

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.1080/JP/2016  
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Harphool Jat 35, Jaton Ki Dhani, Teelavas, Ajmer Road, Jaipur	बनाम Vs.	The Income Tax Officer, Ward-7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADUPJ3646A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya  
राजस्व की ओर से / Revenue by : Sh. J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 25/06/2018  
उद्घोषणा की तारीख / Date of Pronouncement: 06/07/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-III, Jaipur dated 22.09.2016 for Assessment Year 2008-09 wherein he has challenged the action of the Id. CIT(A) in confirming the sale consideration at Rs. 66,29,838/- as valued by the Sub - Registrar as against declared sale consideration of Rs. 32,71,000/- in respect of property situated at Plot No. E-2 & E-3, Krishi Vihar, Unit No. 14, Gopal Pura Bye Pass Road, Jaipur.

2. During the course of assessment proceedings, the Assessing Officer observed that the Registrar has adopted high value of sale consideration than the declared sale consideration in respect of aforesaid property. Therefore, the Assessing officer was of the view that the provisions of section 50C are

applicable in the instant case and sale consideration can be taken at Rs. 66,29,838/-. The assessee was issued a show cause and in response, the assessee submitted as under:-

*"It is submitted that the DLC rates adopted at Rs. 66,29,838/- for the total land is highly excessive and do not represent the correct market value for the simple reason that the subjected land could not have commanded such high rates, more particularly when the size of the plot is abnormal being 60' x 90' and not a popular suitable size. Finding a buyer for such size of plot was a different task and could not faced the sale price as per DLC rates. A big disadvantage attached with the plot was that the same was south facing which is completely against the vastu norms. It is a matter of common knowledge that now a day every buyer ensure and desire to purchase always a vastu compliant property and therefore, such (subjected) property are rated defective and commands much lesser prices. Moreover the locality was not popular with the builders/colonizers in the nearby area also the transaction was made more or less at the same prices commensurating with those declared by the assessee. There are many other drawbacks. Hence, before adopting DLC rates merely on the basis of the stamp valuation, it is requested that a judicial decision kindly be taken after making requisite enquiries. The assessee also wants furnish report of valuer and other supporting evidences. The assessee is applying to the concerned authority under RTI Act to get the relevant papers. However, in the interest of justice the matter may please be referred to the DVO."*

3. The reply filed by the assessee was not found acceptable by the AO for the reason that the assessee has not filed any evidence that either he or the purchaser of the property was aggrieved with the stamp duty charged by the Registering Authority. The AO further observed that despite a period of almost 6 years, the assessee has not adduced any evidence proving that the stamp

duty charged has been challenged by him. It was accordingly held by the AO that stamp duty charged by the Registering Authority is very well as per law and agreed upon by the assessee. Accordingly, the capital gain arising on the sale of land was calculated on the sale consideration as per value adopted by the Stamp Authority at Rs. 66,29,838/-.

4. Being aggrieved, the assessee carried the matter in appeal and reiterated the submissions made before the Assessing Officer. Further, he filed a copy of the valuation report dated 14.01.2016 wherein the value of the property was determined by the registered valuer. The Id. CIT(A) however, confirmed the finding of the Assessing Officer and held that the value adopted by the AO is as per the value determined by the Sub-Registrar at Rs. 66,29,838/- which is in accordance with provisions of section 50C(1) of the Act.

5. During the course of hearing, the Id. AR reiterated the submissions made before the lower authorities and submitted that the assessee has specifically objected to the valuation as determined by the stamp duty authorities before the Assessing Officer and in terms of provisions of section 50C(2) of the Act, which are clearly attracted in the instant case, the Assessing Officer should have referred the matter to the DVO. It was submitted by the Id AR 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, reliance was placed on ITO vs. M/s Aditya Narain Verma (HUF) in *ITA No. 4166/del/2013 vide order dated 07.06.2017* and ACIT vs. Lalitha Karan, Hyderabad in *ITA No. 1130/Hyd/2015 vide order dated 04.01.2017*. It was finally submitted by the Id AR that the order passed by the AO should therefore be quashed as not in accordance

with provisions of law or the matter may be set-aside to the file of the AO for referring to the DVO.

6. The Id. DR is heard who has relied on the order of the CIT(A) and submitted that the AO was duty bound to adopt the valuation as adopted by the stamp duty authority being higher than the declared valued in terms of section 50C of the Act. However, he didn't raise any objection where the matter is remanded back to the AO for reference to the DVO.

7. In order to appreciate the rival contention, we refer to the provisions of section 50C of the Act which are reproduced as under:-

*"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 86 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 86 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.*

*"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 part 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 86 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 86 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).*

*(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed 88 by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."*

8. In the instant case, it is undisputed fact that the sale consideration determined by the stamp duty authority is higher than the declared sale consideration as per the registered sale deed. It is also undisputed fact that neither the assessee nor the purchaser has disputed the stamp duty authority valuation by the stamp duty authority. However, it is also an accepted fact that the assessee has disputed such valuation as adopted by the stamp duty authority before the Assessing officer during the course of assessment proceedings.

9. The question that arises for consideration is where the assessee disputes such valuation as adopted by the stamp duty authority before the Assessing officer during the course of assessment proceedings, what should be the course of action which should be adopted by the Assessing Officer. In this regard, clause (a) of sub-section (2) of section 50C provides that where the assessee claims that the value adopted by the stamp value authority exceeds the fair market value of the property as on the date on the transfer, and value so adopted by the stamp valuation authority has not been disputed in any appeal/ revision or no reference has made before any authority, Court or the High Court, the Assessing Officer may refer the valuation of the capital assets to the Valuation Officer. In the instant case, as we have noted above, we find that during the course of assessment proceedings, the assessee has specifically objected before the Assessing Officer that the valuation adopted by the stamp valuation authority exceeds the fair market value of the property and given the undisputed fact that the said valuation has not been disputed in any appeal or revision, the Assessing Officer is required to refer the matter to the Valuation Officer. We, therefore, deem it appropriate to remand the matter to the file of the Assessing Officer who shall determine the valuation of capital asset so transferred, after calling for the report from the valuation officer and after providing reasonable opportunity to the assessee.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/07/2018.

Sd/-  
(विजय पॉल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Jaipur  
Dated:- 06/07/2018  
\*Ganesh Kr

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Harphool Jat, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward-7(2), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1080/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.