

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.171/Ind/2017
Assessment Year: 2006-07**

Smt. Surendra Kaur Hora 50, Vidhya Nagar Indore (Appellant)	बनाम/ Vs.	ITO Ward- 5(3) Indore (Revenue)
P.A. No.ACAPH7535D		

Appellant by	Shri Subhash Jain & Shri Pankaj Shah, A.Rs
Respondent by	Shri K.G. Goyal, Sr.D.R.
Date of Hearing:	28.03.2019
Date of Pronouncement:	08.04.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-II, Indore dated 3.10.2016 pertaining to the

assessment year 2006-07. The assessee has raised following grounds of appeal:

1. *On the facts and in the circumstances of the case learned CIT(A) erred in holding correctly valued to the property by AVO even who ignore the objection raised by the assessee.*
2. *On the facts and in the circumstances of the case learned CIT(A) erred in not holding the s.50C of the I.T. Act is not applicable to the transaction dated 15.1.2001.*
3. *On the facts and in the circumstances of the case learned CIT(A) erred in holding the wrong value taken of AVO even pointed out to the AVO & Assessing Officer.*
4. *Alternatively, on the facts and in the circumstances of the case, the CIT(A) erred in not holding that the AVO has adopted the value of the property on the basis of some registry taken by him after ignoring to the adjacent sale deed of the plot submitted by the assessee.*
5. *The Appellant craves leave to add, to amend to alter and/or to delete all or any of the above grounds of appeal.*

2. Briefly stated facts are that case of the assessee was reopened and the assessment u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 23.1.2015. The A.O. noticed that the assessee had sold plot in two parts. As per the stamp valuation authority, the valuation was adopted at Rs.9,98,000/- and Rs.7,17,500/- respectively. The assessee raised an objection adopting the value of land as

per the stamp valuation authority during the course of assessment. Therefore, the assessee referred the matter of valuation to the Departmental Valuation Officer. The Departmental Valuation Officer valued the property at Rs.6,56,185/- and Rs.4,73,072/- respectively. Thereby, the A.O. adopting the valuation as given by the Departmental Valuation Officer made addition of Rs.9,41,203/-. Against this, the assessee preferred an appeal before Ld. CIT(A), who after considering submissions, dismissed the appeal. Now the assessee is in appeal before this Tribunal.

3. The present appeal is barred by 67 days. Assessee has filed an application seeking condonation of delay. An affidavit in support of the application has been filed. It is stated in the affidavit that the assessee is suffering from stage 3 cancer and has been undergoing treatment,

therefore, could not file appeal. It is contended that the delay in filing is not intentional but due to serious illness.

4. Ld. D.R. opposed the averment made in the application.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The assessee has filed a medical report stating that the assessee is suffering from cancer and has been undergoing treatment at CHL Hospital, Indore. In our view, the reason stated is a sufficient cause, therefore, we condone delay and take up the appeal for adjudication.

6. The only effective ground in this appeal is against addition made by the assessing officer, by accepting the value as recommended by the DVO.

7. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. The written submissions of the assessee are as under:

1. Appellant is an individual and originally return was filed on 22.09.2006 after declaring total income Rs. 1,34,140/- from sweing work & Long Term capital Gain from sale of plot and the assessment was completed after making addition for the difference between value adopted as per Sec 50C and transaction value. Hence appellant had filed appeals before CIT(A) who confirmed the addition. Thus assessee has filed the second appeal before the Hon'ble ITAT who overlooked to the non-applicability of Sec 50C but directed to refer for valuation before the DVO. Thus the AO has passed the order after taking the value of the plot as suggested by the DVO. Hence Filed the appeal against said order before the CIT(A) who has also dismissed the appeal after observing being involved technical issue.
2. At the outset, the Appellant submits that Section 50C is not applicable in the instant case as the original agreement was executed on 15.01.2001 (**For this agreement please refer to page no. 1 to 6 of paper book**)when the section was not introduced because Sec 50C was introduced by Finance Act 2002, applicable w.e.f 01.04.2003 i.e. A.Y. 2003-04.
3. Moreover, In the instant case, the assessee herein has only fulfilled a contractual obligation in July 2005, which the assessee is bound by law to carry out as per the sale agreement entered on 15 January, 2001. By executing the sale deed in July, 2005 (**for such sale deed, please refer to page no 7 to 67 of the paper book**)the assessee has only completed the contractual obligation imposed upon it by virtue of the sale agreement, Since the process of sale has been initiated from the date of sale agreement, hence Income tax should be determined on the basis of the conditions that prevailed on the date the transaction was initially entered into. Accordingly, the applicability of the provisions of section 50C should be looked at only on the date of sale agreement which actually was not in existence. I hereby further request your good self that the provisions of section 50C should be applied to the impugned

sale transactions as on the date on which sale agreements were entered into. Since the applicability of section 50C is from 01.04.2003, hence the provisions of section 50C as on the date of sale agreements is not applicable. Your assessee also relied on the judgment of *Modipon Ltd. Delhi vs Department Of Income Tax, New Delhi, ITA 2049/Del./2009*.

4. Without prejudice to above, During the year under consideration the Appellant had executed registered sale deed of plot in two parts

Particular	Part- 1	Part- 2
Buyer	Anwar Rasheed	Mandeep Saluja
Area (per square feet)	1110	1050
Sale consideration		
Assessee	210,000	185,000
50C	998,000	719,500
DVO	656185	473,072

3. Details of plot of 2016 sq. ft is as follow:

Part -1: 1110 sq. ft	Part -2: 1050 sq. ft
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Main
Road

Rated by DVO	Rs. 591 p sq. ft	Rs. 451 p sq. ft
Sold to	Anwar Rasheed	Mandeep Saluja

4. The Appellant had objected to the valuation by DVO based on contemporary cases submitted which shows that the value taken by DVO and stamp value is very unrealistic in the area of Mechanic Nagar in comparison to the following adjacent plot sale deed submitted to the AO as well as DVO.

Contemporary cases submitted	Case 1	Case 2	Case 3
Address	Plot 79, Sch,44 Mechanic Nagar	Plot 49, Sch,44 Mechanic Nagar	Plot 109, Sch,44 Mechanic Nagar
Transaction value	236000	750000	400000
Adopted by the registration Authority for Sec 50C	453000	1826500	1240000

Comparision in time of Value adopted v/s Registered value	1.92 times	2.44 times	3.10 times
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5. Moreover, it is also accepted by the DVO in his report (for this please refer to page no. 86 of paper book). Thus from above table it is clear that the value adopted by the registration authority is more than 2 times from the real transaction value because arbitrary rate has been fixed by the district collector on 1st April of each year and same was duly objected by the appellant before AO as well as AVO during the proceedings but Ld' AO illegally taken the value of AVO who adopted on arbitrary manner.
6. The Appellant prays that the value adopted by DVO is higher side, hence be reduced.
8. Ld. D.R. opposed these submissions and supported the orders of the authorities below. The contention of the assessee is too fold. Firstly that the provision of section 50C of the Act are not applicable as in the present case, agreement was executed on 15.1.2001, while section 50C of the Act was introduced by Finance Act, 2002 applicable from 1.4.2003. Secondly, the valuation adopted by the DVO is not correct as the DVO has adopted different value for the same piece of land. As per the DVO, for one piece of land, it is adopted @ Rs.591/- per. Sq.ft. and in the case of other buyer, it is Rs.451/- per sq.ft.

9. We have considered the rival submissions and material placed on record. We find some merit in the contention that two different values have been taken by the DVO considering the contemporary cases, the value so adopted is excessive. Moreover, the DVO has not given reason to adopt values of the adjacent piece of land. We therefore, direct the A.O. to adopt the value @ Rs.451/- per sq.ft. as adopted by the DVO for one part of the land and compute the addition accordingly. This ground of the assessee's appeal is partly allowed.

10. Regarding another objection of the assessee against applicability of provision of section 50C of the Act, same is devoid of any merit. Admittedly, sale deed was executed when the provision came into force. We therefore reject this contention.

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

Order was pronounced in the open court on 08.04.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 08/04/2019

VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore