

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCHES: "A" NEW DELHI ]**

**BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER  
AND SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**ITA. No.4166/Del/2013  
Assessment Year : 2009-10.**

Income Tax Officer,  
Ward : 2 (1),  
Moradabad.

Vs.

M/s. Aditya Narain Verma [HUF]  
UCO Bank Building,  
Civil Lines,  
Moradabad [U.P.]

**PAN : AAFHA 3646 H**

**(Appellant)**

**(Respondent)**

Assessee by : Shri Piyush Kaushik, Adv.;

Department by : Shri S. K. Jain, Sr. D. R.;

Date of Hearing : 23.05.2017

Date of Pronouncement : 07.06.2017

**ORDER.**

**PER I. C. SUDHIR, J. M. :**

The Revenue has questioned first appellate order on the following grounds :-

" 1. The Ld. Commissioner of Income Tax (Appeal) has erred in law in allowing the assessee's appeal and annulling the order passed by the Assessing Officer.



2. The order of Ld. Commissioner of Income Tax (Appeal) is erroneous and bad in law and deserves to be cancelled and the order passed by the Assessing Officer deserves to be sustained on the facts of the case.

3. The spirit of section 50C regarding full value of consideration has not been appreciated by the Ld. Commissioner of Income Tax (Appeal). The full value of consideration and index cost of acquisition were rightly adopted by the Assessing Officer in respect of both the properties.

4. Even if the Ld. Commissioner of Income Tax (Appeal) was of the view that the matter should have been referred to the valuation officer u/s 50C 2(a) of I.T. Act, 1961, he might have directed the Assessing Officer to make valuation after referring to Valuation Officer, if Assessing Officer has made valuation without any such reference.

5. The order of the Ld. Commissioner of Income Tax (Appeal) in annulling the assessment is not acceptable as far as the matter of referring the case to Valuation Officer is concerned. The matter may be set aside to the file of the A.O. for referring the case to Valuation Officer as required u/s 50C 2(a) of the I.T. Act, 1961. ”



2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

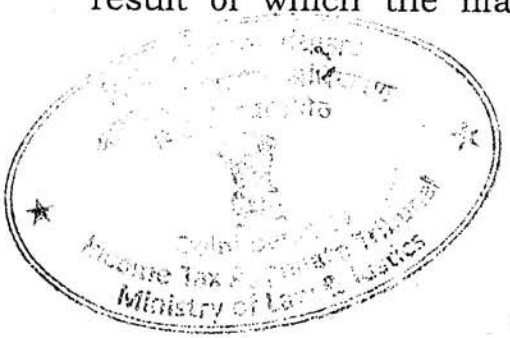
3. The relevant facts as per the assessment order are that the assessee computed long term capital gain treating the fair market value as consideration received on the transfer of the property. The Assessing Officer asked the assessee as to why the fair market value may not be taken, as taken by the authority of State Government for the purpose of payment of stamp duty, as per the provisions of section 50C of the I. T. Act. The explanation of the assessee that the sale was subject to several distressing circumstances and hence, the value adopted for the purposes of stamp valuation does not at all reflect the fair market value of the land was not accepted by the Assessing Officer. The Assessing Officer also not accepted the request of the assessee for making a reference to the valuation officer under the provisions of sub section (2) to 50C. The Assessing Officer instead took the fair market value of the land in question as per value determined by the state authority for the purpose of stamp duty and capital gain was worked out accordingly. The Id. CIT (Appeals) has, however, accepted the explanation of the assessee and has



held the assessment in question on the issue as not valid in the eyes of law. The Id. CIT (A) has accordingly annulled the same.

3.1 In support of the ground, the Id. Sr. DR has basically placed reliance on the assessment order. He submitted that the Assessing Officer has followed the procedure laid down under section 50C of the Act. He submitted that if any irregularity of procedure is there in the assessment order, the same may be set aside to the file of the Assessing Officer to pass fresh assessment order on the issue after following the prescribed procedure under the provisions of the Income Tax Act, 1961.

3.2 The Id. AR, on the other hand, tried to justify the first appellate order with submission that when the assessee had explained before the Assessing Officer that the value adopted by the stamp valuation authority under sub section (1) exceeds the fair market value of the property on the date of transfer, the Assessing Officer, as requested by the assessee, should have referred the valuation of the capital asset to a valuation officer as per sub section (2) to section 50C of the Act. He submitted that the impugned land being the subject matter of sale was subject to several distressing circumstances as a result of which the market value of said land can certainly not be



compared with that of any normal land. The said land as submitted before the authorities below was inter alia, subject to the following distressing circumstances :-

- i. The impugned land is situated in river side and is covered on three sides by the river;
- ii. The land is fully covered by over flow of dirty rainy water which has led to creation of high land mounds;
- iii. The aforesaid facts have been confirmed by way of an affidavit from lekhpal on behalf of the State government before the Allahabad High Court in the suit of ceiling pertaining to the said land;
- iv. The position of land is non-symmetrical;
- v. Further the land is an Alluvial land i.e. infertile land on a river bed;
- vi. Land has been subject to continuous litigation under the UP Imposition of Ceilings on Land Holdings Act, 1960;
- vii. In view of the above circumstances the land was sold to the purchaser with the condition that if in future the purchaser has to vacate the land due to any order of the Court or any other legal proceedings even then the assessee will not be required to refund the sales price received. This has led to a further reduction in the sale price. Land



impugned land is situated in river side and is covered on three sides by the river;

Apart from the above the assessee has submitted certificates from various independent purchasers as noted in pages 18-21 of CIT (A) order in the case of co-owner of property who had sold his share of land. The said certificates clearly provide that a lesser sale consideration has been paid in view of the foregoing reasons;

In view of the above categorical reasons the assessee has submitted before the Assessing Officer to compute the capital gains from sale of land on the basis of actual sale consideration only and not on the basis of consideration as per the stamp valuation. ”

3.3 The Id. AR submitted that a submission in detail was filed before the Assessing Officer in Hindi, a portion of which has been reproduced by the Assessing Officer at page No. 2 of the assessment order. The Id. AR has referred page Nos. 1 to 6 of the paper book i.e. copies of true translation in English of the submission made before the Assessing Officer in Hindi and true translated copy of statement of Lekhpal made before the Hon'ble jurisdictional Allahabad High Court in land ceiling case pertaining to assessee to support the submission of the assessee that the land was sold in distress.



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3.4 The ld. AR submitted that assessee has seriously disputed the value adopted for the purposes of stamp valuation before the Assessing Officer, which does not at all reflect the fair market value of the impugned land in view of several distressing circumstances mentioned above. In spite of the same the Assessing Officer mechanically computed sale consideration on the basis of stamp valuation without making a necessary reference to the valuation officer as required under the provisions of sub section (2) to section 50C on the facts and circumstances of the case. The ld. CIT (Appeals) was thus justified in holding the assessment on the issue as null and void. He contended that when an authority under the provisions of law is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. In support he has placed reliance on the following decisions :-

- (i) Dr. Shashi Kant Garg Vs. CIT,  
285 ITR 158 (All.)
- (ii) CIT Vs. Anjum M. H. Ghaswala & Others,  
252 ITR 1 (SC);
- (iii) DCIT Vs. Mahi Valley Hotels and Resorts,  
287 ITR 360 (Guj.)

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3.5 The ld. AR pointed out that the value so adopted by the stamp valuation authority had not been disputed by the assessee in any appeal or revision or no reference has been made before any other authority, court or the High Court.

3.6 On the request of the Departmental Representative that the matter may be set aside to the file of the Assessing Officer for referring the case to the Valuation Officer, the ld. AR submitted that it is a very settled position that the power of ITAT in setting aside cannot be exercised so as to allow Assessing Officer to cover up the deficiency in its case. In support he placed reliance on the following decisions :-

- (i) ITO Vs. Pawan Kumar Gupta,  
ITA. 4690/Del/2009 dated 14.6.2010;
- (ii) DCIT Vs. Anima Investment Ltd. (2000)  
73 ITD 125 (Del.) (TM);
- (iii) DCIT Vs. Rohtash Projects Ltd. (2006)  
100 ITD 113 (TM) (Lucknow);
- (iv) Raj Kumar Jain Vs. ACIT  
50 ITD 1 (TM) (All.);

4. The relevant provisions laid down under section 50C of the I. T. Act are being reproduced hereunder for a ready reference :-

" Special provision for full value of consideration in certain cases.

50C. (1) 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 <sup>57[or assessable]</sup> 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 57[or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

**58**[Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

**Provided further that the first proviso shall apply only in a case where the amount of consideration, or a pari thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.]**

(2) Without prejudice to the provisions of sub-section (1), where-

- (a) the assessee claims before any Assessing Officer that the value adopted or assessed 59[or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
- (b) the value so adopted or assessed 59[or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2),

(3), (4), (5) and (6) of section 16A, clause (f) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

**60**[Explanation 1].-For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (f) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

**61**[Explanation 2.-For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

- (3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed 61[or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed 61[or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]



4.1 On the very perusal of the provisions laid down under section 50C of the Act reproduced hereinabove, we fully concur with the finding of the Id. CIT (Appeals) that 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 section (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 a 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 is 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. The Hon'ble jurisdictional High Court of Allahabad in the case of Shashi Kant Garg (supra) has been pleased to hold that it is well settled that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner. Similar view has been expressed by the other decisions cited by the Id. AR in this



regard hereinabove. The first appellate order on the issue is thus upheld. The grounds are accordingly rejected

5. In result, appeal is dismissed.

6. The order is pronounced in the Open Court on : 7<sup>th</sup> June, 2017.

( L. P. SAHU )  
ACCOUNTANT MEMBER

( I. C. SUDHIR )  
JUDICIAL MEMBER

Dated : the 09<sup>th</sup> June, 2017.

\*MEHTA\*

Copy of the Order forwarded to:-

1. Appellant;

2. Respondent,

3. CIT;

4. CIT (Appeals);

5. DR, ITAT, ND.

BY ORDER

ASSISTANT REGISTRAR

Assistant Registrar  
आयकर अपीलीय अधिकरण  
Income Tax Appellate Tribunal  
नई दिल्ली / New Delhi

