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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 174/2017

PRINCIPAL COMMISSIONER OF
INCOME TAX(CENTRAL)-3,

..... Appellant

Through: Mr. Zoheb Hossain, Adv.

Versus

SMT. ANITA RANI

..... Respondent

Through: Mr. Salil Kapoor, Mr. Sumit

Lalchandani, Ms. Ananya Kapoor and Mr. Sanat
Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **27.02.2017**

1. The Revenue questions the order of the ITAT which affirmed the CIT(A)'s finding that the additions made on the basis of the re-evaluation of the assessee's property – increasing it to ₹ 4.80 crores was erroneous.

2. The assessee had filed its return for AY 2008-09 and *inter alia* reported sale of its capital asset – acquired in 1974. Although assessment was completed, further appeals were pending on behalf of both the parties before the ITAT. In the meanwhile, on 06.11.2008, a search and seizure operation was initiated under Section 132 of the Income Tax Act, 1961 (in short the Act) in the assessee's premises; pursuant to this it received notice under Section 153A on 08.07.2009. The assessee filed returns for the relevant year i.e. AY 2008-09

declaring ₹ 7,54,540/-.

3. Doubting the assessee's valuation of the property sold during the relevant period i.e. C-218, Mayapuri, Phase-II, New Delhi, the AO referred the issue to the District Valuation Officer (DVO) under Section 142A of the Act. The DVO valued the property at ₹ 83.59 lacs. However, the AO based upon the replies to the queries received from the assessee's banker under Section 133(6) of the Act concluded that the true market value of the property was valued as on 05.07.2005 was ₹ 5,09,20,000/-. The assessee rejected the DVO's valuation but concluded that since the property was shown as collateral by the assessee for the purposes of bank credit, and that in that transaction it was valued at ₹ 4 crores, upon an estimated increase of 10% per annum, the market value was ₹ 5,09,20,000/- and the realisable value was Rs. 4 crores.

4. The CIT(A) after re-appreciating the entire circumstances and also after considering the relevant case law was of the opinion that the AO was not justified in calculating the considerations on a notional basis as he did. In so holding the CIT(A) relied upon the decision in **CIT vs N. Swamy 241 ITR 363** and other judgments. Findings of the CIT(A) are based upon a comparison of the contemporaneous transactions. The CIT(A) concluded as follows:

“.....Upon analyzing the submissions of the appellant on the issue, it is noted from the copy of sale deed dated 29.06.07 in appellant's case that the same has been registered by the registration authorities at Delhi and there is no reference in this sale deed as to higher stamp

duty being charged than the stamp duty as mentioned on the declared sale consideration by the appellant. From this it can be inferred that the case of the appellant does not attract the special provisions for computation of capital gain u/s 50C of the IT Act. Moreover even if the valuation for stamp duty purposes were higher than the actual consideration it was incumbent upon the AO to have given an opportunity and made a reference for valuation if objected upon by the assessee to the valuation officer's report called for u/s 55A of the Act. No such mandatory procedure has been followed and therefore there can be no case for making addition to income u/s 50C of the IT Act, as the valuation report in this case has been obtained u/s 142A of the Act. It is also noted that the above valuation report u/s 142A has not been confronted to the appellant, who in any case has cited several reasons (as referred above) to the effect as to why the aforesaid valuation report should not be made applicable to the facts of this case. The foremost being that the sale instance taken by the valuer is prima facie not a comparable one and secondly the same consideration of the appellant is better than the other sale instances cited by the appellant during the appellate proceedings. The appellant's arguments regarding the comparable sale instance taken in valuation report is acceptable and therefore there is no case for making any addition to income as unaccounted receipt of cash on account of higher sale consideration than the registered sale price by the appellant during the year. Lastly it is also relevant to note that a valuation made u/s 142A is only for the purposes of estimating cost of investment u/s 69/69B of the Act and therefore the scope of this section cannot be extended for determining the sale consideration of an asset.

In view of all the above discussion in totality the

addition made for Rs. 67,14,600/- is directed to be deleted.....”

5. The Revenue’s appeal was rejected by the ITAT which fully endorsed the CIT(A)’s order. Therefore, appellant to this Court contends that the AO was justified in re-valuing the property based upon the replies to the queries by the assessee’s banker. It is submitted that although the issue of valuation was pending in dispute before the ITAT, nevertheless the AO was justified in going into the matter afresh given that search and seizure proceedings were conducted.

6. It is evident from the above discussion that the sale and the consideration received were reported by the assessee in the return filed. The transaction took place on 29.06.2007. The dispute vis-a-vis the transaction value is a matter as yet undertermined. The orders of the adjudicating authorities – most importantly that of the AO, nowhere discloses what was the fresh document or material seized which made him suspect the valuation of the property which ultimately led him to send queries to the assessee’s banker and also refer the matter to the DVO.

7. Having regard to these circumstances, the Court is of the opinion that there is no infirmity with the ITAT order which essentially held that the valuation by the banker, who provided credit could well be different from the valuation report for the transaction given that the assessee had purchased the property long ago. In other words, the absence of any material seized during the search

proceeding could not have justified afresh examination of the valuation issue. No substantial question of law arises.

8. This Court, however, clarifies that the discussion in this appeal shall not be deemed to include the merits of the pending issues in regard to which parties' contentions are kept open.

9. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 27, 2017/kk