

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'DB': AGRA
(Through Video Conferencing)**

**BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.31/AGR/2019
(ASSESSMENT YEAR 2012-13)**

| | | |
|---|-----|--|
| Smt. Sushila Gupta 13/272, Mamu Bhanja Railway Road Aligarh-202 001 UP PAN-AHHPG 6286E (Appellant) | Vs. | Income Tax Officer Ward-1(1), Aligarh (U.P.) (Respondent) |
|---|-----|--|

| | |
|---------------|---------------------------------------|
| Appellant by | Sh. Baldev Raj, CA |
| Respondent by | Sh. Shildendra Shrivastava, Sr. DR |

| | |
|-----------------------|------------|
| Date of Hearing | 11/09/2023 |
| Date of Pronouncement | 18/10/2023 |

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-Aligarh ["Ld. CIT(A)", for short], dated 05/12/2018 for Assessment Year 2012-13.

2. Grounds taken in this appeal are as under:

“1) That on the facts and in law the Appellate order u/s 250 dated 05.12.2018 passed by Ld. The Commissioner of Income Tax (Appeal), Aligarh is bad in law and liable to quash.

2) That on the facts and in law the Ld. The Commissioner of Income Tax (Appeal), Aligarh erred in upholding the addition of Rs.35,75,424 in long term capital gain.

3) That on the facts and in law the Ld. The Commissioner of Income Tax (Appeal), Aligarh erred in his finding that the valuation adopted by the department valuation officer (DVO) merely an advisory in nature and cannot override the valuation determined by the sub-registrar under the Indian Stamp Act.

3.1 That on the facts and in law the Ld. The Commissioner of Income Tax (Appeal), Aligarh erred in upholding value of Rs 37,24,000 being full value of consideration of sale of properties as adopted value under the stamp duty Act as per provision of section 50C.

3.2 That on the facts and in law the Ld. The Commissioner of Income Tax (Appeal), Aligarh erred in not adopting the lower of value as computed by DVO or value considered for calculating of stamp duty (value as per Circle rate) of Rs.20,48,100/- being full value of consideration of sale of properties. The Ld. CIT(A) ought to be compute the full value of consideration as per provision of section 50C in the following manner:

| Property serial number | Valuation of property made by DVO on reference by the learned assessing officer | Value of property considered for Stamp duty purpose (Circle Rate) | Full value of consideration of property as per provision of section 50C of Act. |
|-------------------------------|--|--|--|
| A | B | C | Lower of B and C |
| 1 | 800,300 | 13,17000 | 800,300 |
| 2 | 257,400 | 586,000 | 257,400 |
| 3 | 257,400 | 586,000 | 257,400 |
| 4 | 341,600 | 233,000 | 233,000 |
| 5* | 579,500 | 5,00,000 | 500,000 |
| | 22,36,200 | 37,24,000 | 20,48,100 |

*This property (serial no 5) was sold in year 2001 through registered agreement to sale.

4 That on the facts and in law the Ld. The Commissioner of Income Tax (Appeal), Aligarh erred in not considered and dispose-off the following Appellant grounds of appeal:

“
2. That the Learned AO erred, both on facts and in law, but not accepting valuation report dated June 03, 2011, and by wrongly stating it as undated and incomplete.

5. That the Learned AO is not justified, both on facts and in law, by disallowing cost of acquisition (fair value of the property in year 1981) of Rs 1,58,115 and wrongly considered it @ Rs 120 per square mtr. i.e Rs 9,265/- and also not allowing cost of improvement of Rs.180,120/- incurred in year 1989-90 as per details given in valuation report dated June 03, 2011 without any basis /reasons and without any reference to any legal/regulatory provision.

6. That the Learned AO is not justified, both on facts and in law, by disallowing the legal expenses of Rs.150,000/- as cost of acquisition/improvement without providing an opportunity of being heard to the assessee for such disallowance.

7. That the Learned AO is not justified, both on facts and in law, by disallowing expenses of Rs.56,300/- incurred in connection with the sale of five immovable properties under question.

8. That the order dated December 12, 2016 is factually incorrect and against law by disallowing the benefit of minimum limits not chargeable to Tax, Le. Rs.250,000 to the assessee.

9. That the Learned AO erred, both on facts and in law, by computing the interest of Rs.829,643/- from Assessment Year 2009-10 whereas the case related to assessment year 2012-13.

10. That the Learned AO erred, both on fact and in law, by charging a surcharge on income tax to the assessee for AY 2012-13 whereas no surcharge was applicable to an individual assessee in that year. Similarly, education cess has been mistakenly charged on surcharge amount.”

5. All the above grounds are independent and without prejudice to other. The appellant carves the right to add, modify, amend and delete the grounds of appeal during the course of hearing.”

3. Brief facts of the case are that, the assessee filed return of income declaring income at Rs. 1,71,862/- which was processed u/s 143(1) (a) of the Act and the return was accepted. Subsequently, the reassessment proceedings were initiated u/s 147 of the Act, the assessment order was came to be passed u/s 143(3) read with Section 147 of the Act on 02/12/2016 by computing the income of the assessee at Rs. 37,93,510/-, wherein the Ld. A.O. enhanced the long term capital gain to Rs. 36,51,271/- from declared long term capital gain of Rs. 75,847/- and further enhanced the interest earned on deposit with bank to Rs. 1,42,243/- from declared interest of Rs. 96,015/-. Aggrieved by the Assessment Order dated 02/12/2016, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 05/12/2018, dismissed the Appeal filed by the assessee. Aggrieved by the order of the CIT(A), the assessee preferred the present appeal on the grounds mentioned above.

4. The dispute between the Assessee and the Department of Revenue is regarding consideration of correct sale consideration of the immovable properties disposed by the assessee. The assessee being the owner of the property at 13/144/Mamu Bhanja, Aligarh having four shops, sold to four purchasers and the details are as under:-

| <i>Property reference assessment order</i> | <i>in</i> | <i>Area of Property Sq mtr</i> | <i>Buyer Name</i> | <i>Sales consideration</i> |
|--|-----------|--------------------------------|--------------------------|----------------------------|
| <i>Property -1</i> | | <i>24.25</i> | <i>Pradeep Kumar</i> | <i>5,00,000.00</i> |
| <i>Property - III</i> | | <i>3.9</i> | <i>Babita Agarwal</i> | <i>2,00,000.00</i> |
| <i>Property - IV</i> | | <i>3.9</i> | <i>Babita Mittal</i> | <i>2,00,000.00</i> |
| <i>Property - V</i> | | <i>27.6</i> | <i>Amrapali Varshney</i> | <i>2,00,000.00</i> |
| <i>Total</i> | | <i>35.4</i> | | <i>I 11,00,000.00</i> |

5. It is the case of the assessee that there were no many buyers available for purchasing the property and the market price was very low due to dispute in the title, litigations involved and occupancy by various tenants since long. Therefore, the assessee was compelled to sell the properties to the occupied tenants and sold the property higher than the 'value computed by the approved valuer'. The Id. Counsel also submitted that the property No. 13/144, Mamu Bhanja, Aligarh a 17.56 sq. meter area was sold in the year 2011 for Rs. 5,00,000/- through registered deed, but final registration of the said property taken place in the Assessment Year 2012-13 and capital gain on that arose in the 2001 not in the year in question, therefore, submitted that the circle rate valuation on the said property is not applicable. Further submitted that, the Ld. A.O. computed the long term capital gain on all 5 properties registered during the Assessment Year 2012-13 including the Property No. 13/144, however, the Ld. A.O did not refer the matter to the DVO even though the

assessee raised the objection to the value considered under the Stamp Duty Act, thereby not complied the provision of Section 50C(2) of the Act. Therefore, Ld. A.R. sought for deletion of the addition.

6. Per contra, the Ld. Departmental Representative by relying on the orders of the Lower Authorities submitted that, the Assessee had been given ample opportunity by the A.O. by issuing several Notices, but the Assessee avoided giving reply to the notices issued by the A.O. and took adjournments for 18 months and at the end of the year, when the case was going to get time barred, furnished reply with the Valuation Report only within intention to leave no time to the A.O. to refer the matter to the Departmental Valuation Officer('DVO' for short). Thus, the Ld. DR submitted that the Assessee cannot raise the Ground of non referring the matter to the DVO before this Hon'ble Tribunal and submitted that the addition made by the A.O. deserves to be sustained by the Tribunal.

7. We have heard both the parties and perused the material available on record. The assessee being the owner of the ancestors properties at 13/144 Mamu Bhanja, Aligarh sold Four shops declaring the long term capital gain in following manners:-

| Property ref. in AO order | Area Sq mtr | Sales Consideration in Rs. | Transfer Cost in Rs. | Index cost In Rs | Index cost of Improvement in Rs. | Capital gain in Rs. |
|----------------------------------|--------------------|-----------------------------------|-----------------------------|-------------------------|---|----------------------------|
| Pro.- I | 24.25 | 500,000.00 | 19,900 | 3,24,362 | 1,75,712 | -19,974 |
| Pro - III | 3.9 | 200,000.00 | 5,500 | 53,380 | 1,05,122 | 35,998 |
| Pro.- IV | 3.9 | 200,000.00 | 5,500 | 53,380 | 1,12,517 | 28,603 |
| Pro. - V | 27.6 | 200,000.00 | 5,500 | 1,63,280 | | 31,220 |
| Total | 35.4 | 1,100,000.00 | | | | 75,847 |

The Ld. A.O. computed the long term capital gain on 5 properties in following manners:-

| Property ref. in AO order | Area sq mtr | Value as per 50C in Rs. | Sales Consideration | cost as on 01.4.81 In Rs | Index cost In Rs | Capital gain in Rs. |
|----------------------------------|--------------------|--------------------------------|----------------------------|---------------------------------|-------------------------|----------------------------|
| Pro. - I | 24.25 | 18,19,000 | 5,00,000 | 2,910 | 22843 | 17,96,157 |
| Pro - II | 17.56 | 5,00,000 | 500,000 | 2,107 | 16,540 | 4,83,460 |
| Pro - III | 3.9 | 5,86,000 | 200,000 | 468 | 3673 | 5,82,327 |
| Pro.- IV | 3.9 | 5,86,000 | 200,000 | 468 | 3,673 | 5,82,327 |
| Pro. - V | 27.6 | 2,33,000 | 200,000 | 3,312 | 26.000 | 2,07,000 |
| Total | | 37,24,000 | 16,00,000 | | 72,729 | 36,51,271 |

8. In the present case the addition has been made on the basis of difference in value of the property declared by the Assessee as sale consideration and the

value adopted by stamp valuation authority. It is the contention of the Assessee that the A.O. adopted the full value of the consideration as adopted by the stamp valuation Authority, however, failed to take note of the objection raised by the Assessee for taking the valuation adopted by the Stamp Valuation Authority, Valuation Report produced by the Assessee and also failed to refer the matter to DVO in complacence with Section 50C(2) of the Act.

9. The Hon'ble Calcutta High Court in the case of Sunil Kumar Vs. Commissioner of Income Tax, Siliguri in G.A No. 3686 of 2013, (ITAT No. 221 of 2013) vide order dated 13/03/2014, held as under:-

"We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has not been met by the assessee, can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of Section 50C was met by the assessee.

We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter.

Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

For the aforesaid reasons, the order under challenge is set aside.

The impugned order including orders passed by the CIT(A) and the assessing officer are all set aside. The matter is remanded to the assessing officer. He shall refer the matter to the departmental valuation officer in accordance with law.”

10. It is found from the assessment order the Assessee had been given several notices but the Assessee avoided giving reply to the notices issued by the A.O. and kept on taking adjournments for 18 months and finally at the end of the year, when the case is going to be time barred, furnished reply with valuation report. The Ld. A.O. found that the said valuation report is without having date and also lack of details of complete properties. As per the A.O. since the Assessee intentionally filed the Valuation Report at the fag-end of the time barring, leaving no time for the Department to refer the matter to the Departmental Valuation Officer, the Valuation Report submitted by the Assessee has not been relied upon. The such conduct of the Assessee taking adjournment for 18 months and filing the valuation report at the end of the year nearing the time barring for the A.O. and on the other hand taking a ground that the A.O. failed to refer the matter to the A.O. as per Section 50C(2) of the Act is not appreciable. Nevertheless, considering the facts and circumstances of the case and by following the ratio laid down in the case of Sunil Kumar Agrawal Vs. Commissioner of Income Tax, Siliguri, (supra), we set aside the order of the Lower Authorities and restore the issues involved in the

present appeal to the file of the A.O. who shall refer the matter to the Departmental Valuation Officer and on obtaining the report from the Departmental Valuation Officer, the A.O. is directed to make de-novo assessment in accordance with law. Thus, the Grounds of Appeal of the Assessee are disposed off by partly allowing the Appeal of the Assessee for statistical purpose.

Order pronounced in open Court on 18th October, 2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 18/10/2023

Pk/R.N, Sr ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, AGRA