

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**[Coram: Pramod Kumar (Vice President)
and Madhumita Roy (Judicial Member)]**

ITA No.: 2107/Ahd/17
Assessment year: 2013-14

Lovy RankaAppellant
B 205, Gala Luxuria
South Bhopal Road, Ahmedabad 380058
[PAN: AAPHJ1831D]

Vs

Deputy Commissioner of Income Tax
Circle 5(2), AhmedabadRespondent

Appearances by
Chitranajan Bharadia *for the appellant*
S K Dev *for the respondent*

Date of concluding the hearing : January 2, 2019
Date of pronouncement : April 1, 2019

O R D E R

Per Pramod Kumar, VP:

1. This is an appeal filed by the assessee and is directed against the order dated 12th June 2017, passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14

2. The short grievance of the assessee is that the impugned addition of Rs 12,12,402 in the computation of the capital gains be deleted as fair market value of the property is less than the valuation, as per DVO's valuation report, adopted for computation of capital gains under section 50C(2) of the Act. In effect thus, correctness of the DVO's report has been assailed before us, but then, as is the settled legal position, when a reference is made to the DVO, the Assessing Officer has a duty to "so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer". The question then arises whether we can deal with the question of correctness of the DVO's report- particularly when the Assessing Officer apparently has no say in this regard.

3. It was in this backdrop that we put it to the parties whether this Tribunal has any powers to tinker with the DVO's valuation of an asset for the purposes of computing capital gains under section 50 C of the Act. While learned counsel for the assessee pointed out several decisions in which the coordinate benches have infact altered the valuations made by the DVOs, learned Departmental Representative submitted that when the valuation of an asset is referred to the DVO, and the value so arrived at by the DVO is less than the stamp duty valuation, the Assessing Officer has no option but to adopt DVO's valuation for the purpose of computing capital gains. It was submitted that when the Assessing Officer is under a statutory obligation to adopt such a valuation, no fault can be found in his action of doing so, and, therefore, appellate authorities cannot question that action either. As for the stand of the coordinate benches, learned Departmental Representative submitted that what is important is the legal framework of the relief granted by the coordinate benches and these orders do not throw any light on existence of such a legal framework enabling adjudication on correctness of the DVO's report. Learned counsel for the assessee, in rejoinder, submitted that the Tribunal has wide powers for advancing the cause of justice and to pass such orders as it thinks fit. A pedantic view of our powers will result in gross miscarriage of justice inasmuch in such a situation no grievance redressal will be available against the DVO's report. This report, after all, cannot be treated as the last word on valuation, and there has to be a grievance redressal mechanism against incorrectness of the DVO's valuation-particularly when the DVO has not properly disposed of the objections of the assessee.

4. Let us first take a look at the relevant legal provisions. Section 50 C, as it stood at the relevant point of time, was as follows:

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 or assessable 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 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.

(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 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 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 (i) 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.

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

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 or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

5. It is sufficient, for our purposes, to take note of the fact that the provisions of Section 23A(1)(i) of the Wealth Tax Act, 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". Section 23A(1)(i) of the Wealth Tax Act provides that **"Any person..... objecting to any order of the Valuation Officer under section 35 having the effect of enhancing the valuation of any asset or refusing to allow the claim made by the assessee under the said sectionmay appeal to the Commissioner (Appeals) against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner ..."**. In effect thus, by the virtue of Section 23A(1)(i) being incorporated, with necessary modifications, in Section 50C, the correctness of a DVO's report can indeed be challenged. It is, however, also important to note that the provisions of Section 23A(6) of the Wealth Tax Act shall, with necessary modifications, also apply in the present context- as has been provided in Section 50C(2) itself. Section 23A(6) of the Wealth Tax Act provides as follows:

(6) If the valuation of any asset is objected to in an appeal under clause (a) or clause (i) of sub-section (1), the Commissioner (Appeals) shall,—

(a) in case where such valuation has been made by a Valuation Officer under section 16A, give such Valuation Officer an opportunity of being heard;

(b) in any other case on request being made in this behalf by the Assessing Officer, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the Assessing Officer.

6. Section 24(5) of the Wealth Tax Act, 1957, the scheme of which also stands incorporated in Section 50C as is specifically stated therein, provides as follows:

(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the assessment or penalty :

Provided that if the valuation of any asset is objected to, the Appellate Tribunal shall,—

(a) in a case where such valuation has been made by a Valuation Officer under section 16A, also give such Valuation Officer an opportunity of being heard;

(b) in any other case, on a request being made in this behalf by the 51[Assessing Officer], give an opportunity of being heard also to any Valuation Officer nominated for the purpose by the Assessing Officer

7. What essentially follows from the above provision is that in the event of the correctness of the DVO's report is called into question in an appeal before the Commissioner (Appeals), the DVO is required to be given an opportunity of hearing. While the above provision refers to valuation under section 16A of the Wealth Tax Act, 1957, the provisions of Section 50 C of the Income Tax Act, 1961, specifically refer to the provisions of Section 16A of the Wealth Tax Act, 1957. Accordingly, a valuation under section 50C(2) is also covered by the requirements of Section 23A(6) which are, as specifically stated in Section 50C, applicable in the present context. The same is the position with respect to the proceedings before this Tribunal. While the correctness of the DVO report can indeed be challenged before us as well, as a corollary to the powers of the CIT(A) which comes up for examination before us, once again the rider is that the Valuation Officer is to be given an opportunity of hearing. This opportunity of hearing to the DVO is a mandatory requirement of law. That is the unambiguous scheme of the law.

8. With this clarity on the scheme of the law, let us revert to the facts of this case.

9. The assessee before us is an individual. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has sold a bungalow for Rs 1,15,00,000 but the stamp duty valuation of the said bungalow, as evident from the sale deed, was Rs 1,40,00,000. The assessee, however, contended that the fair market price of the property was much less than the stamp duty valuation, and, accordingly, a reference was made to the Departmental Valuation Officer under section 50C(2). The valuation as per DVO was Rs 1,27,12,402. The assessee made elaborate submissions on incorrectness of this valuation, and submitted that the objections taken by him before the DVO were not properly dealt with. The Assessing Officer was of the view that the valuation done by the DVO binds him and it is his duty to pass an order in conformity with the DVO's report. He referred to, and relied upon, various judicial precedents in support of this proposition. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) observed that "Section 50C of the Act is a deeming provision" and "a deeming

provision is to be strictly applied without enlarging its scope”. Learned CIT(A) was of the view that “considering the provisions of Section 50C, the value taken by the AO is correct” and no interference is thus called for. The assessee is not satisfied and is in further appeal before us. He is once again challenging the correctness of the DVO’s report, is pointing out, what he perceives as, glaring errors in the methodology adopted by the DVO and is submitting that the CIT(A) fell in error in not adjudicating upon the same on merits.

10. In view of our analysis of the legal provisions earlier in this order, the assessee is indeed correct, even though somewhat serendipitously. that the CIT(A) ought to have examined the matter on merits. Of course, before doing so, the CIT(A) was under a statutory obligation to serve notice of hearing to the DVO and thus afford him an opportunity of hearing. Clearly, learned CIT(A) took too narrow and somewhat superficial a view of his powers under the scheme of the law, and the assessee did not point out the specific legal provisions to him either. Be that as it may, the fact remains that correctness of the DVO’s report is to be examined on merits and there is no adjudication, on that aspect, by the CIT(A). In view of these discussions, as also bearing in mind entirety of the case, we deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication on merits in accordance with the scheme of the law, after giving a due and reasonable opportunity of hearing to the assessee as also to the DVO, and by way of a speaking order. We further direct the CIT(A) to dispose of the remanded proceedings within three months of receiving this order, and, in case the DVO does not avail the opportunity of hearing, on the basis of material on record and submissions of the assessee. Ordered, accordingly.

11. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 1st day of April, 2019

Sd/-

Madhumita Roy
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Ahmedabad, dated the 1st day of April, 2019

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

True Copy

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*