

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.7738/Del/2017
(ASSESSMENT YEAR 2009-10)

Tara Singh Bindra (HUF) 1554-55, Church Road Kashmiri Gate Delhi-110 006 PAN-AAAHB 1132J	Vs.	ACIT Circle-20(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Sachin Jain, Adv.
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	19/10/2023
Date of Pronouncement	10/01/2024

ORDER

PER M. BALAGANESH AM:

This appeal of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-25, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.238/11-12/68/17-18 dated 25/09/2017 against the order passed by Ld. Assistant Commissioner of Income Tax, Central 20(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income

Tax Act (hereinafter referred to as 'the Act') on 30/12/2011 for the Assessment Year 2009-10.

2. The Ground No. 3 raised by the assessee was stated to be not pressed by the ld. AR before us. The same is reckoned as a statement made from the Bar and accordingly Ground No. 3 is hereby dismissed as not pressed.

3. With regard to the other remaining grounds, the only effective issue to be decided is as to whether the ld. CIT(A) was justified in confirming the addition made on account of long term capital gains (LTCG) on sale of property by adopting the value adopted by the Departmental Valuation Officer (DVO) ignoring the guideline value determined u/s 50C of the Act.

4. We have heard the rival submissions and perused the materials available on record. The assessee sold land situated at Okhla Industrial Area on 24.10.2008 for Rs 2,20,00,000/-. The indexed cost of acquisition of land was worked out at Rs.2,17,20,240/- and accordingly the LTCG of Rs.2,79,760/- was disclosed by the assessee. The sale consideration figure adopted by the assessee at Rs.2,20,00,000/- was the same as fixed by the Sub-Registrar for

the purpose of levy of stamp duty. Hence the value determined by the stamp valuation authority in terms of section 50C of the Act for the subject mentioned land is Rs.2,20,00,000/-, which is the same as adopted by the assessee as the full value of consideration. The ld. AO ignored the said value as per section 50C of the Act and proceeded to adopt the value determined by the ld. DVO u/s 55A of the Act at Rs.3,56,93,000/- and recomputed the LTCG accordingly. This action of the ld. AO was upheld by the ld. CIT(A). In our considered opinion, the provisions of section 50C of the Act (which is a special provision) are very clear by stating that the full value of consideration shown by the assessee is less than the value fixed by the stamp valuation authority for the purpose of levy of stamp duty, then the value as fixed by the stamp valuation authority shall be deemed to be the full value of consideration. Accordingly, if the sale consideration shown by the assessee itself is equal to or less than the value fixed by the stamp valuation authority, the value shown by the assessee is to be adopted as the full value of consideration. Viewing from this angle, we hold that there is absolutely no need for the ld. AO to refer the valuation of the land to ld. DVO u/s 55A of the Act. We hold that the reference made per se thereon is illegal

and against the provisions of section 50C of the Act which is a specific provision. Hence we hold that the sale consideration value adopted by the ld. AO by relying on ld. DVO report at Rs.3,56,93,000/- is patently illegal. The ld. AO is directed to adopt the sale consideration figure at Rs.2,20,00,000/- only.

5. With regard to purchase cost of land, the assessee adopted the cost at Rs.37,32,000/- as per section 48 of the Act based on the report of a registered valuer. Only the cost of land was considered by the assessee ignoring the value of cost of construction. The ld. AO adopted the fair market value as on 1.4.1981 of the land at Rs.14,84,738/- as per report of ld. DVO by making reference u/s 55A of the Act. In this regard, we find that as per the provisions of section 55A of the Act, the reference to ld. DVO could be made only if the value adopted by the assessee based on the registered valuer's report is less than the fair market value. In the instant case, the fair market value as determined by the ld. DVO itself was only Rs.14,84,738/- whereas the value shown by the assessee is Rs.37,32,000/-. Hence the value claimed by the assessee is more than the fair market value determined by the ld. DVO.

Accordingly, the reference per se made u/s 55A of the Act becomes illegal in terms of section 55A(1)(a) of the Act. Our view is further fortified by the decision of Hon'ble Bombay High Court in the case of CIT vs Puja Prints reported in 224 Taxman 22 (Bom) wherein it was held that prior to 1.7.2012, reference to valuation officer u/s 55A of the Act could not be made if the value of asset given by the assessee was more than its market value. From 1.7.2012, the Act is amended by stating that 'the value so claimed is at variance with its fair market value'. Hence the reference made u/s 55A of the Act in the facts and circumstances of the instant case to determine the fair market value as on 1.4.1981 for determining cost of acquisition is patently illegal and does not gain support from the provisions of the Act. Accordingly, the indexed cost of acquisition should be considered at Rs.2,17,20,240/-.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10th January, 2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:
Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI