

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F+SMC": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6345/Del/2018
(Assessment Year: 2015-16)

Rakesh Prakash, Flat No. 110, Ground Floor, Ashiana Greens, Ashinsa Khand- II, Indirapuram, Ghaziabad PAN: ACZPP7046E	Vs.	ITO, Ward-2(2), Muzaffarnagar
(Appellant)		(Respondent)

Assessee by :	Shri Ankit Gupta, Adv
Revenue by:	Shri S. L. Anuragi, Sr. DR
Date of Hearing	23/07/2019
Date of pronouncement	22/10/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A), Muzaffarnagar dated 31.07.2018, dismissing the appeal of Assessee. The assessee has challenged it on 11 grounds.
2. The assessee has raised the following grounds of appeal:-
 - “1. That assessment order passed u/s 143(3) by the Assessing officer is illegal, bad in law and without jurisdiction and the CIT(A) has also erred in upholding the same.
 2. The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the assessee appellant has been wrongly and illegally computed by the assessing officer on Income of Rs.25,06,820.00 as against declared Income of Rs.2,89,820.00.
 3. That, the Assessing Officer has erred in making the addition of Rs.22,17,000.00 to the Income of the assessee on account of Sector 50C by adopting the value as per Stamp Valuation (Circle Rate) of Rs.82,17,000.00 against the actual Value (Fair Market Value) at Rs.60,00,000.00 of the Property while computing the Long Term Capital Gain, which is highly arbitrary, unjustified and against facts of the case. The CIT (A) has erred in upholding the same.
 4. That, the CIT(A) erred in not appreciating the valuation report submitted by the Assessee Appellant during the appellate Stage and

reject the same in summary manner without pointing out any specific defect, which is highly arbitrary, unjustified and against the provision of Act.

5. *That, the CIT(A) cannot ignore the Valuation report submitted by the assessee merely on his own presumption or without bringing any adverse material on record, when it is a established principle that the Ld. CIT(A) is not an expert of the valuation of the Property.*
 6. *That, the CIT (A) and the assessing officer has erred in not appreciating that the property sold is having certain defects such as, the property was located at the backside of the total property with not terrace right and have no parking provision along with it, which is also mentioned in the sale deed executed, which is highly arbitrary and unjustified.*
 7. *That, the assessing officer and CIT(A) erred in not referring the issue to registered DVO U/s 50(2) of the Income Tax Act, 1961 for the purpose of the valuation of Fair Market Value, which is the mandatory requirement of Section 50C of the Act, when the same was challenged by the assessee.*
 8. *That, the CIT (A) and the assessing officer has failed to appreciate the evidence and facts brought on records by the assessee appellant and made the several observations which is baseless, vague and not at all related to the assessee appellant.*
 9. *That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*
 10. *That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*
 11. *That the interest U/s 234B & 234C has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.”*
3. The brief facts of the case is that the assessee is an individual, filed his return of income 07.09.2015 declared income Rs. 2,89,820/-. The case was picked up for limited scrutiny through CASS for determination of capital gain on sale of land and plot and mismatch of capital gain. The facts shows that the assessee has purchased a flat on 01.03.2011 for Rs. 29,00,000/- and stamp duty paid thereon was Rs. 3,44,500/-. Cost of improvement for Financial Year 2012-13 was claimed of Rs. 1070500/-. The property was sold for Rs. 60 lacs and long term capital gain of Rs. 40580/- was determined. The assessee did not submit the sale deed, however, the stamp

value authority has mentioned in the AIR return picked the value of property at Rs. 82,17,000/-. Thus, the ld AO computed long term capital gain at Rs. 2257580/- by applying provisions of section 50C of the Act and made an addition of Rs. 2217000/-. Consequently, the order u/s 143(3) of the Act was passed on 29.12.2017, where the total income of the assessee was determined at Rs. 2506820/-. The assessee aggrieved with the order of the ld AO preferred appeal before the ld CIT(A) who passed order on 31.07.2018 dismissing the appeal of the assessee. Therefore, the assessee is in appeal before us.

4. The ld AR referred to para No. 9 of the order of the ld CIT(A) wherein, certain additional evidence were admitted which are in the form of report of the registered valuer. He submitted that when the ld CIT(A) has admitted the report of the registered valuer then only option left with the AO is to refer the matter to the Departmental Valuation Officer before adopting the fair market value of the property sold. He referred to the application for additional evidence at page 58 and 59 of the paper book. He also referred the remand report submitted by the AO wherein ld AO objected stating only reason that ample opportunities were given during the assessment proceedings. However, when the CIT(A) has admitted the additional evidence the only option left is reference the ld DVO u/s 50C(2) of the act.
5. Ld DR objected and relied upon the orders of the lower authority.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has sold the property as stated above for Rs. 60 lacs and admittedly the stamp duty valuation of the same was Rs. 8217000/-. The ld AO invoked the position of section 50C of the Act. The ld AO sent the notice via e-mail to the assessee which were replied by the assessee that as he is residing at Gurgaon and not at Muzaffarnagar his case may be transferred to ITO, Ward-3(4), Gurgaon, Haryana. However, assessee submitted the copies of the purchase deed, bank statement and capital gain working. The ld AO proceeded straightway to compute the capital gain by adopting Circle rate of the property for determining of the capital gain. Admittedly, assessee did not have any opportunity of objecting the valuation adopted before the AO. The assessee took such an opportunity before the ld CIT(A) by filing the report of the registered valuer

which were admitted by the CIT(A) but rejected on the merit stating that there are infirmities in the same. Once the 1d CIT(A) admitted the additional evidence in the form of valuation report showing that fair market value (FMV) as per circle rate cannot be FMV cannot be the deemed consideration in the case of the assessee, the only option left is to proceed with reference to the departmental valuation officer as per provision of section 52C(2) of the Act. In view of this, we are of opinion that assessee objected to the valuation adopted according to Section 50C at the first opportunity available, therefore the stamp duty valuation has been questioned by the assessee. In view of this, we cannot confirm the order of the CIT(A) in rejecting the valuation report and stating that no objection has been raised before the 1d AO during the course of assessment proceedings. When no opportunity is available to the assessee to raise such objection before the 1d AO, the assessee cannot be denied of opportunity of raising such an issue before CIT(A). In view of the above, facts we set aside the order of the lower authorities and remand the issue back to the file of the 1d AO to determine the sale consideration of the property in accordance with the provision of section 50C of the act. Assessee is directed to submit the copy of the Valuation Report before the 1d AO and put his arguments on this issue. The AO will grant proper opportunity of hearing and then determine the capital gain in accordance with the law.

7. Accordingly, appeal of the assessee is allowed with above direction for statistical purposes.

Order pronounced in the open court on 22/10/2019.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 22/10/2019
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

