

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 400/JP/2023
निर्धारण वर्ष / Assessment Years : 2013-14

Gopal Lal Meena 185/180, Sec-18 Pratap Nagar, Sanganer, Jaipur	बनाम Vs.	DCIT, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKDPM 3130 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vishnu Khandelwal (CA)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 13/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 06/03/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 01/05/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2013-14 which in turn arise from the order dated 31.03.2016 passed under section 148/142(1)/144 of the Income Tax Act, by DCIT, Circle-07, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. That in the facts and circumstances of the case the learned CIT (Appeal) has erred in holding that director of CBDT being above the rank of Joint Commissioner of Income Tax was competent to accord sanction for issuance of notice under section 148 of the income Tax Act as per provisions of section 151.

2. That in the facts and circumstances of the case, the learned CIT (Appeal) has erred in not holding the issuance of notice under section 148 as unlawful having been issued without sanction of authority as mentioned in section 151 of the income tax Act 1961.

3. That in the facts and circumstances of the case the learned CIT (A) has erred in not giving a clear finding that no notice under section 148 could have been issued on the basis of incorrect and factually wrong reasons.

4. That in the facts and circumstances of the case the learned CIT (A) has erred in not following the decisions of the higher courts that no notice under section 148 be issued in respect of deemed income under section 53C of the income tax Act 1961.

5. That in the facts and circumstances of the case the learned CIT (A) has erred in not quashing the entire assessment proceeding being unlawful and illegal having been completed without issuing of notice under section 143(2) of the income tax Act 1961

6. That in the facts and circumstances of the case the learned CIT (A) has erred in giving a finding that provisions of section 53(2) are not mandatory in referring the issue of valuation of capital asset to the valuation officer despite the request of the assessee.

7. That in the facts and circumstances of the case the learned CIT(A) has erred in law and in fact in confirming the addition made by the learned AO of Rs. 92,25,000/- under section 53C of the income Tax Act 1961.

8. That the appellant craves to add/alter/amend the Grounds of Appeal before the final hearing is completed.”

3. Succinctly, the fact as culled out from the records is that the assessee filed his Return of income for the A.Y. 2013-14 on 30.09.2014

declaring a total income of Rs. 1,30,54,690/-. The case was selected for scrutiny by CPC for which the Director of Income-tax (System), Central Board Director Taxes, vide its office letter no. F.No. DIT(S)-II/CASS/2014-15/2045 dated 30/09/2014, accorded the approval for initiating the assessment proceeding u/s 147 of the I.T. Act, 1961. Therefore, notice u/s 148 of the I.T. Act was issued to the assessee on 09.10.2014 by ITO Ward 7(2) and served upon the assessee through speed post on 14.10.2014. However, no return was furnished by the assessee u/s 148. The case was received in Circle -7 on 08.12.2015. On change of office incumbent, fresh notice u/s 142(1) along with questionnaire was issued on 18.01.2016 which was served upon the assessee.

3.1 During the year under consideration, the assessee has declared income from Long Term Capital Gain of Rs. 1,30,54,692/- with respect to transfer of two capital assets and bank interest of Rs. 8,347/-. Both the capital assets sold are lands situated in the near vicinity of Jaipur. The first one is land at Village Siroli, sold on 28/09/2012 for consideration of Rs. 4,11,00,000/-. From the details/documents obtained during assessment proceedings, it is noticed that the value of this land has been assessed at Rs. 5,03,25,000/- by the sub-registrar for stamp duty purposes. Thus, the

assessee was required to compute the capital gain with respect to this property by considering full value of consideration at Rs. 5,03,25,000/- in place of Rs. 4,11,00,000/- in accordance with the section 50C of the Act. The assessee made the request to the Id. AO that the matter of valuation of property be referred to DVO vide his letter dated 23.03.2016. On this request the Id. AO noted that *“Further the request of the AR to refer his matter to valuation officer as the case is getting time barred by March 31st 2016 and the assessee made request for the first time on 23.03.2016. If he wished to got his matter refer to DVO then he could request the same at the very early stage of assessment when the first notice u/s. 142(1) was issued on 08.05.2015 but had not furnish any such objection or request prior to 23.03.2016 specially when he knows when the case is getting time barred by 31st March 2016, which shows that he just want make the issue debatable by making such request and benefit could be taken before the Id. CIT(A) on this ground.”* Ultimately the Id. AO made the addition of Rs. 92,25,000/- being the full value of consideration adopted by the stamp duty authority and the value of consideration shown by the assessee.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

"I have given thoughtful consideration, to the reply of the assessee. So far applicability of provisions of section 50C is reproduced as under:-

"Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "Stamp Valuation Authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."

Having regard to the fact of the case of assessee, the language of section 50C is very much clear that the capital gain has to be assessed on the value so adopted or assessed or assessable by the stamp valuation authority, whether it is DLC rate or reserve price or FMV, whatever value, the sub-registrar has not taken the applicable DLC rate of the land prevailing at the time of registry, for stamp duty purpose. Rather he adopted the reserve price proposed by JDA for converted land, this agreement of assessee does not contained the word "DLC" it says "for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purpose of section 48, be deemed to be the full value of the consideration" means thereby that if the sub registrar has taken stamp duty on the reserve price of said land the same value, whatever it may be, whether DLC or reserve price, would be considered as sale consideration for the purpose of capital gain.

Further, the contention of the AR that sub registrar has not taken the applicable DLC rate of the land prevailing at the time of registry, for stamp duty purpose. Rather he adopted the reserve price proposed by JDA for converted land, is also not acceptable as if he was having any objection in respect of the value adopted by sub registrar than the assessee could have objected the same by filing an appeal to DIG Registration or any component revenue authority in this regard, but assessee did not file any such objection so far before any of the authority. However, he first time challenged the value adopted by sub registrar, at the time of assessment proceedings, before AO, when show cause u/s 151 was given to him which shows that these objection are nothing but an afterthought to misguide the assessing officer.

In view of provisions of section 50C of the Act, while are very clear in this regard, the full value of consideration has to be taken at the value, adopted/ assessed by sub-registrar for stamp duty purpose.

7.13 In the assessment order, the AO has discussed the submission in respect of sale consideration of land in dispute and refuted it. However, he did not opinion about expenses of Rs. 7,70,000/- which is brought by the assessee in his revised computation of income. I find that the assessee has neither claimed the above expenses of Rs. 7,70,000/- in original e-filed ITR for the AY 2013-14, dated 30.03.2014 nor has he rectified it nor has he claimed it by filing fresh ITR in response to notice u/s 148. The appellant himself accepting that he has sold agricultural land but to materialize the transaction, he deposited Rs. 7,70,000/- with JDA for initiation of conversion proceedings of the agricultural land to residential land. While going through the details of challan, you would find that the deposit of Rs. 7,70,000/- is nothing but a provisional deposit receipt. The copy of receipt is not legible. But, the appellant himself is accepting that it is just a receipt, therefore it does not substantiate any specific purpose. Also I find that the appellant has not submitted any documentary evidences in this regard which can substantiate that this amount of Rs. 7,70,000/- was paid to JDA to convert agricultural land into residential land as a prescribed fee. Also it is undoubtedly admitted fact that the land is question was sold as agricultural land but as residential land. The onus to prove the fact of the case lies on the appellant where he claims something additional during the course of proceedings. In the absence of proof in this regard and in terms of the provisions of section 101 and 106 of the Indian Evidence Act, 1872 which casts the onus of proof on the person who asserts something, the contention of the appellant in respect of claiming additional expenses of Rs. 7,70,000/- is not acceptable.

7.14 As regards of the issue of sale consideration. The appellant has submitted that land was sold at Rs. 4,11,00,000/- whereas the correct DLC is of Rs. 3,99,00,000/- based on the chart of DLC prescribed at the site of the revenue authority. In terms of the provisions of section 101 and 106 of the Indian Evidence Act, 1872 which casts the onus of proof on the person who asserts something, therefore the appellant was required to submit copy of registry wherein it was mentioned the real stamp value of the land in question. Also I find that the appellant has not objected the stamp value of such land so adopted by the Stamp Valuation Authority during the assessment proceeding. He only disagreed by submitting that the Stamp Valuation Authority has valued the land considering it JDA approved land. The provision of section 50C of the Act clearly says "where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed for assessable] by any authority of a State Government (hereinafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such

transfer." Hence, in view of the above very provision laid down in section 50C of the Act, the AO was fully justified in invoking provisions of section 50C of the Act and taking full value of consideration u/s 50C of the Act amounting to Rs. 5,03,25,000/-, resulting an addition of Rs. 92,25,000/- to the total income of the appellant. Ground nos. 1, 2 & 3 are dismissed.

7.15 Ground no. 4 is general in nature. The appellant has also not pressed this ground of appeal. Hence, I am of the opinion that this ground of appeal does not require any adjudication. Therefore, ground no. 4 is dismissed."

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below.

- Assessee has sold a land for a consideration of Rs.4,11,00,000/- , Stamp valuation of this land was Rs.503,25,000/- .

- Assessing officer has made the addition of Rs.92,25,000/- without referring the matter to the Valuation Officer.

2. Being aggrieved with order of the learned CIT (A) the assessee is in appeal before your kind honour (hon'ble tribunal) and the individual grounds of appeal are discussed below.

Ground No. 1 and 2

Notice issued u/s 148 is illegal.

Returned income of the assessee was Rs.1,30,54,690/-, therefore, ITO has no jurisdiction to issue notice u/s 148 and/or assess the income of the assessee.

As the income is more than Rs. 15 lacs therefore, DCIT Range 7 has the jurisdiction to issued notice to the assessee.

In this reference following instruction is relevant

Section 119 of the Income-tax Act, 1961 – Instructions to subordinate authorities – Instructions regarding income limits for assigning cases to Deputy

Commissioners/Assistant Commissioners/ITOs. INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED 31-1-2011 :

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mofussil areas)		Income Declared (Metro cities)	
	ITOs	ACs/DCs	ITOs	DCs/ACs
<i>Corporate returns</i>	<i>Upto Rs. 20 lacs</i>	<i>Above Rs. 20 lacs</i>	<i>Upto Rs. 30 lacs</i>	<i>Above Rs. 30 lacs</i>
<i>Non-corporate returns</i>	<i>Upto Rs. 15 lacs</i>	<i>Above Rs. 15 lacs</i>	<i>Upto Rs. 20 lacs</i>	<i>Above Rs. 20 lacs</i>

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.

In the instant case income of the assessee was more than Rs.15 lacs therefore, jurisdiction lies with the AC/DC. It is pertinent to mention here that the notice has been issued by the ITO, therefore, it is illegal.

Ground No. 3 and 4

That in the facts and circumstances of the case the learned CIT (A) has erred in not giving a clear finding that no notice under section 148 could have been issued on the basis of incorrect and factually wrong reasons.

No escaped income in the reasons recorded:-

The perusal of the aforesaid reasons reveals that

a That the learned AO issued the notice under section 148 on approval by the Directorate of income Tax Systems new delhi vide its letter No.dated 30.09.2014

b That the approval was granted to examine the capital gains of Rs.1,30,54,692/-as declared in the return of income.

c The learned AO has mentioned that he has reason to believe that the income of the assessee Rs.13054692/-as declared in the return of income escaped assessment.

Notice u/s 148 can be issued if there is reason to believe that there is some income escaped from the assessment.

In the instant case, notice has been issued to examine the return of income. In the notice it has been mentioned that the income of Rs.13054692/- has escaped from assessment. It is pertinent to mention here that this was the income declared by the assessee, therefore, how it can be escaped from assessment.

Therefore, the notice issued u/s 148 is illegal.

[Proceeding u/s 148 cannot be resorted with reference to section 50C –](#)

The only issue in the case of the assessee is with reference to sale of agricultural land at village siroli on 28.09.2012 for an apparent consideration is of Rs. 4,11,00,000/- against the value taken by the sub- registrar for purposes of stamp duty at Rs. 5,03,25,000/-. The Learned Assessing Officer has made addition of Rs. 92,25,000/- (5,03,25,000/- - 4,11,00,000/-) being the difference the apparent consideration and the value taken by the sub-registrar. Thus there is no other addition with reference to the original return. It is submitted that the provisions of section 50C are deeming nature and hence proceedings u/s 147 cannot be initiated for deeming income. The Hon'ble Rajasthan High court, Hon'ble ITAT Jaipur Bench/Jodhpur Bench have held such proceedings as ab-initio void. The following case laws are quoted in support: -

(i) [Arun Kumar Choudhary vs. Income Tax Officer \(ITA No. 268/JP/2015\) dated 08.09.2016 for Assessment Year 2008-09](#)

A mere adoption of higher value of property by the stamp valuation authority cannot lead to a formation of belief of escapement of income, particularly when the value so adopted is adopted for stamp duty purposes only.

(ii) [INCOME TAX OFFICER vs. SHIV SHAKTI BUILD HOME \(P\) LTD \(2011\) 61DTR 37 \(ITAT Jodhpur Bench\)](#)

Merely because the stamp valuation authority has adopted certain valuation for payment of stamp duty on the property purchased by the assessee, the same cannot be a basis to conclude that assessee's income has escaped assessment,

particularly when no tangible material has been brought on record to suggest escapement of income except the Inspector's report which could not be relied upon to ascertain the market value of the property; reassessment proceedings rightly annulled by CIT(A).

iii) [CIT VS Kishan Kumar and Others \(2008\) 315 ITR 204 \(RAJ\)](#)

There may be cases, where the assets may have been purchased at the price higher than the DLC rates, and rather there may be cases, where the assets may be acquired at a price lesser than the DLC rates, The reasons for either of the situations are innumerable, and can not be put into any straight jacket. Sec 50 C also does not show, that the valuations put by the stamp valuations Authority is required to be adopted as the valuation of the property, as a rule of thumb ."

iv) [CIT Vs. Khandelwal Shringi & Co. \(2017\) 398 ITR 420 \(Raj.\)](#)

has held that " the rate of property fixed by stamp valuations authority for the purpose of registration of sale deeds cannot be taken to be the price for which the property is purchased.

Ground No. 5

Assessment made without issuing of notice under section 143(2) of the income tax Act 1961

The following case laws are quoted in support: -

(i) [ACIT Vs Hotel Blue Moon 321ITR 362 \(Supreme Court\).](#)

Omission on the part of assessing authority to issue notice u/s 143(2) cannot be a mere procedural irregularity and the same is not curable

(ii) Pr. CIT Vs Shri Jai Shiv Shankar Traders P Ltd (ITA 519/2015 quoted at 282 CTR 435(2015)

The Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax -08 Vs. Shri Jai Shiv Shankar Traders P limited (ITA 519/2015 quoted at 282 CTR 435 (2015) held that In the case Notice under section 148 was issued on 30.03.2010 and return was filed on 16.12.2010. As no Notice under section 143(2) was issued after 16.12.2010 the assessment framed u/s 143(3) was held void. Brief facts of the case are as under:

DATE	PARTICULARS
16/09/2008	Original ITR has been filed by assessee

30/03/2010	Notice u/s 148 has been issued by ITO
01/10/2010	Notice U/s 143(2) issued by ITO
16/12/2010	Assessee stated that original ITR shall be treated as ITR in compliance of notice u/s 148
	NO NOTICE HAS BEEN ISSUED BY AO U/S 143(2) AFTER 16/12/2010 & BEFORE MAKING ASSESSMENT.
31/12/2010	Assessment order passed

(iii) [CIT Vs Sukhini P Modi \(2014\) 367 ITR 0882 \(Gujrat\)](#)

Assessment—reopening—Enquiry before assessment—mandatory Compliance—AO had observed that capital gain received from sale of shares by assessee had escaped assessment- Notice for reopening of assessment u/s 148 was issued by A O and consequently certain additions were made—CIT(A) held that after notice of reassessment u/s 148 had been issued, procedure u/s 142(1) and 143 for completing assessment was required to be carried out and having not done so, asstt framed by AO was not sustainable-ITAT concurred with view of CIT(A) – Held, Supreme Court, in case of ACIT v Hotel Blue Moon had held that Ao had to necessarily follow provisions of section 142, 143(2) and 143(3) – CIT (A) and ITAT had held that procedure prescribed for issuance of notice u/s 143(2) had not been followed at all by revenue—Assumption of jurisdiction of issuance of notice of reopening itself would not be sustainable- Indulgence of High court did into concurrent findings of both authorities was not warranted-- In the absence of fulfillment of mandatory requirement of issuance of notice us 143(2) both authorities rightly and validly held against revenue and in favour of the assessee. Revenue appeal dismissed

Ground No. 6 and 7

That in the facts and circumstances of the case the learned CIT (A) has erred in giving a finding that provisions of section 50(c)(2) are not mandatory in referring the issue of valuation of capital asset to the valuation officer despite the request of the assessee.

Facts of the case: -

The only issue in the case of the assessee is with reference to sale of agricultural land at village siroli on 28.09.2012 for an apparent consideration is of Rs. 4,11,00,000/- against the value taken by the sub- registrar for purposes of stamp duty at Rs. 5,03,25,000/-. The Learned Assessing Officer has made addition of Rs. 92,25,000/- (50325000- 41100000) being the difference the apparent consideration and the value taken by the sub-registrar. Thus there is no other addition with reference to the original return. It has already been challenged that the provisions of section 50C are of deeming nature and hence proceedings u/s 147 cannot be initiated for deemed income. The Hon'ble ITAT Jaipur Bench/Jodhpur Bench have held such proceedings as ab-initio void.

Further during the course of assessment proceedings the assessee requested for referring the matter to the valuation cell as per provisions of section 50C(2) but for reasons of paucity of time the same was not done by the Learned Assessing Officer. Thus the statutory provisions stand violated and therefore the addition deserves to be quashed. In this regard the learned CIT Appeal has observed as under in para 7.12.5 on page 7 of the appellate order.

“7.12.5 Also, I find that the provision laid down in section 50C(2) of the Act, empowers AO to the extent of “may” refer the valuation of the capital assets to a Valuation Officer, As per language used in this provision, it does not strictly bind AO as this section does not use word “shall” refer the valuation of the capital asset to a Valuation officer. Hence the provisions laid down hereinabove (supra) and ratio laid down in various judicial decisions (supra), the AO was fully justified in not referring the matter to the DVO, despite the request was made under section 50C(2) of the Act just before a week of assessment proceedings getting barred by limitation.”

It is submitted that the above finding and decision of the learned CIT (A) is incorrect. In the Appellate order the learned CIT (A) on his own has quoted the following two decisions wherein it has been held that when the assessee request for reference to the DVO it is the duty of the assessing officer to refer the matter to the DVO. It has been held in these cases that once the assessee objects to the value adopted by the sub registrar and request for valuation of property to the district valuation officer there is no choice with the learned AO but to refer the same for valuation to the district valuation officer. Non compliance of the provisions of 50C(2) cannot be held valid.

Reliance has been placed on the following Decisions:

(a) In the matter of Shri Goverdhan Prasad Singhal ITA No. 64/JP/2022 and ITA No. 62/JP/2022 in the order dated 07/06/2022.

Held that A.O. Should refer the matter to the Valuation officer

[Copy of Order is enclosed](#)

(b) “Ramdoss Ramvijay Kumar Vs ITO (ITAT Mumbai) in ITA No.

3096/Chny/2016, pronounced on 15.02.2023 held as follows

"In so far as merits of the issue, although the Learned CIT(A) did not adjudicate the issue on merits with regard to the additions made on account of computation of capital gain by adopting full value consideration in terms of provisions of section 50C(1) of the Act, but fact remains that the assessee has raised his objection for adopting full value of consideration in terms of provisions of section 50C(2) of the Act, and requested to refer the matter to the DVO for determination of fair market value of the property as on the date of sale. Although, the assessee has requested to refer the matter to DVO in terms of provisions of section 50C(2) of the Act. But the AO has proceeded with computation of capital gains and adopted full value of consideration in terms of provisions of section 50C(1) of the Act. In our considered view, once the assessee objects for adopting full value of consideration and requests for reference to DVO, it is the duty of the assessing officer to refer the matter to the DVO and find out correct fair market value of the property as on the date of sale. Since, the AO has failed to comply with the requirements of law, we are of the considered view that the issued need to go back to the file of the AO and thus, we set aside the issue to the file of the assessing officer and direct the AO to reconsider the issue of computation of capital gain and also refer the matter to the DVO to determine correct fair market value of the property as on the date of sale, and decide the issue in accordance of law.

(c) Further, in the case of Razia Abu Khatri Vs ITO before the ITAT Delhi, dated 24.02.2020 the issued similar to this case that whether AO was correct in invoking section 50C where no reference to valuation officer despite being request was made by the assessee. The Hon,ble ITAT stated that, sale value for the purpose of the stamp duty ie. Circle rate being higher than the sale consideration recorded in the sale deed, provisions of the section 50C of the Act are applicable in the case of the assessee and the long term capital gain was to be computed accordingly. The assessee contended that the circle rate is for vacant building whereas in the case of the assessee building were occupied by the tenants. This contention of the assessee was rejected by the assessing officer. The assessee requested by letter dated 11/03/2014 to refer the valuation of the properties to the district valuation officer, but this contention was also rejected buy the assessing officer on the ground that it was not maintainable because, the sub registrar of Mumbai, Maharastra being a government authority, no need arise for valuation from the District Valuation officer, when the assessee in the present case had claimed before assessing officer that the value adopted or assessed by the stamp valuation authority under sub-subjection (1) exceeds the fair market value of the property as on the date of transfer, the assessing officer should have referred the valuation of the capital asset to the valuation officer instead of adopting the value taken by the state authority for the purpose of stamp duty, the very purpose of the legislature behind the provisions laid down under sub section (2) to section 50C of the Act is that a valuation officer is an expert of the subject for such valuation and it certainly in a better position than the assessing officer to determine the valuation. Thus, non compliance of the

provisions laid down under sub section (2) by the assessing officer cannot be held valid and justified. Hence the assessing officer is barred from invoking provisions of section 50C of the Act for computation of the long term Capital gain on the sale transaction carried out by the assessee. Accordingly, the appeal is allowed. “

(d) Sunil Kumar Agarwal vs. CIT (2014) 112 DTR 164 (Cal)

For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer.

There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

(e) CHANDRA NARAIN CHAUDHRI VS CIT (2014) 99 DTR (ALL) 0105

It is mandatory on the part of the AO to make reference to Valuation Officer as per provisions of section 50C where the assessee contended that valuation as done by Stamp Valuation Authority is not acceptable to him. The decision of the AO was not correct where he held that reference to Valuation Officer is optional since the assessee had not objected to value adopted by the State Valuation Authority, there was no need to refer matter to the Valuation Officer [Kalpataru Industries Vs. ITO ITAT No. 5540/Mum/07 decided on 24.08.2009.

In view of above it is humbly requested to please allow the appeal and delete the additions made by A.O.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

DATE	PARTICULARS	Paper Book Pages
30/03/2014	Original ITR has been filed by assessee declaring total income of Rs. 1,30,54,690/-.	1 to 3

13/10/2014	Notice u/s 148 has been issued by ITO <u>who is having no Jurisdiction</u>	4
31/08/2015	Notice U/s 143(2) issued by ITO	
30/10/2015	Assessee has furnished ITR and computation in compliance of notice u/s 148	
08/12/2015	As the returned income was more than the jurisdictional limit of ITO, case has been transferred to DCIT, Circle -7	
18/01/2016	Notice u/s 142(1) issued by DCIT – 7	
	Various details have been furnished as and when required by AO	
	NO NOTICE HAS BEEN ISSUED BY DCIT U/S 143(2) BEFORE MAKING ASSESSMENT.	
21/03/2016	Assessee has furnished Valuation report issued by registered valuer.	16 to 21
	There was no entrance on the property from Govt Road. Entry can only be made from the other private property.	12
23/03/2016	Assessee has requested to refer the matter to the Valuation officer	
31/03/2016	Assessment order passed by DCIT without referring the matter to the valuation officer.	

7. The Id. AR of the assessee in addition to the written submission vehemently argued that the assessment has been made without issuing notice u/s. 143(2) of the Act and therefore, the order of the assessment is null and void. To drive home to this contention the Id. AR of the assessee relied upon the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Shri Jai Shiv Shankar Traders Private Limited in ITA no. 519/2015. The

assessee submitted that he has filed the return of income in response to notice u/s. 148 on 30.10.2015. In support this contention the Id. AR of the assessee filed the order sheet entry and the same is extracted here in below :

30/10/2015 श्री सी.एच. डूकाड CA / AR अपील (इए) करने पर ITR की कपी, कर्षण भूमि खरीद एवं विक्री की राजपत्र की कपी गलत ही जमा करके पेश करने के लिए दिनांक 16/11/2015 प्रेषित ;

The Id. AR of the assessee on merits argued that there are reasons as to why there exist the alleged difference of the consideration and value considered for the stamp duty purpose. The Id. AR of the assessee vehemently argued that even as per the DLC rates the value did not exceed Rs. 4,11,00,000/-. The sub-registrar wrongly took it as approved land, whereas the process of approval was going on and no approval was granted for conversion of land for residential purpose upto the sale of the said land and therefore, the rate adopted is also incorrect on facts. The assessee has only deposited Rs. 7,70,000/- as conversion charges, the remaining procedure for converting the land could not be completed by the JDA till the sale of the land by the assessee. Hence there is no ground to value the land at Rs. 5,03,25,000/-. This aspect of the matter demanded the matter to be decided by the DVO and thus, the prayer of the assessee was made

justified and the lower authority has not dealt this aspect of the matter. When the assessee request the Id. AO to refer the matter to DVO and without that the order passed cannot be considered as legal and to drive home this contention the Id. AR of the assessee relied upon the judgment cited in his written submission.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. AO and that of the Id. CIT(A). As regards the contention of the assessee that no notice u/s. 143(2) of the Act issued by the Id.AO, the Id. DR submitted that since the assessee has not filed the return of income in response to notice u/s. 148 of the Act no notice can be issued. This issue has been very well decided by the Id. CIT(A) after taking the remand report of the Id. AO and in para 7.9 wherein the contentions raised by the assessee has been considered and decided against the assessee and the Id. DR supported those finding of the Id. CIT(A). The assessee made a request to refer the matter to the departmental valuation officer just before the 6 days when the assessment getting time barred. The Id. CIT(A) also dealt with this issue and decided that it is the discretion of the assessing officer. The Id. DR submitted that the assessee knowing made such request

just before 6 days remaining made request to refer the matter of valuation to DVO.

9. We have heard the rival contentions and perused the material placed on record. The assessee has challenged the finding of the Id. CIT(A) on various grounds among other. In ground no. 5 the assessee has challenged the finding of the learned CIT (A) stating that he has erred in not quashing the entire assessment proceeding being unlawful and illegal having been completed without issuing of notice under section 143(2) of the income tax Act 1961. Since this ground has an impact on the ground and this ground being legal in nature the same is decided first. The fact related to the ground is that notice u/s. 148 of the Act was issued to the assessee in this case on 09.10.2014. The Id. AO in the assessment order and in the remand proceeding noted that the assessee has not filed any return in response to the notice u/s. 148. To counter that aspect of the matter the Id. AR of the assessee filed the certified copy of the order sheet entry wherein it is recorded that on 30.10.2015 the Id. AR of the assessee appeared and filed the copy of ITR, details of agricultural purchase and sale details and the proceeding was adjourned to 16.10.2015. The Id. AR of the assessee submitted that once the copy of the ITR was handed over in the proceeding

u/s. 148 and the same is not considered as return is not correct when the proceeding sheet specific record the Id. AR of the assessee filed the ITR. On the contrary revenue undisputedly contended that since the assessee has not filed the return of income no notice u/s. 143(2) was issued to the assessee. Here the assessee has failed in support of the contention the order sheet entry and submitted that the same is the return the assessee has filed in response to the notice u/s. 148 of the Act and since the assessee has undisputed filed the copy of the ITR in the absence of the contrary finding the same should be considered as return filed. This aspect of the matter was argued by the assessee in the beginning from the date of hearing first hearing fixed on 01.11.2023. Since than the case was adjourned at the instance to prove this version of the assessee contrary the case was adjourned to 29.11.2023, 05.12.2023, 03.01.2024, 09.01.2024, 06.02.2024 and finally the bench heard the matter on 13.02.2024. Since the contention of the assessee that his AR appeared on 30.10.2015 and filed the copy of the ITR, the notice u/s. 143(2) is required to be issued before the completion of the assessment which in this case not issued. So considering the decision of the apex court in the case of ACIT Vs Hotel Blue Moon 321ITR 362 (Supreme Court) where in it has been held that Omission on the part of assessing authority to issue notice u/s 143(2) cannot be a

mere procedural irregularity and the same is not curable. Considering this finding of the apex court the Hon'ble Delhi High Court in the case of Pr. CIT Vs Shri Jai Shiv Shankar Traders P Ltd (ITA 519/2015 quoted at 282 CTR 435(2015) held that that in the case Notice under section 148 was issued and return was filed on and thereafter no Notice under section 143(2) was issued the assessment framed u/s 143(3) was held void. Respectfully following finding that finding that decision cited and the fact being similar in this case also the failure to issue a notice to the assessee u/s. 143(2) of the act when the assessee on 30.10.2015 made the statement before the AO to effect that the original return filed should be treated as a return pursuant to notice u/s. 148 of the Act, is fatal to the order of the re-assessment. Based on these observations, ground no. 5 raised by the assessee is allowed.

10. Since we have considered the legal ground raised by the assessee the other ground raised by the assessee become educative in nature and the same is not adjudicated.

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

Order pronounced in the open court on 06/03/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/03/2024

*Ganesh Kumar, PS

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

1. The Appellant- Gopal Lal Meena, Jaipur
2. प्रत्यर्धी / The Respondent- DCIT, Circle-07, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 400/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar