IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.6005/Del/2017
Assessment Year : 2014-15

ITO, Ward- 41(1), New Delhi.	**Vs.**	Aastha Goel, 28/42, West Punjabi Bagh, New Delhi.
		PAN : AROPG0416H
(Appellant)		**(Respondent)**

Department by	:	Shri N. K. Bansal, Sr.DR
Assessee by	:	Mrs. Rano Jain, Adv.
Date of hearing	:	25-09-2018
Date of pronouncement	:	08-10-2018

O R D E R

PER R. K. PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 20.07.2017 of the CIT(A)- 14, New Delhi relating to assessment year 2014-15.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 31.07.2014 declaring taxable income of Rs.4,50,000/-. The assessee in the said return had declared income of Rs.3,00,000/- under the head "income from business and profession" and "salary income" of Rs.1,80,000/- from M/s Pashupati Iron and Steel Pvt. Ltd. and savings bank account interest of Rs.2,655/-. After claiming deduction of Rs.30,000/- u/s 80C

and Rs.2,655/- u/s 80TTA of the I.T. Act, 1961, the assessee computed her taxable income at Rs.4,50,000/-.

3. During the course of assessment proceedings, the Assessing Officer noticed from the purchase deed of the property located at E-886, Narela Industrial Complex DSIIDC Narela, Delhi that the assessee had jointly purchased 50% undivided share in the above property with Shri Rachit Garg at a price of Rs.75,00,000/- and the circle rate value was Rs.2,80,00,000/-. The Assessing Officer, therefore, asked the assessee to explain as to why the provisions of section 56(2)(vii)(b)(ii) be not invoked and the difference in the amount be added to her total income. In response to the same, the assessee filed a letter along with an affidavit dated 26.09.2016, the contents of which have been reproduced by the Assessing Officer in the body of the assessment order and which read as under :-

> *"I, Aastha Goel, D/o Shri Ashok Kumar Goel aged 26 years, Resident of 28/42, Punjabi Bagh, New Delhi-110026 do hereby solemnly affirm and declare as under :-*
>
> *i. That I am a regular income tax assessee having PAN: AROPG0416H and having my jurisdiction with the Assessing Officer, Ward 42(1), New Delhi.*
>
> *ii. That I have filed my income tax return for the assessment year 2014-15 on Dt. 31.07.2014, Ack. No.319920770310714.*
>
> *iii. That my Ex-spouse Mr. Rachit Garg had purchased a property No.886, Block E, DSIIDC, Narela Industrial Complex, Narela, Delhi-110040 (hereinafter called the property) on dated 07.08.2015 for Rs.75,00,000/- vide registered sale deed.*
>
> *iv. That Mr. Rachit Garg was the 100% beneficial owner of the property, however, the sale deed was registered jointly in the name of Rachit Garg and myself.*
>
> *v. That, I and Rachit Garg are now legally separated vide court order dated 21.04.2014.*
>
> *vi. That after divorce, I have transferred the 50% of share of the property to Shankar Fin Invest Private limited, through its director Mr. Subhash Chander*

Garg, a family run company of my ex-spouse Mr. Rachit Garg vide sale deed dated 26.05.2014.

vii. That, Mr. Rachit Garg was the beneficial owner of the aforesaid property under the Income Tax Act, 1961. Hence, he will be responsible for any taxes if any levied by the income tax department against the aforesaid property."

4. Subsequently, the assessee filed an affidavit of Shri Rachit Garg, the contents of which have been reproduced by the Assessing Officer in the body of the assessment order and which read as under :-

"I, Rachit Garg, S/o Shri Ramesh Chander aged 28 years, Resident of BQ-57, Shalimar Bagh, Delhi-110088 do hereby solemnly affirm and declare as under :-

i. That I am a regular income tax assessee having PAN: AKWPG6234G and having my jurisdiction with the Assessing Officer, Ward- 34(1), New Delhi.

ii. That I had filed my income return for the assessment year 2014-15 on dated 15.07.2014 Ack No.226723010150714.

iii. That I had purchased a property No.886, Block-E, DSIIDC, Narela Industrial Complex, Narela, Delhi-110040 (hereinafter called the property) on dated 07.08.2015 for Rs.75,00,000/- vide registered sale deed jointly with Ms. Aastha Goel (my ex-spouse, as we have legally separated vide court order dated 21.04.2014).

iv. That, I was beneficial owner of the aforesaid property under the Income Tax Act, 1961. I will be responsible for any taxes if any levied by the income tax department against the aforesaid property."

5. Subsequently, the Assessing Officer issued summons u/s 131 to Shri Rachit Garg who appeared before the Assessing Officer and his statement was recorded wherein he confirmed the contents of the affidavit which was signed by him. However, the Assessing Officer was not satisfied with the explanation given by the assessee. According to him, it is settled position of law that "Owner" means a person who has got valid title legally conveyed to him after complying with the requirement of law such as the Transfer of Property Act, Registration Act, etc. Since in the instant case the property was purchased

jointly and the assessee was having undivided share of 50%, which has later been sold by the assessee herself which clearly demonstrates that the assessee was having all the rights in the property and it was her sweet will to sell it at any point of time, therefore, the Assessing Officer rejecting the various explanations given by the assessee and invoking the provisions of section 56(2)(vii)(b) made addition of Rs.1,02,50,000/- to the total income of the assessee being the difference between the value as per stamp valuation authority of Rs.1,40,00,000/- and the value as per purchase deed of Rs.37,50,000/-.

6. Before the ld. CIT(A), it was submitted that the addition made by the Assessing Officer is based on mere surmises and conjectures. It was submitted that there has been an indiscriminate rise in the circle rates of the area without considering the actual market rate. The representation sent by the Industrial Complex Welfare Association to the then Chief Minister of Delhi was brought to the notice of the ld. CIT(A), according to which, it is one third as compared to residential property and circle rates are enhanced arbitrarily without any logic. It was stated that other properties in the area were also sold likewise. Two instances of such sale were brought to the notice of the ld. CIT(A). The valuation done by the Government approved valuer valuing the property at Rs.75,40,000/- was also filed before the ld. CIT(A). It was further stated that at the time of making the addition the Assessing Officer did not issue any show-cause notice to the assessee. The Assessing Officer had not given any

opportunity to the assessee to file the relevant documents. It was accordingly submitted that the addition made by the Assessing Officer should be deleted.

7. The ld. CIT(A) forwarded all the evidences to the Assessing Officer for his comments. The Assessing Officer confirmed that the various documents filed before the ld. CIT(A) such as copy of valuation report and the letters written to the then Chief Minister of Delhi were filed during the course of assessment proceedings but the Assessing Officer had not considered the same. However, the sale instances of the two properties in the nearby areas were not produced before the Assessing Officer during the course of assessment proceedings wherein the properties were sold well below the circle rates. The Assessing Officer accordingly requested the ld. CIT(A) to decide the appeal on merit.

8. The ld. CIT(A) confronted the copy of the remand report to the assessee who made elaborate submission before the ld. CIT(A) in his rejoinder to the remand report. Various decisions were also brought to the notice of the ld. CIT(A). It was further submitted that the assessee was challenging the valuation as per stamp value authorities. The Assessing Officer instead of referring the same to the DVO adopted the circle rate valuation and made addition which is not correct.

9. Based on the arguments advanced by the assessee, the ld. CIT(A) deleted the addition made by the Assessing Officer by observing as under :-

"I have considered the findings & Remand Report of the Ld. AO, the submissions & comments on the Remand Report given by the Ld. AR of the appellant as well as the judicial pronouncements of the higher appellate authorities and the Hon'ble Courts. I incline to agree with the contention of the Ld. AR that Ld. AO is not justified in making the addition of Rs.1,02,50,000/- u/s 56(2)(vii)(b) of the Act on account of difference between value of property as per stamp valuation and value as per purchase deed of the property under consideration in view of the following facts and circumstances of the appellant's case:-

(i) The assessment u/s 143(3) of Act was completed on 05.12.2016 at in income of Rs.1,07,00,000/- as against returned income of Rs.4,50,000/- by ITO Ward 42(1), New Delhi, after making an addition of Rs.1,02,50,000/- on account of difference between value of property as per stamp valuation and value as per purchase deed.

(ii) Brief facts in this case is that as per the purchase deed of the property located at E-886, Narela Industrial Complex DSIIDC Narela, Delhi the assessee had jointly purchased 50% undivided share in the property with Sh. Rachit Garg at a price of Rs.75,00,000/- whereas as per circle rate the value of the property was Rs.2,80,00,000/-. Accordingly, the Ld. AO after invoking the provisions of Section 56(2)(vii)(b)(ii) of the Act made an addition of Rs.1,02,50,000/- being 50% of Rs.2,80,00,000/- (-) 75,00,000/- to the total income of the assessee.

(iii) The written submissions mentioned above filed by the Ld. AR were sent to the Ld. AO vide this office letter F.No. CIT (A)- 14/ 17 -18/71 dated 15.06.2017 for his comments u/s 250(4) of the Act who vide his office letter No. ITO Ward 41(1)/2016-17/255 dated 29.06.2017 has submitted his report which has been reproduced above. The Addl. CIT Range-41, New Delhi while forwarding the said remand report of the Ld. AO vide his office letter F.No. Addl.CIT/Range-41/Remand Report/2017-18/203 dated 29.06.2017 has mentioned that additional evidences U/R 46A of IT Rules 1962 should not be admitted as none of the conditions given in the rules are fulfilled by the appellant. It is worth to mention here that the comments of the Ld.AO were called u/s 250(4) of the Act and not U/R 46A of IT Rules 1962 as the copy of valuation report from the registered valuer and the letters written to the Chief Minister, Delhi were also filed by the Ld. AR of the assessee during the course of assessment proceedings, but the Ld. AO had not considered the same. The AO in his remand report had admitted that a Valuation report of the property under question from a registered Valuer was furnished on behalf of the assessee during the course of assessment proceedings and thus, it is clear that the Circle Rate Valuation as proposed to be adopted during the assessment proceedings was duly challenged by substantiating the value adopted by filing these documents, during the assessment proceedings and therefore, these documents cannot be treated as Additional Evidences.

(iv) The Ld. AR has submitted that neither during the course of the original proceedings nor during the course of the remand proceedings, the Ld. AO had brought any other evidence or document on records so as to establish that the addition of Rs.1,02,50,000/- u/s 56(2)(vii)(b) of the Act on account of difference between value of property as per stamp valuation and value as per purchase deed of the property under consideration is justified, while on the contrary the appellant had submitted documents, which have neither been negated nor rebutted by the Ld. AO so as to hold that the Circle rate of the property bought was the Fair market Value. No

reference have been made to the DVO either during the course of the original assessment proceedings, when duly disputing the circle rate of the property, the appellant filed the letters and documents referred supra. Further no reference was made even during the remand proceedings by the Ld. AO though the differences between the circle rate and the consideration paid is being specifically disputed and it is being submitted time and again and all through out that the said circle rate was notional, unrealistic, arbitrary indiscriminate as well as not in commensuration to the prevailing fair market value at the relevant times. However, despite all the above, no power was exercised by the Ld. AO under the relevant provisions of the Act so as to arrive at the Fair Market Value a the asset purchased.

(v) To decide the grounds of appeal it is worth to discuss the whole provisions of section 56(2)(vii) of the Act including the proviso thereof which are as under: -

Quote

56(2)(vii) Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 84[but before the 1st day of April, 2017],-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum:

(b) any immovable property,-

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

(c) any property, other than immovable property,-

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections.

Unquote

It is submitted that the expression "so far as may be" as per the proviso to section 56(2)(vii) has always been construed to mean that those provisions may generally be followed to the extent possible. Reference is sought to be made to the judgment of R. Dalmia and Ors. v. CIT 236 ITR 480 (SC), for the proposition that the expression "so far as may be" applies to all the provisions.

(i) That this provision has employed the word "shall". By use of the word "shall", the provision has been made mandatory and it cannot be construed as directory.

(ii) What has been made applicable by this provision is the provision of this Act."

(iii) Deeming provisions are to be extended to the legitimate purpose for which these are enacted. Accordingly, proviso to Section 56(2)(vii) has to be treated as mandatory. Thereby meaning that ion all cases covered by the said proviso, the provisions of section 50C as also of section 155(15) shall apply in all cases.

It is therefore the Ld. AR has submitted that, it can, on the strength of the above judicial propositions, be contended and would be held that, the procedure of reference to the DVO as per section 50C(2) of the Act shall also apply to the extent it is practical or possible even in case of purchase of immovable property for a value less than the circle rates, provided the said value [as proposed to be added to his income u/s 56(2)(vii)(b)(ii)] is disputed by the Assessee.

Thus, in view of the above referred judicial pronouncements and under the factual matrix it is that the reliance on the provisions of section 56(2)(vii)(b)(ii) while completely overlooking the Proviso to section 56(2)(vii) by the Ld. AO is wrong, incorrect and unwarranted as the AO had failed to bring on record any material or evidence which would warrant the addition impugned.

The appellant' case is covered by the provisions of the Proviso to section 56(2)(vii) of the Act and thus being so, the Ld. AO was mandated to make a reference to the DVO in accordance with the provision of the Act and in the manner and circumstances referred u/s 50C(2) of the Act.

In view of the above discussion, provisions of the Act and respectfully following the judicial pronouncements mentioned above in my opinion the addition of Rs.1,02,50,000/- u/s 56(2)(vii)(b) of the Act on account of difference between value of property as per stamp valuation and value as per purchase deed of the property under consideration deserves to be deleted. I order accordingly. Hence, the ground Nos. 2, 3, 4 and 6 are allowed."

10. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds :-

"1. On the facts and circumstances of the case, the Ld. CIT (A) is not justified in deleting the additional of Rs.1,07,00,000/- made by the AO on account of difference between value of property as per stamp valuation and value as per purchase deed of the property u/s 56(2)(vii) of the Income Tax Act merely holding that AO was failed to make a reference to the DVO, which was mandatory.

2. On the facts and circumstances of the case, the Ld. CIT(A) is not justified in deleting the addition of Rs.1,07,00,000/- made by the AO on account of difference between value of property as per stamp valuation and value as per purchase deed of the property u/s 56(2)(vii) of the Income Tax Act without appreciating the judgment given by the Hon'ble Delhi High Court in the case of Commissioner of Income-tax-II v. Jansampark Advertising & Marketing (P.) Ltd. [2015] 56 taxmann.com 286 (Delhi) wherein the Hon'ble jurisdictional High court has held that 'obligation to conduct proper inquiry shifts to Commissioner (Appeals) and Tribunal if no inquiry is conducted by the AO and they cannot simply delete addition made by Assessing Officer on ground of lack of inquiry, thus, if the AO had failed to conduct the relevant inquiry then it was the duty of the CIT (A) to conduct inquiry.

3. The appellant craves the right to add, alter or amend any ground of appeal before or during the course of the hearing of the appeal."

11. The ld. DR strongly challenged the order of the ld. CIT(A). He submitted that the ld. CIT(A) himself should have referred the matter to the DVO for determination of the fair market value of the property. Since he has not done so, therefore, the order of the ld. CIT(A) should be reversed and that of the Assessing Officer be restored. For the above proposition, he relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Jansampark Advertising and Marketing Ltd. reported in 56 taxmann.com 286.

12. The ld. counsel for the assessee on the other hand strongly supported the order of the ld. CIT(A). She submitted that the property was purchased by the assessee along with her husband who holds 50% share in the said property. The return of income filed by her husband was accepted by the Department, although in summary assessment. However, no proceedings u/s 147 or 263 has been initiated. The assessee during the course of assessment proceedings has filed a report of the registered valuer. However, not a single word has been

mentioned by the Assessing Officer in the assessment order about such valuation report. Although the assessee had filed the copies of the representation made by the Trade Organizations before the then Chief Minister of Delhi, however, the order of the Assessing Officer is silent on this issue. She submitted that before the ld. CIT(A) the assessee filed two comparable cases in the nearby areas which were forwarded by the ld. CIT(A) to the Assessing Officer for his comments. At that time also, the Assessing Officer, instead of referring the matter to the DVO, preferred not to do so. Thus, the Assessing Officer has lost two opportunities for referring the matter to the DVO. She accordingly submitted that the Assessing Officer should not be given a third opportunity for referring the matter to the DVO. Relying on various decisions, she submitted that when the assessee submitted numerous documentary evidences to support the contention of the assessee and when the Assessing Officer never confronted the same to the assessee and did not make any further enquiry and merely on the basis of the difference between the circle rate adopted by the stamp valuation authority and the purchase price made the addition, therefore, the same cannot be sustained.

13. Referring to the decision of the Delhi Bench of the Tribunal in the case of ITO vs. Aditya Narain Verma (HUF) vide ITA No.5166/Del/2013 order dated 07.06.2017, she submitted that identical issue had come up before the Tribunal and the Tribunal after considering the various decisions upheld the order of the

ld. CIT(A) and dismissed the appeal filed by the Revenue where the Assessing Officer instead of referring the valuation of the capital asset to the valuation officer adopted the value taken by the stamp valuation authority for the purpose of stamp duty. She accordingly submitted that the order of the ld. CIT(A) be upheld and the grounds raised by the Revenue should be dismissed. She also relied on the following decisions in support of the case of the assessee :-

(i) Tata Skyline And Health Farms Ltd. vs. ACIT, 70 ITD 387.
(ii) ITO vs. Pawan Kumar Gupta, [2011] 43 SOT 32.
(iii) DCIT vs. Rohtas Projects Ltd., 282 ITR 42.
(iv) ACIT, Anima Investment Ltd., 247 ITR 22.
(v) Raj Kumar Jain vs. ACIT, 208 ITR 22.

14. We have considered the rival arguments made by both the sides and perused the material available on record. We find the assessee in the instant case had jointly purchased the property located at E-886, Narela Industrial Complex DSIIDC Narela, Delhi with her husband Shri Rachit Garg each having 50% undivided share in the said property at purchase price of Rs.75,00,000/-. We find on the basis of price adopted by the stamp valuation authority at Rs.2,80,00,000/-, the Assessing Officer made addition of Rs.1,02,50,000/- in the hands of the assessee by following the provisions of section 56(2) of the I.T. Act. We find, in appeal, the ld. CIT(A) deleted the addition, the reasons for which have already been reproduced in the preceding paragraph. It is the submission of the ld. DR that since the ld. CIT(A), instead of calling for a report from the DVO, had deleted the addition on the basis of submissions made by the

assessee, therefore, the order of the ld. CIT(A) is not in accordance with law and the order of the ld. CIT(A) be reversed. In his alternate argument it is his submission that the matter should be restored to the file of the Assessing Officer.

15. It the submission of the ld. counsel for the assessee that when the assessee had furnished copy of the registered valuer and has also brought to the notice of the Assessing Officer during the assessment proceedings regarding the arbitrary adoption of circle rate by the stamp valuation authority, the Assessing Officer, instead of referring the matter to the DVO proceeded to make the addition on the basis of the valuation adopted by the stamp valuation authority. Further, during the appellate proceedings, the assessee had filed sale instances of two comparable cases in the nearby area which were forwarded by the ld. CIT(A) to the Assessing Officer and the Assessing Officer at that time also did not refer the matter to the DVO. Therefore, the order of the ld. CIT(A) being in accordance with law should be upheld.

16. We find merit in the above argument of the ld. counsel for the assessee. It is an admitted fact that during the course of assessment proceedings the assessee had filed a valuation report of Captain Suresh Dutt & Associates, Government of India approved and registered valuers, who valued the property at Rs.75,40,000/- vide their report dated 07.06.2013, copy of which is placed at pages 33 to 37 of the Paper Book. It is also an admitted fact that the assessee

during the course of assessment proceedings had filed the representations made by the Narela Industrial Complex Welfare Association to the then Chief Minister of Delhi dated 09.12.2010 and another on 30.01.2014, copies of which are placed at pages 29 to 32 of the Paper Book. However, it is strange to note that there is not a whisper in the assessment order by the Assessing Officer on the above facts. Even though the assessee has brought to the notice of the Assessing Officer regarding the arbitrary valuation adopted by the stamp valuation authorities, the Assessing Officer instead of referring the matter to the DVO, made the addition on the basis of the difference in the purchase price and value adopted by the stamp valuation authority. We find during the course of appellate proceedings apart from various submissions made by the assessee, two sale instances of nearby areas were filed before the ld. CIT(A) as additional evidences and the ld. CIT(A) forwarded those evidences in shape of sale instances to the Assessing Officer for his comments. At that time also, the Assessing Officer did not refer the matter to the DVO and simply requested the ld. CIT(A) to adjudicate the issue on merit of the case. The relevant portion of the remand report, copy of which is placed at page 42 and 43 of the Paper Book, reads as under :-

"The AR of assessee vide his letter dated 27.06.2017, during the remand stage furnished the sale deeds of two properties of same location and area i.e. 350 sq.mts. The descriptions of the both the properties is as under :-

S. No.	*Address of property*	*Area in sq.mtrs.*	*Date of sale deed*	*Value as per Circle rates (Rs.)*	*Value as registered sale deed (Rs.)*

1.	*957, Sector G, Narela Indl. Complex, Delhi*	*350 Sq. Mtrs.*	*08.11.2015*	*3,58,57,500/-*	*70,00,000/-*
2.	*855, Block E, DSIDC Narela Indl. Area, Delhi*	*350 Sq. Mtrs.*	*13.07.2013*	*2,80,00,000/-*	*90,00,000/-*

The copy of valuation report in respect of property No.886, Block E, Narela Industrial Area, Delhi dated 07.06.2013 of Captain Suresh Dutt & Associates also filed during the remand stage. The copies of letter by the Industrial Complex Welfare Association to the then Chief Minister of Delhi Smt. Sheila Dixit dated 09.12.2010 and to Shri Arvind Kejriwal dated 30.01.2014,1, stating that the circle rates of industrial plots in Narela Industrial area are much higher than the actual market rates and circle rates are enhanced arbitrarily without any logic were also filed.

The submission of AR of assessee has been considered and documents now furnished has been examined and placed on records. The copy of valuation report and the letters written to the Chief Minister were also filed by the AR of assessee during the course of assessment proceedings, but the Assessing Officer had not considered the same. Now at the remand report stage the AR of assessee filed copies of two sale deed i.e. dated 13.07.2013 and 08.11.2015 of the same locality and area of the property. These new evidences were not produced before the AO during the assessment proceedings where the properties were sold well below the Circle Rates. The AR argued that due to slump in the property market, the properties in the Narela Industrial area are being sold well below the Circle rates. The documentary evidences now furnished by the AR of assessee is placed on records.

In view of above narrated submissions and the facts of the case, it is requested that the appeal of the assessee may please be adjudicated on the merits of the case.

17. So far as the reliance placed on by the Revenue on the decision of the Hon'ble Delhi High Court in the case of Jansampark Advertising and Marketing (P) Ltd. (supra) is concerned, the same, in our opinion, is not applicable to the facts of the present case. In that case the assessment was reopened on the basis of the report of the Investigation Wing that the assessee has received accommodation entries in shape of bogus share capital. Since the Assessing Officer was not satisfied with the genuineness of the claim of receipt of share capital, he issued summons u/s 131 but no one appeared and some of the notices were returned undelivered with the postal remark "Left/no such person". On

being asked by the Assessing Officer to produce the persons/parties from whom the assessee received share application money/share capital, the assessee failed to produce the directors of the companies from whom the share capital was received. The Assessing Officer, therefore, invoking the provisions of section 68 of the I.T. Act, 1961 made addition which was deleted by the ld. CIT(A) and subsequently the Tribunal upheld the order of the ld. CIT(A). On further appeal by the Revenue, the Hon'ble High Court observed as under :-

> *"38. The provision of appeal, before the CIT (Appeals) and then before the ITAT, is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact-finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in Section 250 of the Income Tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made, "further inquiry", in terms of sub-section (4) which reads as under:-*
>
> > *"The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)."*
>
> *39. The further inquiry envisaged under Section 250(4) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found. The assessment proceedings re- opened on the basis of preliminary satisfaction that some part of the income has escaped assessment, particularly when some unexplained credit entries have come to the notice (as in Section 68), cannot conclude, save and except by reaching satisfaction on the touchstone of the three tests mentioned earlier; viz. the identity of the third party making the payment, its creditworthiness and genuineness of the transaction. Whilst it is true that the assessee cannot be called upon to adduce conclusive proof on all these three questions, it is nonetheless legitimate expectation of the process that he would bring in some proof so as to discharge the initial burden placed on him. Since Section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not*

satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.

xxxxx

42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

43. In the result, the questions of law stand answered in favour of the Revenue though with a direction that the matter of assessment arising out of notice under Section 148 Income Tax Act issued on 18.04.2007 for AY 2004-05 in respect of the assessee would stand remitted to the CIT (Appeals) for fresh consideration/adjudication in accordance with law."

18. However, the facts in the instant case are completely different. The Assessing Officer had not discussed anything about the valuation report filed by the assessee during the course of assessment proceedings. The representations filed by the trade organization before the then Chief Minister of Delhi about the arbitrary adoption of circle rate by the stamp valuation authority was also ignored by the Assessing Officer and instead of referring the matter to the DVO he made addition being the difference between the circle rate and actual sale

consideration. When the assessee submitted various details including two sale instances below the circle rate in the same area, the ld. CIT(A) called for a remand report from the Assessing Officer and the Assessing Officer at that time also did not refer the matter to the DVO. Therefore, under these circumstances, the decision of the Hon'ble Delhi High Court in the case of Jansampark Advertising and Marketing Ltd. (supra) as relied on by the Revenue in the grounds of appeal will not be applicable to the facts of the present case.

19. We find identical issue had come up before the Tribunal in the case of Aditya Narain Verma (HUF) (supra). In the said decision also, the Department had requested the Tribunal for setting aside the matter to the file of the Assessing Officer for referring the case to the valuation officer. However, the Tribunal after considering the various submissions made by the assessee rejected such request of the Revenue and upheld the order of the ld. CIT(A) by observing as under :-

> *"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 the result, appeal is dismissed."

20. Since the facts in the instant case are identical to the facts of the case decided by the Tribunal, therefore, respectfully following the same, we uphold the order of the ld. CIT(A) on this issue and the grounds raised by the Revenue are accordingly dismissed.

21. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 08th day of October, 2018.

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA)	(R. K. PANDA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 08-10-2018.

Sujeet

Copy of order to: -

1) The Appellant
2) The Respondent
3) The CIT
4) The CIT(A)
5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi