

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “D” NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**I.T.A No.313/Del/2023
निर्धारणवर्ष/Assessment Year: 2018-19**

Akash Garg 4/71, Road No.71, Punjabi Bagh West, New Delhi.	बनाम Vs.	DCIT Circle Int. Tax 1(3)(1), New Delhi.
PAN No. ALDPG7446A		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Ashok Khandelwal, CA
Revenue by	Shri Abhishek Sharma, CIT (DR)

सुनवाईकीतारीख/ Date of hearing:	05.09.2023
उद्घोषणाकीतारीख/Pronouncement on	04.12.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the final assessment order of the Assessing Officer (for short “AO”) passed u/s 143(3) r.w.s. 144C(13) of the Act dated 20.01.2023 in computing the capital gains by considering the valuation of the DVO as the fair market value of the property instead of the value shown by the assessee which is also the circle rate. The assessee in its appeal raised the following grounds:

“The action of the AO in making an addition of Rs.49,96,140/- as Long Term Capital Gain being the difference of Fair Market Value of the property estimated by the Valuation Officer at Rs.1,20,26,140/- and the actual sale consideration and circle rate of Rs.70,30,000/- shown by the appellant, is unjust, illegal, arbitrary and against the facts and circumstances of the case.”

2. The Ld. Counsel for the assessee, at the outset, submits that reference to Valuation Officer u/s 50C is bad in law for the reason that the sale consideration of the property is not less than the circle rate. The Ld. Counsel placing reliance on the decision of the Hon’ble Gujarat High Court in the case of PCIT Vs. Shanubhai M Patel (73 taxmann.com 138) submits that when the sale consideration of the property is more than the circle rate the reference to Valuation Officer to find out the fair market value of the property is bad in law. Ld. Counsel also submits that the SLP filed by the Revenue against this judgment was also dismissed by the Hon’ble Supreme Court in the case of PCIT Vs. Shanubhai M Patel reported in (73 taxmann.com 151) (SC).

3. Ld. DR strongly supported the orders of the authorities below.

4. Provisions of Sec. 50C sub-section (1) 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 or assessable by any

authority of a State Government (hereinafter 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 or assessable 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.”

5. As could be seen from the above, when consideration received as a result of transfer of capital asset either land or building or both is less than the value adopted or assessed or assessable by any authority of a State Government namely Stamp Valuation Authority for the purpose of Stamp Duty in respect of such transfer, the value so adopted by the Stamp Valuation Authority shall be deemed to be the full value of consideration received as a result of transfer of such capital asset for the purpose of computing capital gains. In the assessee's case, the sale consideration received on transfer of capital asset at Rs.70,30,000/-. The stamp valuation/circle rate of the said properties was also valued at Rs.70,30,000/- for the purpose of Stamp Duty by the Stamp Valuation Authorities.

6. The Hon'ble Gujarat High Court in the case of PCIT Vs. Shanubhai M Patel (supra) held that where the assessee sold plot of land since the value declared by the assessee exceeded value adopted by the Stamp Valuation Officer there was no question of referring valuation of plot to Valuation Officer by the AO by way of

a reference u/s 50C of the Act. While holding so the Hon'ble High Court held as under:

“4. The facts are not in dispute. The assessee showed the value of the plot bearing survey No.14 at Rs.8,04,20,506/-. It is an admitted position that the price of the land, as valued by the assessee, was more than the value adopted by the stamp valuation authority. Section 50C of the Act is a special provision for full value of consideration in some cases. Sub-section (1) of section 50C of the Act provides that 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 or assessable by any authority of a State Government (hereinafter in the section referred to as the “stamp valuation authority”) for the payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable 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. Thus, what the section provides is that if any land or building or both are transferred at a value less than the value adopted or assessed or assessable by the stamp valuation authority, the value adopted or assessed or assessable by the stamp valuation authority shall be considered to be the full value of the consideration received or accruing as a result of such transfer. Thus, the condition precedent for resorting to the provisions of sub-section (1) of section 50C of the Act is that the land or building should have been transferred for a lesser consideration than that adopted or assessed or assessable by the stamp valuation authority. Adverting to the facts of the present case, undisputedly the valuation made by the assessee exceeds the value adopted by the stamp valuation authority. The condition precedent for invoking sub-section (1) of section 50C of the Act is, therefore, clearly not satisfied. Consequently, there was no question of referring the valuation of the plots in question to the Valuation Officer. The impugned order

passed by the Tribunal being in consonance with the provisions of sub-section (1) of section 50C of the Act, does not suffer from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law.”

7. The SLP filed by the Revenue against this judgment was also dismissed by the Hon’ble Supreme Court. In the case on hand the valuation as per Stamp Value Authorities is same or equal to the sale consideration received by the assessee. Provision of Sec. 50C sub-section (1) says if the sale consideration is less than the value adopted by the Stamp Valuation Authorities the value so adopted by the Stamp Valuation Authorities shall be deemed to be the full value consideration. Here in the case on hand the assessee has reported the sale consideration which is equal to the stamp valuation adopted by the Stamp Valuation Authorities in other words the circle rate. The sale consideration reported by the assessee is equal to the circle rate and not less than the circle rate. Therefore, following the decision of the Hon’ble Gujarat High Court, we hold that when the sale consideration is more than or equal to the circle rate the reference made to Valuation Officer to find out fair market value of the property is not justified. Thus, we hold that the reference to Valuation Officer in the case of the assessee is bad in law. Since reference made to Valuation Officer was held to be bad in law the addition made to long term capital

gains will not survive. Accordingly, the same is directed to be deleted.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 04/12/2023

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 04.12.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi