

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'SMC' BENCH, KOLKATA**

**Before Shri J. Sudhakar Reddy, Accountant Member**

**I.T.A. No. 2150/KOL/ 2016  
Assessment Year : 2012-2013**

**Sri Pradip Kumar Das,.....Appellant**  
**13, Hempal Lane, Flat No. 204,**  
**P.O. Belurmata (Howrah)-711 202**  
**[PAN : ACPPD 6969 C]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-1(3), Durgapur,**  
**Aayakar Bhawan, Ayakar Bitjhi,**  
**Durgapur-713 216, West Bengal**

**Appearances by:**

*Shri V.N. Purohit, A.R., for the assessee*  
*N o n e, for the Department*

Date of concluding the hearing : January 31, 2017  
Date of pronouncing the order : February 08, 2017

**O R D E R**

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals), Durgapur dated 31.08.2016 for the assessment year 2012-13 on the following grounds:-

- (1) *That the reopening of proceedings by ITO u/s 147 of the I.T. Act, 1961 is bad in law and also on the facts and circumstances of the case and CIT(A) has erred in confirming ITO's action.*
- (2) *That without prejudice to above ground, the CIT(A) has erred, both in law and on the facts of the case in holding that L.T. Capital Gain arrived by ITO on basis of fair market value estimated by 1<sup>st</sup> Land Revenue Officer is correct and thereby dismissing the appeal.*

2. The sole issue that arises in this appeal for my consideration is whether the Assessing Officer was right in determining the fair market value of the asset as on 01.04.1981 by relying on valuation furnished by the First Land Acquisition Collector, Government of West Bengal, after rejecting the valuation report of the Government Registered Valuer, which was relied upon by the assessee. The assessee does not press Ground No. 1 on the issue of reopening of assessment proceedings under section 147. Hence, the same is dismissed.

3. Brief facts of the case are that the assessee is a co-owner of a property situated at 7A, Allenby Road, Kolkata, P.S. Bhowanipur, Kolkata-20. There were five co-owners and the assessee received one-fifth share of the property. This property was sold to M/s. JCS Impex Pvt. Limited for the total sale consideration of Rs. two crores. The assessee got the fair market value of the property valued by Government Registered Valuer vide Registration No. WB/CCIT/KOL-VII/40/Registration of Valuer/Immovable Property/2006-07, who has determined the value of property at Rs.32,60,000/- as on 01.04.1981. On the basis of this, 1/5<sup>th</sup> share, i.e. Rs.6,52,000/- was adopted by the assessee as fair market value as on 01.04.1981. The Assessing Officer made an enquiry from the First Land Acquisition Collector, Government of West Bengal, who had valued the property as on 01.04.1981 at Rs.4,13,818/-. The assessee objected to the adoption of such valuation. The Assessing Officer instead of referring the valuation of the property to the Departmental Valuation Officer adopted the valuation given by the First Land Acquisition Collector, Government of West Bengal vide its letter dated 29.01.2016 and determined the capital gains. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(Appeals) and the first appellate authority upheld the order of the Assessing Officer. Aggrieved with the order of the Id. CIT(Appeals), the assessee is in appeal before the Tribunal.

4. After hearing the rival contentions, I find that the letter of the First Land Acquisition Collector, Government of West Bengal relied upon by the Assessing Officer, was not furnished to the assessee. This enquiry was made behind the back of the assessee. When the evidence is relied upon by the assessing authority, the principles of natural justice demand that the assessee should be confronted with the said evidence. As this was not done, hence I hold that reliance cannot be placed by the Assessing Officer on the letter of the First Land Acquisition Collector, Government of West Bengal. The valuation of the property was given by the Registered Valuer empanelled by the Income Tax Department. If the Assessing Officer was not in agreement with the valuation given by the Registered Valuer empanelled with the Income Tax Department, then the proper course would have been to refer this valuation to the Departmental Valuation Officer.

5. Under these circumstances, I am of the considered opinion that the valuation furnished by the Registered Valuer has to be accepted and the capital gains recomputed accordingly. As the assessee has done this exercise, the Assessing Officer is directed to accept the capital gains calculation as returned by the assessee. In the result, the addition made is deleted and the appeal of the assessee is allowed.

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

Order pronounced in the open Court on February 8<sup>th</sup>, 2017.

**Sd/-**  
**J. Sudhakar Reddy**  
**(Accountant Member)**

***Kolkata, the 8<sup>th</sup> day of February, 2017***

***Copies to : (1) Sri Pradip Kumar Das,***  
***C/o. V.N. Purohit & Co.,***  
***Chartered Accountants,***  
***Diamond Chambers, Unit-III, 4<sup>th</sup> Floor, Suit No. 4G,***  
***4, Chowringhee Lane, Kolkata-700 016***

**(2) Income Tax Officer,  
Ward-1(3), Durgapur,  
Aayakar Bhawan, Aayakar Bithi, Durgapur-713 216**

(3) Commissioner of Income-tax (Appeals), Durgapur,

(4) Commissioner of Income Tax, Kolkata

(5) The Departmental Representative

(6) Guard File

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**