMV of 10 paisa per square feet as had been taken by the A.O, is beyond comprehension. Although the Ld. AR has taken me through the guideline rates issued by the Dy. Registrar, Dhamtari for F.Y. 1985-86, Page 3 of APB, however, the same in itself is not free from doubts. On a careful perusal of the guidelines rate of

Rs.20/- per square feet of non-converted i.e. agricultural land that had been pressed into service by the Ld. AR to drive home his aforesaid claim, I find that the same clearly makes a reference to land situated/subjected to a commercial purpose/area. Be that as it may, I find substance in the claim of the Ld. AR that as the assessee despite specific request vide his letter dated 14.08.2017 was not supplied with a copy of the guideline rate as was obtained by the A.O from the sub-registrar, Dhamtari, on the basis of which the latter had computed the indexed cost of acquisition, therefore, drawing of such adverse inferences at the back of the assessee on the basis of material collected by the A.O cannot not be endorsed on my part. Considering the aforesaid facts, I am of the considered view that in all fairness the matter requires to be restored to the file of the A.O, with a direction to re-adjudicate the issue after affording a reasonable opportunity of being heard to the assessee on the issue in hand. Needless to say, the A.O shall in the course of the set-aside proceeding make available a copy of the guideline rates that were obtained by him from the Sub-Registrar, Dhamtari, as well as consider the guideline rates which the assessee is stated to have obtained from the Dy. Registrar, Dhamtari. I may herein clarify that the A.O in the course of the set-aside proceeding shall remain at a liberty to carry out any further verification, and also call for any such information as he may deem

necessary for adjudication of the aforesaid issue. Accordingly, the order of the CIT(Appeals) is set-aside and the matter is restored to the file of the A.O in terms of my aforesaid observations.

10. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 23rd day of November, 2022.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 23rd November, 2022

**SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच,
रायपुर / DR, ITAT, “SMC” Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur