

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 549/Kol/2024
Assessment Year: 2016-17

Smt. Kakali Sen (PAN: AVXPS 2468 C)	Vs.	ITO, Ward-22(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	25.09.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.10.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manoj Kataruka, Advocate
For the Respondent/ राजस्व की ओर से	Smt. Monalisha Pal Mukherjee, JCIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 02.02.2024 for the AY 2016-17.

2. The common issue raised in the various grounds of appeal is against the confirmation of addition of Rs. 35,59,792/-, Rs. 11,84,375/- and Rs. 6,88,763/- as made by the AO u/s 56(2)(vii) of the Act being the difference of the value as per stamp valuation authority and purchase value without referring the matter to the DVO in respect of three sales.

3. Facts in brief are that the assessee filed return of income of 21.03.2017 declaring total income of Rs. 10,96,150/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served on the assessee. The assessment u/s 143(3) was completed vide order dated 21.12.2018 accepting the returned income of the assessee. Pertinent to state that during the original assessment proceedings, the AO noticed that there were differences between the stamp duty value and purchase price with respect to three properties and the matter was referred to DVO, Valuation Cell, Income Tax Department, Kolkata on 21.11.2018 but the requisite report from the Valuation Cell was not received by the AO and as such assessment proceedings, has culminated into passing of this order on 21.12.2018 accepting value declared by the assessee in the purchase deeds. Thereafter the PCIT exercised the revisionary jurisdiction u/s 263 of the Act by issuing notice u/s 263 of the Act and thus revised the assessment vide order dated 01.03.2021 with a direction to pass fresh order . In the set aside assessment proceedings, the AO added the difference between the stamp duty value and purchase value in respect of these properties thereby making addition u/s 56(2)(vii)(b)(ii) without referring the matter to DVO. The AO while passing the order did mention in middle of para 5 that remedy as provided under the Act has given the assessee to get the valuation made from the DVO , If he is not satisfied with the value adopted by the authorities executing the deeds. But the assessee has not got done valuation from the DVO for the reason best known to her.

4. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO by noting that as per AO, the assessee did not get value from the District Valuation Officer to whom a reference was made for valuation of the properties.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has purchased three properties during the impugned assessment year. The stamp value of which was apparently higher than the purchase price. In the original assessment proceedings, the issue was examined by the AO and the matter was referred to the DVO. However, the report was not received from DVO and due to case being getting time barred, the assessment was framed vide order dated 21.12.2018 accepting the returned income meaning thereby that the purchase price disclosed by the assessee in respect of three properties have been accepted. It was stated before us that the assessee did not pursue the value before the DVO because the AO has accepted the purchase price in respect of three properties. Now in the set aside assessment proceedings, the AO simply made addition by citing the reason that the assessee did not get the properties' valued from the DVO for the reason best known to her and for the same reason, the assessment order was affirmed by the Ld. CIT(A). In our opinion, the reference to the DVO is mandatory where there is a difference between the stamp duty value and purchase price declared by the assessee if the AO intends to make an addition on account of difference between the two prices one as per stamp duty valuation and second as shown in the purchase deeds. In the present case, the same has not been adhered to by authorities below. Therefore, the appellate order passed by the Ld. CIT(A) cannot be sustained. Besides it has been brought to our notice that there are some litigations going on the above said properties which need to be taken into account and factored in while assessing the value of these properties which is quite fair and reasonable. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to decide the issue after obtaining a letter from the DVO. Needless to state that the issue of litigations have to be given due weightage and the price to be adopted by the AO has to be discounted accordingly as per his wisdom and on reasonable basis. The issue is set aside to the file of AO with the above directions.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 9th October, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 9th October, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Smt. Kakali Sen, 20, Hare Krishna Sett Lane, Dum Dum, Kolkata-700050
2. Respondent – ITO, Ward-22(2), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata