<u>The Hon'ble Sri Justice C.V.Nagarjuna Reddy</u>

<u>and</u>

<u>The Hon'ble Sri Justice Challa Kodanda Ram</u>

<u>ITTA No.384 of 2017</u>

<u>Date: 07.11.2017</u>

Between:

The Prl. Commissioner of Income-Tax-2
Hyderabad

… Petitioner

and

T.Vijayasaradhi

…Respondent

Counsel for the Petitioner: **Ms.K.Mamta Choudary**
Senior Standing Counsel for IT Dept.,

Counsel for the respondent: **Mr.C.V.Narasimham**

The Court made the following:

Judgment: **(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This Appeal is filed by the Revenue against Order, dated 13.05.2016, in ITA.No.708/HYD/2014 on the file of the Income Tax Appellate Tribunal, Hyderabad 'B' Bench, Hyderabad (for short 'the Tribunal').

In respect of the assessment year 2008-2009, the dispute regarding valuation of certain property was raised by the respondent-assessee before the Assessing Officer (for short 'the AO'). Despite the request made by the respondent- assessee, the AO has not referred the said dispute to the Departmental Valuation Officer (for short 'the DVO') for valuation of the property and based on the registration value of the property, he has made the assessment. The appeal filed by the respondent- assessee before the Commissioner of Income Tax (Appeals)-III having been dismissed, he has filed ITA.No.708/HYD/2014 before the Tribunal.

The respondent- assessee pleaded before the Tribunal that under sub-Clause (a) of Section 50C (2) of the Income Tax Act, 1961 (for short 'the Act'), a right is vested in the assessee to dispute the value adopted or assessed (or assessable) by the stamp valuation authority, if the same exceeds the fair market value of the property as on the date of transfer and, that, on such dispute being raised, the AO is bound to refer the issue of valuation of the property to the Valuation Officer. The Tribunal has accepted the said submission of the assessee, set aside the orders of both the primary as well as the appellate authorities and remitted the issue to the AO, with a direction to him to refer the matter to the DVO for valuation. The Revenue has filed this Appeal feeling aggrieved by the said order.

The main ground, raised as substantial question of law by the Revenue, is as follows:

> "Whether, in the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in directing the matter to be referred to the DVO even though the Assessee has not objected to the market value of land adopted by the SRO?"

Mr.C.V.Narasimham, learned Counsel for the respondent- assessee, pointed out and in our view rightly, that the above-mentioned substantial question of law framed by the Revenue runs contrary to Section 50C (2) of the Act, which reads as under:

> "Without prejudice to the provisions of sub-section (1) where-
>
> (a) the assessee claims before any Assessing Officer that the value adopted [or assessed or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
>
> (b) the value so adopted [or assessed or assessable] by the stamp valuation authority under sub-section (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 Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where by such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax 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 Assessing Officer under sub-section (1) of section 16A of that Act."

It is evident from the afore-mentioned provision that the assessee is entitled to raise the plea that the valuation made by the stamp valuation authority for the purpose of registration and stamp duty is in excess of the market value. Indeed, in order to meet such a situation, a specific provision is made under sub-section (2) for the AO to refer the issue of valuation of the capital asset to the Valuation Officer, so as to arrive at the true and the correct market value. Therefore, we are of the opinion that the view taken by the Tribunal is in consonance with the above-mentioned statutory provision and, therefore, the substantial question of law raised by the Department is answered against it and in favour of the respondent- assessee.

Accordingly, the Appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

(Challa Kodanda Ram, J)

Dt: 7th November, 2017
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