

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCHES, ALLAHABAD**

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 30/Alld/2023
Assessment Year: 2014-15

Mr. Mohammad Nazim, 133 Kheldar, Fatehpur-212601,U.P.	v.	Income Tax Officer, Ward-2(4), Fatehpur, Income Tax Office, Fatehpur-212601,U.P.
PAN:AGEPN3675J		
(Appellant)		(Respondent)

Assessee by:	Sh. Mayank Arora, Advocate
Revenue by:	Sh. Amlendu Nath Mishra, CIT-DR
Date of hearing:	12.09.2023
Date of pronouncement:	12.09.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, arising out of the appellate order passed by learned Commissioner of Income-tax(Appeals) (National Faceless Appeal Centre (NFAC)), dated 10.02.2023 for assessment year 2014-15 (DIN & Order No. ITBA/NFAC/S/250/2022-23/1049616055(1)) , which appeal in turn has arisen out of the assessment order dated 29.12.2016 passed by ld. Assessing Officer(hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961(hereinafter called "the Act").

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Allahabad Bench,Allahabad in ITA No. 30/Alld/2023 for assessment year 2014-15, which reads as under:-

"1. Because the Learned Commissioner of Income Tax (Appeals), NFAC has erred to pass Appellate order without considering the facts and circumstances of the case and has confirmed the order passed by the Ld. Assessing Authority U/s 143 (3).

2. Because the Learned Commissioner of Income Tax (Appeals), NFAC has failed to appreciate the fact that the appellant has sold his land for Rs. 50,00,000=00 only vide Registry dated 18-09-2013 whose payment has been received through bank draft. Copy of Registry has also been submitted before the Learned Assessing Authority. No other amount or consideration other than Rs. 50,00,000=00 has been received in this transaction.
3. Because the Learned Commissioner of Income Tax (Appeals), NFAC is incorrect to confirm the disallowance of brokerage charges of Rs. 35,000-00 on the grounds of non production of any proof since such brokerage was given in cash to different persons for arranging the sales. The Assessing Authority as well as Appellate Authority should have understood that this is a very small and genuine amount of brokerage which is very common in such types of sales and should have allowed such deduction in computing Capital Gains.
4. Because the Learned Commissioner of Income Tax (Appeals), NFAC has erred to ignore the circumstances of the appellant that Rs. 50 lacs was the best offer he was getting to sell this land and since he was in need of money, he has no other option but to accept it.
5. Because the Learned Commissioner of Income Tax (Appeals), NFAC has erred to ignore the fact that the Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value in the condition the property is a offered for sale and is purchased. He is required to value the property in accordance with the circle rates fixed by the Collector. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine its true, correct and fair market value which has also many other attributes.
6. Because the appellant is relying on the judgement of Hon'ble Income Tax Appellate Tribunal, Agra Bench, Agra in case of ITO - 1 (3), Mathura Vs Ramesh Chandra Kulshresth & Brother HUF. Copy of this judgement is attached herewith for your kind perusal and record as Annexure No. VIII.
7. Because the Ld. Assessing Authority has not mentioned or proved that the appellant has received any amount which is more than actual sale consideration of Rs. 50,00,000=00 and in absence of any information, the Ld. Appellate Authority should have directed the AO to accept the sale consideration of Rs. 50 lacs for the purpose of determining Capital Gains.
8. Because the Ld. Assessing Authority should have also referred the matter to Valuation for determining the Fair Market Value before determining the value U/s 50C (1) since the appellant is of the view that the circle value fixed actually exceeds the fair market value. The findings given by the Ld. Appellate Authority in this context is not correct and the appellant is also relying upon the judgements of Hon'ble ITAT Delhi Bench 'A' in case of Anil Kumar Jain Vs. Income Tax Officer, Ward 29 (3), New Delhi & Hon'ble ITAT Hyderabad in case of Jayashree Kothari Vs ITO, Ward - 8 (2), Hyderabad, wherein in similar circumstances, the Hon'ble Tribunals restored the matter back to the AO for a fresh adjudication after referring the matter to the Valuation Officer u/s-50C (2) of the Act. Copies of both the judgements are attached herewith for your kind perusal and record as Annexure No. IX & X.

9. Because the disallowance of full value of Rs. 10,00,000=00 U/S Sec 54EC is not justified and wrong on the part of the Learned Assessing Authority which has been confirmed by the Ld. Commissioner of Income Tax (Appeals), NFAC.

10. Because the order passed U/s 143 (3) by the Ld. Assessing Authority and the order passed U/s 250 by the Ld. First Appellate Authority is bad in law and against the facts.”

3. The brief facts of the case are that the assessee filed his return of income on 31.03.2015 declaring income of Rs. 4,88,272/- and agriculture income of Rs. 75,200/-(for rate purposes). The case was selected by Revenue for framing limited scrutiny. The assessee derives income from Rainbow Builders as a partner of the firm and capital gain. The reason for selection of case under limited scrutiny was that sale consideration of the property declared in ITR was less than sale consideration of property reported in AIR , which was confronted by AO to the assessee. The assessee submitted reply/explanation , and it was observed by AO that the assessee purchased 2671 square meters of land in 2010 , out of which 1395 square meters of land was sold in 2014. The assessee has declared sale consideration for the aforesaid land of Rs. 50,00,000/- , while the value as per section 50C was Rs. 1,11,60,000/- being adopted by Sub-Registrar for stamp duty purposes. The AO observed that the assessee has right to challenge the stamp duty value taken by Sub-Registrar but no documentary evidences were produced wherein he has challenged the stamp value taken by the Registrar before the Stamp Appellate Authority , and thus the AO took the value as adopted by Sub-Registrar for stamp duty purposes as the full value of consideration of the property which was brought to tax by the AO, vide assessment framed u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by the AO, the assessee filed first appeal before learned CIT(A). The assessee submitted that the assessee was in need of money and he has to sell his land for Rs. 50 lacs as there were no buyers to purchase the aforesaid land for more than Rs. 50,00,000/- , so this was the best price which was offered to the assessee by the Buyer , which he had accepted. The assessee submitted that stamp duty value as adopted by Sub-Registrar was much higher than

the actual fair market value of the property as nobody was offering the value of more than Rs. 50,00,000/- for the said property. The ld. CIT(A) was of the view that although the assessee has challenged the stamp value of the property but there is no *prima facie* material produced by the assessee to justify that stamp value adopted by the Sub-Registrar does not reflect fair market value of the property. Thus, both ld. CIT(A) and AO did not referred the matter of valuation of the aforesaid land to DVO. Thus, in nut-shell, assessment order of the AO was upheld by ld. CIT(A).

5. Still aggrieved, the assessee filed second appeal with Tribunal , and ld. Counsel for the assessee, at the outset, submitted that the sale consideration actually received was Rs. 50,00,000/- but stamp duty value as adopted by Sub-Registrar was Rs.1,11,60,000/- . It was submitted that the said stamp duty value was adopted by both the authorities instead of the actual sale consideration received by the assessee for bringing to tax capital gains. It was submitted that request was made to refer the matter to DVO but the same was rejected by both the authorities. It was submitted that the main grievance of the assessee in this appeal is Ground No. 8 raised by the assessee in memo of appeal filed with the Tribunal, which is concerning the differential in the sale consideration of Rs. 50,00,000/- stated to be received and the valuation for stamp duty purposes adopted by Sub-Registrar to the tune of Rs. 1,11,60,000/- . Thus, it was submitted that Ground no. 8 is pressed as the matter is not referred to DVO by learned CIT(A) as well as AO , and it can go back to the AO for referring the matter to DVO under section 50C(2) of the Act. The learned counsel for the assessee also relied upon judgment and order of Hon'ble Madras High Court in the case of **S. Muthuraja v. CIT**, dated 22.07.2013 in Tax Case (Appeal) No. 449 of 2013 and 354 of 2013. The ld. CIT-DR relied upon the orders of the authorities below and submitted that they were justified in rejecting the claim of the assessee for referring the matter to DVO.

5.2. This appeal is filed late by 1 day, beyond the time stipulated u/s 253(3). The ld. CIT(A) order was stated to be received by assessee on 10.02.2023, and the appeal

with Tribunal ought to have been filed on 09.04.2023, but the appeal was filed on 10.04.2023. The assessee has filed clarification through his counsel Mr. N K Arora , that 09th April, 2023 happened to be Sunday wherein Tribunal office was closed, and hence the appeal was filed on 10.04.2023. The said clarificatory letter is placed on record. Reference is also drawn in the said letter to Section 4 of the Limitation Act, and it is claimed that this appeal is in time as 09th April, 2023 happened to be Sunday, the assessee filed the appeal on the very next day i.e. on Monday 10th April, 2023. We accept the cause explained by the assessee , and condone the delay as the explanation is bonafide. When the technicalities are pitted against substantial justice, the Courts will lean towards advancement of justice , unless malice is at writ large. Thus, the delay of one day is condoned.

6. We have considered rival contentions and perused the material on record. We have observed that the assessee filed his return of income declaring income of Rs. 4,88,270/- and agriculture income of Rs. 75,200/- (for rate purposes). The case of the assessee was selected by Revenue for framing limited scrutiny. The assessee derives income from Rainbow Builders as a partner of the firm and earned capital gain. We have observed that the assessee purchased property of 2671 square meter of the land in 2010 , out of which 1395 square meter was sold during the year under consideration . We have observed that sale consideration actually received by the assessee was Rs. 50,00,000/- , which the assessee is claiming has been received through banking channel vide demand draft from M/s G.H.S. Fatehpur Care Fatehpur Super Specialty Health Care LLP. The sale deed is enclosed in the paper book. The said property was sold for Rs. 50,00,000/- although the stamp duty value adopted by Sub Registrar is Rs. 1,11,60,000/-. The case of the assessee was selected for framing limited scrutiny by the Department. We have observed that assessee has raised this plea before the AO as well as before Id. CIT(A) that the fair market value of the said property was only Rs. 50,00,000/- which infact was the actual sale consideration, and various attempts made by assessee to sell the property at higher

rate did not fructify and ultimately the property was sold for Rs. 50,00,000/- which is the actual sale consideration. It is the claim of the assessee that the market value of the said property sold was Rs. 50,00,000/- and not Rs. 1,11,60,000/- which was the value adopted by Sub-Registrar for stamp duty purposes. Thus, the assessee is disputing the stamp duty value adopted by the Sub Registrar of Rs. 1,11,60,000/- for the said property for stamp duty purposes, as that the same did not reflect fair market value of the property on the date of sale. We are of the considered view that section 50C(2) stipulates / mandate that in case the assessee disputes the value adopted by Sub-Registrar for stamp duty purposes, the AO ought to have referred the matter to Departmental Valuation Officer(DVO) for valuing the property. In this case, the assessee has challenged the value adopted by Sub- Registrar both before AO as well as Id. CIT(A) , but both the authorities below did not refer the matter of valuation of land to DVO to get the value of the property assessed on the date of sale , hence the orders are not sustainable to that effect. Thus, keeping in view the entire facts and circumstances of the case, we are inclined to set aside and restore the matter to file of AO for *de novo* assessment, after referring the matter to DVO for valuation of the impugned property which was sold by the assessee. Our view is supported by the judgment and order of Hon'ble Madras High Court in the case of **S. Muthuraja(supra)**. Needless to say that the AO/DVO shall give proper and adequate opportunity of being heard to the assessee in set aside remand proceedings, and in accordance with Rules. All the issues are kept open. Thus, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced on 12/09/2023 in Open Court at Allahabad, U.P..

Sd/-

**[ABY T. VARKEY]
JUDICIAL MEMBER**

DATED:12/09/2023

Sh

Sd/-

**[RAMIT KOCHAR]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant – Mr.Mohammad Nazim, 133 Kheldar, Fatehpur-212601
2. Respondent – Income Tax Officer, Ward-2(4), Fatehpur
3. CIT DR
4. CIT
5. The CIT(A)