IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6638/Del/2018
Assessment Year: 2014-15

GEETIKA SACHDEV, 497/19, MAIN ROAD, BHATIA NAGAR, TOHANA, SAHARANPUR UTTAR PRADESH **(PAN No. DIJPS2176H)**	Vs.	ITO, Ward-3(2), Saharanpur
APPELLANT		**RESPONDENT**

Assessee by	**Shri K. Sampath, Advocate & Sh. Rajakumar, Advocate**
Revenue by	**Shri Pradeep Singh Gautam, Sr. DR**

ORDER

This appeal filed by the assessee against the impugned order dated 31.07.2018 passed by the Ld. CIT(Appeals), Muzaffarnagar in relation to assessment year 2014-15 on the following grounds:

> On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in:
> 1. Upholding the validity of assessment which is without jurisdiction;
> 2. Confirming the addition made u/s. 56(2)(vii)(b)(ii) of the Income Tax Act, 1961 to the extent of Rs. 8,40,000/-.
>
> Both the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.

2. Ground no. 1 was not pressed by the Ld. Counsel for the assessee, therefore, the same is dismissed as such.

3. As regards ground no. 2 relating to confirmation of addition of Rs. 8,40,000/- is concerned, Ld. Counsel for the assessee stated that this issue is squarely covered by the decision dated 12.01.2019 of the ITAT, Pune-B, Bench, in the case of Rahul Constructions vs. DCIT passed in ITA No. 1543/Pn/2007 (AY 2004-05) wherein it has been held that the margin between the value as given by the assessee and the Departmental Valuer was less than 10 percent, the difference is liable to be ignored and the addition made by the lower authorities on this cannot be sustained and accordingly, the same was deleted. For the sake of ready reference, he placed the copy of the aforesaid decision dated 12.1.2019 before the Bench and requested to follow the aforesaid decision in the case of the assessee and addition in dispute may be deleted.

4. Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the impugned order as well as the case laws cited by the Ld. Counsel for the Assessee. From the facts, it is apparent that the assessee has disputed the addition to be made as mentioned in the show cause notice issued by the AO u/s. 56(2)(vii)(b) of the Act by stating that the purchase consideration paid by her was as per prevailing market rate at that time. However, the AO has not referred the matter to the DVO for the determination of the fair market value of the flat purchased as required under the relevant provisions of the Act. Accordingly the AO has been directed during the appellate proceedings to make such reference to the DVO to meet the principle of natural justice. The DVO,

after considering the objections of the assessee and other evidences produced before him by the assessee, has determined the fair market value of the said flat at RS.98,40,000/-. The AR has raised certain more objections against the determination FMV by the DVO during the appellate proceedings by stating that the DVO has not considered comparable sale deeds and location of the flat, properly. However, the AR also stated during the appellate proceedings that objections could not be sent to the DVO once again and should be considered in deciding the ground of appeal by the Ld. CIT(A). From the facts of the case, it is noted that reference has been made to the DVO to determine the FMV of the flat purchased by the assessee only due to objection of the assessee and the DVO has determined the FMV at Rs.98,40,000/- after considering the objections of the assessee and other evidences produced before him by the assessee. The DVO being an expert on the subject, his report is taken as, final on this issue. Therefore, Ld. CIT(A) has observed that there was no justification for further altering the FMV determined by the DVO and further objections raised by the assessee were rejected. Accordingly under the facts of the case the addition made by the AO was confirmed to the extent of Rs.8,40,000/- and the balance addition was deleted by the Ld. CIT(A) against which the assessee is in appeal before the Tribunal.

5.1 I have also perused the decision dated 12.01.2019 of the ITAT, Pune-B, Bench, in the case of Rahul Constructions vs. DCIT passed in ITA No. 1543/Pn/2007 (AY 2004-05) wherein the Tribunal has adjudicated and decided the similar issue in favour of the assessee by observing as under:-

"We have considered the rival submissions made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. There is no dispute to the fact that the assessee received an amount of Rs. 19,00,000 as sale consideration on account of sale of basement Nos. 2 and 3 at Rahul Chambers. There is also no dispute to the fact that the stamp valuation authorities have adopted the value at Rs. 28,73,000 for the purpose of stamp duty. There is also no dispute to the fact that on being objected by the assessee for substitution of the same figure under s. 50C(2) of the Act, the AO referred the matter to the DVO who determined the FMV of the property on the date of sale at Rs. 20,55,000. We find that the learned CIT(A) upheld the action of the AO in substituting the value determined by the DVO on the ground that the assessee has not objected to the valuation either before the DVO or before the AO or even before him. Further, according to him, as per the provisions of s. 50C, the AO is bound to take the valuation as per the stamp valuation authorities and he is not empowered to go beyond the valuation made by the stamp valuation authorities. However, since the AO has already adopted the FMV determined by the DVO he upheld the action of the AO. It is the submission of the learned counsel for the assessee that the assessee can challenge the valuation determined by the DVO as per the provisions of s. 50C(2) of the Act. However, according to the learned Departmental Representative once the matter is referred to the DVO and the value determined by the DVO is less than the value adopted by the stamp valuation authorities, the AO has no other option but to adopt the value so determined by the DVO. We find the provisions of s. 50C read 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 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 shall, for the purposes of s. 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. (2) Without prejudice to the provisions of sub-so (1), where- (a) the assessee claims before any AO

that the value adopted or assessed by the stamp valuation authority under sub-so (1) exceeds the fair market value of the property as on the date of transfer; (b) the value so adopted or assessed by the stamp valuation authority under sub-so (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 AO may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-ss. (2), (3), (4), (5) and (6) of s. 16A, cl. (i) of sub-s. (1) a sub-ss. (6) and (7) of s. 23A, sub- S. (5) of S. 24, S. 34AA, S. 35 and S. 37 of the WT 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 AO under sub-so (1) of s. 16A of that Act. Explanation: For the purposes of this section, 'Valuation Officer' shall have the same meaning as in cl. (r) of s. 2 of the WT Act, 1957 (27 of 1957). (3) Subject to the provisions contained in sub-s. (2), where the value ascertained under sub-so (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-so (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." A bare reading of the above provisions shows that as per the provisions of S. 50C(1) the value ado ted by the stamp valuation authorities in respect of transfer of a capital asset shall be deemed to be the full value of consideration received or accruing as a result of transfer if such value is more than the value or consideration received by the assessee. As per the provisions of sub-so (2) of the said section if the assessee claims before the AO that such valuation by the stamp valuation authorities under sub-so (l) exceeds the FMV of the property as on the date of transfer the AO may refer the valuation of the capital asset to the DVO. As per the said sub-section where any such reference is made the various provisions of WT Act as mentioned in sub-so (2) referred above shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the AO under sub-so (1) of S. 16A of the WT Act.

We find the provisions of S. 16A of the WT Act deal with reference to the Valuation Officer by the AO. Similarly S.

23A(l)(i) inter alia confers right of appeal to the CIT(A) to any person objecting to any order of the DVO under S. 35 having the effect of enhancing the valuation of any asset or refusing to allow the claim made by the assessee under the said section. We find the provisions of S. 23A(6) and S. 23A(7) and S. 24(5) of the WT Act read as under: "23A(6) If the valuation of any asset is objected to in any appeal under cl. (a) or cl. (i) of sub-so (1) the CWT(A) shall,- (a) in case where such valuation has been made by a Valuation Officer under S. I6A, give such Valuation Officer an opportunity of being heard; (b) in any other case on request being made in this behalf by the AO, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the AO." (a) at the hearing of an appeal, allow an appellant to go into any ground of appeal not specific in the grounds of appeal; (b) before disposing of-any-appeal, make such further enquiry as he thinks fit or cause further enquiry to be made by the AO or, as the case may be, by the Valuation Officer." "23A(7). The CWT(A) may, "24(5) The Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the assessment or penalty: Provided that if the valuation of any asset is objected to, the Tribunal shall,- (a) in a case where such valuation has been made by Valuation Officer under S. 16A, also give such Valuation Officer an opportunity of being heard; (b) in any other case, on a request being made in this behalf by the AO, give an opportunity of being heard also to any Valuation Officer nominated for the purpose by the AO : Provided further that no order enhancing an assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement." A combined reading of the above provisions shows that the valuation adopted by the DVO is subject to appeal and the same is not final. In the instant case we find that as against the value of Rs. 28,73,000 adopted by the stamp valuation authorities, the DVO has determined the FMV on the date of transfer at Rs. 20,55,000. This itself shows that there is wide variation between the two values. Further, the value adopted by the DVO is also based on some estimate. We find that the difference between the sale consideration shown by the assessee at Rs. 19,00,000 and

the FMV determined by the DVO at Rs. 20,55,000 is only Rs. 1,55,000 which is less than 10 per cent. The Courts and Tribunals are consistently taking a liberal approach in favour of the assessee where the difference between the value adopted by the assessee and the value adopted by the DVO is less than 10 per cent.

We find that the Pune Bench of the Tribunal in the case of Asstt. CIT vs. Harpreet Hotels (P) Ltd. vide ITA Nos. 1156-1160/Pn/2000 and relied on by the learned counsel for the assessee had dismissed the appeal filed by the Revenue where the CIT(A) had deleted the unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. Kaaddu Jayghosh Appasaheb, vide ITA No. 441IPnl2004 for the asst. yr. 1992-93 and relied on by the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. vs. CIT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs. 20,55,000 as against the actual sale consideration of Rs. 19,00,000 disclosed by the assessee. We, therefore, set side the order of the CIT(A) and direct the AO to take Rs. 19,00,000 only as the sale consideration of the property.

17. The grounds raised by the assessee are accordingly allowed."

5.2 After perusing the aforesaid findings of the Tribunal, I find considerable cogency in the contention of the Ld. Counsel for the assessee that the issue in dispute involved in ground no. 2 is squarely

covered by the decision dated 12.01.2019 of the ITAT, Pune-B, Bench, in the case of Rahul Constructions vs. DCIT passed in ITA No. 1543/Pn/2007 (AY 2004-05) wherein, it has been held that the margin between the value as given by the assessee and the Departmental Valuer was less than 10 percent and the difference is liable to be ignored and the addition made by the lower authorities on this count cannot be sustained and accordingly, the same was deleted. Similarly, in the case in hand, the difference between sale consideration shown by the assessee at Rs. 90 lacs and fair market value estimated by the DVO at Rs. 98,40,000/- which was less than 10% and hence, the same is liable to be ignored and, therefore, the addition confirmed by the Ld. CIT(A) is not tenable and needs to be deleted. Therefore, respectfully following the precedent, as aforesaid, the addition in dispute is hereby deleted and ground no. 2 raised by the assessee is allowed.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 02/12/2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 02/12/2019
SRB
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI