

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.589/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2014-15

Shrikant Somawar  
Prop. Raigarh Gas Service,  
Gouri Shankar Mandir Road,  
Raigarh (C.G.)-496 001  
PAN: AJFPS7436J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-1,  
Raigarh (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 12.11.2025

घोषणा की तारीख / Date of Pronouncement : 13.11.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM:**

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 28.07.2025 for the assessment year 2014-15 as per the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming addition of Rs.67,57,852/- made by the A.O on account of long term capital gain on property sold without appreciating facts of the case properly. The addition made by the A.O and confirmed by the Ld. CIT(A) is arbitrary, baseless and not justified.

2. Without prejudice to above ground, Ld. CIT(A) erred in confirming addition of Rs.67,57,852/- without making reference to DVO in spite of specific request made by the appellant. The addition made by the A.O and confirmed by the Ld. CIT(A) is illegal and not justified.

3. The appellant reserves the right to add, amend or alter any ground/s of appeal.”

2. The Ld. Counsel for the assessee submitted that **Ground of appeal No.2** is the legal ground and if that is answered in affirmative, rest of the grounds shall become academic in nature. Demonstrating the grievance of the assessee pertaining to ground of appeal No.2, the Ld. Counsel brought to our notice at Page 70 of the paper book which is the submission before the A.O i.e. ITO, Ward-1, Raigarh, dated 27.12.2016, wherein at Para 4, the assessee had requested the A.O to refer the matter to the DVO and the same is extracted as follows:

“4. The calculation of capital gain under 50 C of the act is not justified on the basis of the fact that the property is limited to

restricted sale/purchase transactions because the karta happens to belong to scheduled tribe, hence affecting the market value of the property considerably. Therefore, the value at which the transaction was executed is the actual market value. In case your honor, is not agreed to the market value of the property, the same may be referred to the Department's Valuation Officer for assessing the actual market value.”

3. The fact of the matter as submitted by the Ld. Counsel for the assessee is that there is an addition made under the head ‘capital gain’ and the dispute arose due to the difference in the sale consideration value and the stamp duty value. Demonstrating through the sale deed, the Ld. Counsel for the assessee submitted that both the seller and the purchaser are tribal and as per relevant statute applicable in the State of Chhattisgarh, land owned by Tribal can only be purchased by tribal and as per the sale deed, therefore, it is categorically mentioned in the cause title both the seller and purchaser as against their name that they are both tribals. In this scenario, if there is difference between the sale consideration value and the stamp duty value then the prayer of the assessee before the A.O should have been complied with by the A.O for reference to the DVO. However. The said request was not accepted by the A.O and he proceeded to complete the assessment u/s.143(3) of the Act by observing as follows:

“4. The assessee has submitted that the value of the land as per stamp valuation authority is more than the actual market price, therefore the calculation of capital gain under section 50C is not justified on the basis of the fact that the property

is limited to restricted sale/purchase transactions because the assessee belong to scheduled tribe, hence affecting the market value of the property considerable. The contention of the assessee is not acceptable due to the fact that if the assessee had such genuine objection, he should have raised it before the stamp valuation authority which was not done. Therefore, I find no merit in the contention of the assessee regarding the reference to Department's Valuation Officer.”

Therefore, the A.O added LTCG of Rs.67,57,852/- a/w. returned income filed by the assessee at Rs.8,20,910/- and arrived at a total assessed income of Rs.75,78,762/- which was upheld by the Ld. CIT(Appeals)/NFAC.

4. That assailing the legal ground, the Ld. Counsel for the assessee had placed reliance on the following case laws:

- (i) Clayking Minerals LLP Vs. ITO (2025) 213 ITD 1 (Ahd.)
- (ii) ACIT Vs. Trun Agrawal (2018) 173 ITD 107 (Agra.)
- (iii) Ramdoss Ramvijay Kumar Vs. ITO (2023) 222 ITJ 39 (Chennai)

5. Per contra, the Ld. Sr. DR relied on the findings of the sub-ordinate authorities and could not bring on record any evidence to show that the department had referred the matter of the assessee to DVO for his comments.

6. Having heard the parties herein and on examination of the facts and legal parameters of the case, we find in the recent decision of the Co-ordinate Bench of the Tribunal, Ahmedabad in the case of **Clayking**

**Minerals LLP Vs. ITO (supra)** on the same parity of reasoning and on facts held that where the assessee had purchased property for sum of Rs.42.72 lakhs, however, stamp duty value of same was Rs.1.15 crores, since value of property was disputed, the A.O had to make a reference to DVO for purpose of valuing same. For the sake of clarity, the relevant findings of the Tribunal are extracted as follows:

“13. However, in the case of Dilip Manibhai Prajapati vs. Income-tax Officer [2024] 164 taxmann.com 224 (Ahmedabad-Trib.) [28-06-2024], the ITAT Ahmedabad held that where assessee purchased agricultural land at price lower than stamp value of land, however FMV of land determined by DVO was within 10% of purchase price, showing no significant difference from purchase consideration, no addition under section 56(2)(x) was warranted. The ITAT in the above order held that from bare perusal of section 56(2)(x), wherein any person receives an immovable property for purchase consideration which is less than the stamp duty value the difference is liable to be taxed in his hands subject to the condition that the difference does not exceed Rs.50,000/- or 10% of the consideration whichever is more. **Further, the third proviso to the section clearly provides that where the stamp duty value of the immovable property is disputed by the assessee on grounds mentioned in section 50C(2), the AO may refer its valuation to the Valuation Officer.**

14. Therefore, there is merit in the contention of the assessee that where the stamp duty value of the property is disputed, the AO has to make a reference to the DVO for the purpose or valuing the same.

15. Accordingly, in light of the above observations, we hereby refer the matter to the file of the Assessing Officer with a direction to refer the matter to DVO as requested by the assessee vide Ground Number 2 raised before us.

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

7. That on the same parity of reasoning, as per mandate of Section 56(2)(x) of the Act, the “third proviso” to the said section clearly provides that where the stamp duty value of the immovable property is disputed by the assessee on grounds mentioned in section 50C(2), the A.O may refer the valuation to the Valuation Officer. The reasoning behind this provision is upholding the rights of the tax payer assessee so that the taxability arrived at is absolutely accurate and there is no ambiguity regarding taxability of a particular income. The Revenue even if refers the matter to the DVO in such circumstances, regarding the difference in sale consideration value and the stamp duty value, no prejudice is caused to the revenue through making such reference. Rather, clarity can be sought on the issue before taxing the particular income.

8. In the present case, the assessee in spite of providing sale deed copy etc. before the A.O, he has refused and found no merit in the request of the assessee for reference to the DVO. The facts were before the A.O that both seller and purchaser were Tribal and there was as per applicable legislation in the State of Chhattisgarh a tribal land cannot be purchased by any other person except tribal. Therefore, these issues should have been considered and accordingly the case justified a reference of valuation to the DVO. In other words, he had acted in defiance to the provisions of the Act without any justifiable reasons. That without the order of the DVO, there is no conclusive proof that the addition he had arrived at in the

assessment order is correct. Even, the Ld. CIT(Appeals)/NFAC without rectification of such mistake had summarily confirmed the assessment order.

9. Another question arises that if as in the present case, the A.O had not referred the matter to the DVO and had directly proceeded to compute the capital gains and made addition accordingly, whether this non-reference to the DVO can be called as fatal so to nullify the assessment itself?

10. To our understanding, answer is negative. This is so because, the A.O as quasi-judicial authority is duty bound to follow the prescribed procedure as per law and then arrive at a particular conclusion. When the mandate of the law i.e. the “third proviso” to Section 56(2)(x) of the Act mandates the reference to the DVO and if such reference is not done by the quasi-judicial authority, then he must be provided with an opportunity to rectify that procedural mistake and come out with a speaking order. If on the other hand when we say that such mistake for non-reference to the DVO or non-following the procedure nullifies the assessment then the very basic question as to what shall be the exact valuation of the property for determination of the taxes that question itself dies which is not the correct arriving at the logical end.

11. On the other hand, if the matter is remanded to the file of the A.O to comply with the directives of the statute and determine accordingly the exact amount for purpose of taxation that only provides the appropriate reasoning to the issue at hand and accordingly, the process of law can continue and at the same time, the scales of justice stands balanced.

12. Accordingly, in light of the above observation, we set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter to the file of the A.O with a direction to refer the matter to the DVO as requested by the assessee vide Ground of appeal No.2 raised before us. Thus, the **Ground of appeal No.2** raised by the assessee is allowed for statistical purposes.

13. Since this matter has been decided on the basis of the legal ground as aforesaid, all other grounds on merits etc. shall stand academic only.

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

Order pronounced in the open court on 13<sup>th</sup> November, 2025.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 13<sup>th</sup> November, 2025.

SB, Sr. PS

**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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.