

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

**ITA No. 1101/CHD/2014**  
Assessment Year: 2010-11

Shri Barjinder Singh Bhatti,  
# 1136, Sector 36-C,  
Chandigarh.  
PAN: AAHPB7272Q

Vs

The ITO,  
Ward 4(1),  
Chandigarh.

(Appellant)

(Respondent)

Appellant by : Shri Navtej Kumar  
Respondent by : Shri S.K.Mittal

Date of Hearing : 09.07.2015  
Date of Pronouncement : 15.07.2015

**ORDER**

**PER BHAVNESH SAINI, JM**

This appeal by assessee is directed against the order of ld. CIT(Appeals) Chandigarh dated 15.10.2014 for assessment year 2010-11.

2. The assessee in the ground of appeal before ld. CIT(Appeals) challenged the order of Assessing Officer in rejecting market valuation as on 01.04.1981 as calculated by the Registered Valuer at Rs. 8,35,217/- and against calculated fair market value at Rs. 2,32,800/- without taking expert opinion.

3. During the year under consideration, the assessee had sold some lands at village Barnala Kalan on different dates

and worked out capital gain as under :

Sale Consideration	:	Rs.	99,63,600/-
Less: indexed cost (835217 X 632 / 100)		Rs.	52,78,571/-
Long term capital gain		Rs.	46,84,429/-
Less deduction u/s 54B (gains invested in capital gain account)		Rs.	46,84,444/-
Balance Long Term capital gain taxable		Rs.	Nil

3(i) The value of the land as on 01.04.1981 was taken on the basis of valuation made by a registered valuer. The Assessing Officer noticed from the valuation report that the valuation was done at 3.5 times of the sale rate as per the registered deed in 1981 @ 24,000/-per kanal. For the sake of ready reference, relevant portion of the valuer report is reproduced below :

- i) *There are three sale instances available in year 1981, where on record registries are available with us, where big prices of lands were sold @ Rs. 48000/- per 2.0 kanals in the same area. This works out to be Rs. 1,92,000/- per acre.*
- ii) *As there was no Minimum guideline rates in those times (1981) for calculation of stamp papers and cost of registration was very high i.e. to the tune of 14% of land price shown in the registration, purchaser was interested in showing the minimum possible value of land properties.*
- iii) *But being on sale side, we are taking market value of the above land to be at the rate of 3.5 times than that shown in registration deeds of year 1981.  
It had a very good price ( as on 1.4.1981).*

4. The Assessing Officer was of the view that the valuer had ignored concrete evidence i.e. sales registration deed made in 1981, which was the base for the valuation report and had, resorted to expectation and

imagination that in that area, price/ value of land must have been 4 to 5 times higher than that shown in the registration deed. He accordingly adopted the rate of Rs. 24,000/- per kanal as on 01.04.1981 for the purposes of computing capital gain.

5. During the course of appellate proceedings Counsel for the assessee has submitted that the Assessing Officer assumed the role of a valuer for computing capital gain whereas section 142A clearly stipulates that reference is to be made to the Valuation Officer and even section 50C prescribes that the valuation may be sought from the District -Valuation Officer (hereinafter referred to as 'DVO). Reliance has been placed on the judgements of Hon'ble Allahabad High Court in the cases of Chandra Narain Chaudhri in ITA No. 287 of 2011 and Raj Kumari Vimla Devi (279 ITR 360) and Hon'ble Punjab & Haryana High Court in the case of Chandani Bhochar (223 ITR 510). It has also been contended that it was a prime land and the sale rate of this land was much more than the rate at which other lands were registered in that area.

6. The ld. CIT(Appeals) considering submission of the assessee, dismissed the appeal of the assessee on this issue. His findings in para 3.3 to 3.3.3 are reproduced as under :

*3.3 I have considered the submission of the ld. Counsel Reference to DVO under section 142A can be made only in a situation where estimate of value of investment in accordance with Section 69,69A or*

69B of the Income Tax Act, 1961 (hereinafter referred to as 'Act') or fair market value of property referred to in Section 56(2) of the Act is to be made. Reference to Valuation Officer cannot be made under section 142A for valuation of the property for the purposes of computing capital gain. Hence, the argument of the ld. Counsel that the Assessing Officer should have made reference to the Valuation Officer under section 142A is not correct and is accordingly rejected.

3.3.1 As per the provisions of Section 50C of the Act, where the consideration received as a result of the transfer of a capital asset is less than the value adopted or assessed by any stamp valuation authority, the matter can be referred to the Valuation Officer if the assessee claims before the Assessing Officer that value adopted by the stamp valuation authority was more than fair market value of the property. In the instant case, the issue before Assessing Officer was not of the valuation of property as on the date of sale, but for computing Cost of acquisition as on 01.04.1981 and so the matter could not have been referred to the Valuation Officer under section 50C of the Act. Therefore, the contention of the Ld. Counsel that the matter should have been referred to the Valuation Officer u/s 50C is also not correct and is accordingly rejected.

3.3.2 The appellant has relied upon a number of judgements, which are discussed below :

- i) *Chandra Narain Chaudhry (supra)*  
 In this case, the value of the property was adopted as per the valuation made by the stamp valuation authority. In first appeal, the argument of the assessee that it was a distress sale and so the valuation made by registered valuer was accepted by the Ld. Commissioner of Income Tax (A). The Hon'ble Tribunal had confirmed the findings of ld. CIT(Appeals). The department filed further appeal before the Hon'ble High Court and High Court remanded the matter to the Assessing Officer to decide the valuation of capital asset in accordance with law. The Hon'ble Court had held as under in this case.:

"14. We are of the view that whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessable by the (Stamp Valuation Authority under sub-section (l) of Section 50-C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessed He may either accept the valuation of the property on

*the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55 A of the Act. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A of the Act as a matter of course, without considering the report of approved valuer submitted by the assessee. In all such cases, the reasons recorded by the AO may be questioned by the assessee or the department as the case may be.*

15. *The questions of law, as framed in the memo of appeal, are decided in favour of the revenue and against the assessee. The order of ITAT dated 10.05.2011 is set aside. The matter is remanded to Assessing Officer to decide the valuation of the capital asset in accordance with law as explained by us in this judgement.*

*Thus, the Hon'ble Court had merely held that the Assessing Officer has to apply his mind on the Validity of objection of the assessee regarding the value assessed by the stamp valuation authority, if it exceeds the fair market value. In the instant case, the issue is regarding Valuation as on 01.04.1981 for computing the indexed cost and so the issue here is entirely different to the issue decided by the Hon'ble Court. The ratio of this judgement is accordingly not applicable to the case of the Appellant*

(ii) *Chandani Bhochar (supra)*

*In this case, the Assessing Officer applied the provisions of Section 50C for computing unexplained investment in property and making addition under section 69B of the Act. The addition made was deleted in first appeal and the order of the ld. CIT(Appeals) was affirmed by Hon'ble Tribunal and subsequently by Hon'ble Punjab & Haryana High Court. Provisions of Section 50C are for the purpose of determining the sale consideration for computing capital gain and the value determined by stamp valuation authority for the purpose of computation of stamp duty cannot be adopted for computing unexplained investment under section 69B. Therefore, the Issue involved in this case was regarding Addition u/s69B whereas in the instant case, the issue is regarding cost of acquisition as on 01.04.1981 for the purposes of computation of capital gain, The issue involved being entirely*

*different, the ratio of this judgement is also not applicable to the case of the appellant.*

*iii) Raj Kumari Vimla Devi (supra)*

*In this case, the Hon'ble High Court had held that the Hon'ble Tribunal was correct in holding that the rules framed under the stamp Duty Act are not conclusive for determination of market value of properties and so the deemed gift could not be taxed. The case pertains to A.Y. 1981-82 and the question before the Hon'ble Court was related to deemed gift whereas in the instant case, the issue is regarding valuation for the purpose of determination of cost of acquisition of the property. Therefore, the issue in the present case is entirely different and this judgement is of no help to the appellant.*

*3:3.3 The Assessing Officer has computed the cost of acquisition as on 01.04.1981 by applying the rate mentioned by the registered valuer in his valuation report i.e. Rs. 24,000/- per kanal, The registered valuer has mentioned in his report that it was expected that the price of land in that area must have been 4 to 5 times higher than what was shown in the registration deed, but to be on the safer side he was adopting it to be at 3.5 times of what was shown in the registration deed. At the outset, it may be mentioned that there was no scientific/rational basis for the registered valuer to take the rate of 3.5 times of the rate of registration. Moreover, if he was taking the cost of acquisition at 3.5 times of the registered deed, the same factor/multiplier should have been used for declaring the sale consideration which was not done. Be that as it may, the Assessing Officer has rightly adopted the rate of Rs. 24,000/- per kanal as on 01.4.1981, which is the rate at which the registration had been done in 1981 and his action in this regard is upheld. Grounds of appeal Nos. 2, 3 and 4 are dismissed.”*

7. The assessee in the present appeal, raised the same issue and it is also stated that ld. CIT(Appeals) erred in up-holding the order of the Assessing Officer in over-riding the report of technical valuer, without supporting evidence from a DVO which is bad in law. The ld. counsel for the

assessee submitted that the Assessing Officer, for rejecting the report of the Registered Valuer should have referred the matter to the DVO and in the absence of any evidence on record, the report of Registered Valuer should be accepted with regard to the market value as on 01.04.1981 for the purpose of computing capital gains. Therefore, orders of the authorities below may be set aside.

8. On the other hand, ld. DR relied upon orders of the authorities below.

9. We have considered rival submissions and do not subscribe to the views of the authorities below. The assessee filed report of Registered Valuer in support of the market value as on 01.04.1981. The Assessing Officer was not having any evidence or material before him to contradict the report of the Registered Valuer. The Assessing Officer, if was not satisfied with the report of the Registered Valuer, could have made a reference to the Departmental Valuation Officer under section 55A of the Act for the purpose of computing income from capital gains. The Assessing Officer has thus, not acted in accordance with law and without any basis or evidence in his possession, did not accept report of the Registered Valuer. In the absence of any material on record, Assessing Officer should not have made his own calculation for the purpose of computing the capital gains. The orders of the authorities below, thus, cannot be sustained in law. We, accordingly, set aside the orders of authorities below

and direct Assessing Officer to accept valuation reported by the assessee as per report of the Registered Valuer as on 01.04.1981 and accept the computation filed by the assessee.

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

Order pronounced in the Open Court on 15<sup>th</sup> July,2015.

Sd/-

Sd/-

(T.R.SOOD)  
ACCOUNTANT MEMBER

(BHAVNESH SAINI)  
JUDICIAL MEMBER

Dated: 15<sup>th</sup> July,2015.

'Poonam'

Copy to:

The Appellant, The Respondent, The CIT(A), The CIT,DR

Assistant Registrar, ITAT  
Chandigarh