

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant
Member**

**ITA No. 140/Agr/2018
Assessment Year: 2013-14**

Dr. Sanjay Chobey, (HUF) Opp. Ware House, Shivpuri Road, Nandpura, Jhansi PAN : AAHHD7844 Q (Appellant)	vs.	ACIT, Circle –2(3)(1), Aayakar Bhawan, 1090, Civil Lines, Jhansi (Respondent)
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Appellant by	Shri P.K. Sahgal, Advocate And Shri Utsav Sahgal, C.A.
Respondent by	Shri Waseem Arshad, Sr. DR

Date of Hearing	05.06.2018
Date of Pronouncement	02.07.2018

ORDER

Per Dr. Mitha Lal Meena, A.M.:

This appeal by the assessee is directed against the order of the Id. CIT(A)-2, Agra, dated 30.11.2017 for A.Y. 2013-14.

2. The Id. Counsel for the assessee does not want to press the Ground Nos. 1,2 and 3, hence, these grounds are dismissed as not pressed. The Ground Nos. 7 to 10 are consequential and general in nature, therefore no adjudication is required.

3. The rest of the following effective grounds raised by the assessee are as under:

- “4. That the Ld. CIT(A)-2, Agra has been arbitrary and unjust in upholding the value of Rs. 2,47,23,000 adopted by stamp valuation authority, as fair market value of the property sold by the appellant, though the same was abnormally higher. The actual sale consideration of Rs. 25,90,500 declared by the appellant, which was representing true and correct fair market value should have been adopted.
5. That the Ld. CIT(A)-2, Agra has completely ignored that once the appellant had objected before AO that value adopted by valuation authority exceeds the fair market value of the property sole on the date of transfer, then the AO was duty bound to refer the valuation to the Valuation Officer and in case he failed to do so, he was legally bound to accept the actual sale consideration of Rs. 25,90,500 to represent the fair market value of the property sold.
6. That it is settled law that failure by AO to refer the Valuation Officer despite specific request by the appellant and adopting the value taken by the stamp duty authority is a fatal error and reassessment has to be annulled. The matter cannot be set aside to the AO for second chance.”

4. The sole grievance of the assessee is regarding adoption of value of property at the circle rates of the State Government as against value of sale consideration disclosed by the assessee.

5. During the course of assessment proceeding, the AO received an AIR alongwith sale deed from this he noticed that in the return of income, the assessee has shown the value of the property less than at the circle rates.. As such, the AO invoked provisions of Section 50C and assessed the total income of the assessee at Rs.2,47,23,000/- by adopting value of said property at the circle rates.

6. The Ld. CIT(A) has confirmed the finding of the AO vide Para 5.4 of the impugned order by observing as under :

“5.4 Since more than enough opportunities were granted and the appellant has chosen not to appear or to file any written submissions, it appears that he has been purposely avoiding attendance before the undersigned. Since the appellant or his Authorized Representative have not attended the appellate proceedings despite repeated opportunities provided to them. I am considered to uphold the assessment order to sustain the additions made by the Assessing Officer.”

7. The counsel for the assessee submitted that the circle rate adopted by the AO for computation of fair market value of the subject immovable property is much higher than the actual value of sale consideration; that the assessee has sold the immovable property at the actual market rate of Rs.25,90,500/- of his share of properties sold by the assessee as against the circle rates of State Government quoted during the year under consideration at Rs. 2,47,23,000/- of the properties as per the chart submitted along with the reply

filed before the AO (APB-Pgs,3-4); that in pari materia facts, a valuation report sought from DVO by the ITO2(3)(4), Lalitpur in the case of Shri Chanchal Chobey for the A.Y. 2013-14 for the sale of property (plot of land) just adjacent to assessee property, the sale price consideration was accepted as FMV by the DVO stamp duty over the circle rates [copy of the said valuation report is enclosed (APB, Pgs, 6 & 7)]; that as per Section 50C(2) of the Act, the AO may refer the valuation of capital assets to valuation officer if, the stamp value so adopted is disputed by the assessee; that in the instant case, the assessee disputed the valuation adopted by the AO, as evident from the AO's specific mention of the objection in the assessment order in Para 3 at page 3 as follows:

“The assessee has filed objection vide letter dated 16.01.2016 and requested the case to the valuation officer for the valuation of sold plots.”

8. The counsel for the assessee further submitted that the word 'may' of Section 50C(2) should be read as 'must' by the Assessing Officer in the matter of reference of valuation of capital assets to the DVO, if the assessee objects adoption of stamp duty or circle rates. For this purpose, he placed reliance on the judgment of Hon'ble Calcutta High Court in the case of Sunil

Kumar Agarwal Vs. CIT, in (2015) 372 ITR 83 (Cal) where it was held that a reference to DVO in the case of assessee who contest jantri price in question to be higher than the fair market value of the relevant capital assets, then a reference is mandatory even if an assessee does not make any such prayer.

To buttress his contention, he relied on the following case laws:

- i) ACIT 5(1), Hyderabad vs. Lalitha karan, Hyderabad in ITA No.1130/Hyd/2015 (Trib. Hyd.)
- ii) Income Tax Officer, Moradabad vs. Aditya Narain Verma (HUF) Moradabad in ITA 4166/Del/2013 (Del. Trib)
- iii) ITO vs. Pawan Kumar Gupta (2011) 43 SOT 42 (Trib. Delhi)
- iv) Raj Kumar Jain vs. ACIT, (1994) 50 ITD 1 (Alld. Trib)
- v) DCIT vs. Rohtas Projects Ltd., (2006) 100 ITD 113 (Trib. Lkw)
- vi) ACIT vs. Anima Investment Ltd. 73 ITD 125 (Trib. Del)

9. The Ld. DR submitted that the CIT(A) could have remanded the issue to the AO with the direction to refer the issue of valuation of property to the departmental valuation officer and the then accordingly decided. He again submitted before us that the matter may be restored to the AO.

10. Heard. It is fact on record that the assessee has disputed the adoption of value of the property (plots) as per stamp duty and circle rates of State

Government which was claimed to be much higher than the fair market value. The AO has adopted fair market value of the property at circle rate at Rs. 2,47,23,000/- as against the value as per stamp valuation at Rs.70,48,000/-; that the AO has not made a reference of the said property to the valuation officer for the valuation of fair market value although the assessee has made a written request to the AO to refer the same to the DVO in his case vide his reply dated 16.11.2016 (APB-1) and 17.11.2016 (APB-2), out of these one reply find a reference in Para-3 at Pg,3 of the assessment order as above.

11. The Ld. CIT(A) has confirmed the action of the AO as regards to the adoption of circle rates of the State Government for the purpose of calculation of long term capital gain in summary manner. We find that the assessee has objected the adoption of stamp duty valuation and circle rates of the State Government for the purpose of calculation of long term capital gain u/s 50C(2)(a) of the Act. We find that the assessee has requested the AO to refer the matter to the valuation officer as per provisions of Section 50C(2)(a) of the Act. The assessee counsels contention that the assessee has sold the property under distress sale being sub urban and undeveloped area without basic amenities for which he could not fetch higher value than the sale consideration, therefore, while arriving at the fair market value, is found

correct and this aspect was required to be taken into consideration by the AO which he had not addressed. It is further seen that the assessee has referred to the provisions of Section 50C of the Act which were mandatorily required to be followed by the AO. However, the AO while adopting value as per circle rates of the State Government, brushed aside the submission of the assessee and the provisions of law. As such, the fair market value of the property was not at all taken into consideration. Though it was statutory duty laid down upon the AO to obtain the valuation report by referring the matter to the DVO which he did not abide. The crux of the issue is that whether AO can be given second opportunity to make good his deficiency at the cost of expenditure to be incurred by the assessee by continuing the litigation for a further period beyond prescribed period of time under the act, in view of the period of limitation u/s 153 of the Act.

12. The Hon'ble Supreme Court in its Judgment in the case of 'Parashuram Pottery Works Co. Ltd. Vs. ITO', reported in (1997) 106 ITR 0001, has observed as follows:

"It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarise

themselves with the relevant provisions and become well-versed with the law on the subject. Any remission on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue”

13. The courts time and again held that reference u/s 153C(2) of the Act is mandatory and the AO having failed to follow the provisions of the Act, he should not be given one more chance to refer the matter to the DVO. Recently the Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT and Anr. (2007) 289 ITR 341 (SC), the provisions of Section 153C deserves that if the AO not recorded a satisfaction for the issue of notice 153C of the Act, the proceeding deserves to be quashed rather than giving the AO another chance to record proper reasons, when the AO not followed the procedure in law, the addition made deserves to be deleted.

14. The lower authorities passed the order in summary manner without going into the merits of the case and analyzing the legal issue involved, the applicability of Section 50C(2) (a) of the Act, in a particular. We further find that the AO has not found any adverse material evidence to indicate that assessee has received any excess money over and above the sale consideration, in the return of income. In the light of the peculiar facts of this

case and in the absence of the DVO report, we are of the considered opinion that the assessee cannot put to travel up facing virtual trial to appear before the AO after three years to prove that the sale price declared by him was reasonable.

15. In view of the above, we accept the grievance of the assessee as justified. As such, the addition is deleted and these grounds are allowed.

16. In the result, appeal of the assessee is partly allowed.

(Order pronounced in the open court on 02.07.2018.)

**Sd/-
(A.D. Jain)
Judicial member**

**Sd/-
(Dr. Mitha Lal Meena)
Accountant Member**

Dated: 02/07/2018
Aks

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra*

		Date		
1.	Draft dictated / (DNS)	25.06.2018		PS
2.	Draft placed before author	02.07.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			