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

+ **ITA 703/2017**

SONIA GOEL

..... Appellant

Through: Mr.Rajesh Mahna, Advocate.

Versus

I.T.O, WARD 21(1), NEW DELHI

..... Respondent

Through: None.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

28.08.2017

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C.M.No.31100/2017 (Exemptions)

1. Allowed subject to all just exceptions.

ITA No.703/2017

2. This appeal has been filed by the Assessee under Section 260A of the Income Tax Act, 1961 ('the Act') against an order dated 10th April, 2017 of the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2539/Del/2015 for the Assessment Year ('AY') 2008-09.

3. It must be noted at the outset that the challenge to the impugned order of the ITAT is essentially on the ground that the ITAT erred in affirming the order of the Commissioner of Income Tax (Appeals) ['CIT (A)'] as regards the additions made to the return of income of the Assessee for the AY in question on re-assessment under Section 147/148 of the Act on the basis of a

valuation report submitted by the District Valuation Officer ('DVO') pursuant to a reference made to him under Section 55A of the Act.

4. The background facts are that during the AY in consideration, the Assessee sold a residential property at Plot No. 3, Pocket-5, Block-E, Sector-7, Rohini, Delhi for Rs.77,50,000/- by a registered deed dated 14th December, 2007. According to the Assessee, the value disclosed in the sale deed was as per the circle rate prevalent at the relevant point in time. The Assessee claimed that the said property had been purchased on 3rd February, 2004 for Rs.40,33,000/- and that she had a 1/6th share in the said property.

5. In the income tax return filed on 19th March 2009, the Assessee declared an income of Rs.1,38,007/-. In the course of the assessment proceedings itself, the Assessing Officer ('AO') made a reference to the DVO under Section 55 of the Act for valuation of the property in question. In the order dated 31st December 2010, passed under Section 143 (3) of the Act, the AO noted that the assessment would be subject to the valuation report of the DVO.

6. From the document placed on record it appears that an order was passed by the DVO under Section 55A of the Act on 4th April, 2011 in which *inter alia* it was noted that notice had been issued by him to the Assessee with regard to his proposal for estimating the fair market value of the property at Rs.3,66,77,300/-. The order specifically notes that no objections were raised till then by the Assessee. Consequently, the DVO proceeded to estimate the fair market value of the property in question at the relevant time as Rs.3,66,77,300/-.

7. The AO issued notice to the Assessee on 9th April, 2012 under Section 148 of the Act. The reasons for the re-opening of the assessment referred to the valuation report. The AO noted he had reasons to believe that capital gains at Rs.48,21,216/- had escaped assessment. This was followed by notices being issued to the Assessee under Section 143(2) and 142 (1) of the Act on 21st October, 2013. The Assessee, on 7th February 2014, filed objections to the reopening of the assessment. A careful perusal of these objections shows that the Assessee did not, *per se*, challenge the valuation report but only that there could be no re-opening of the assessment. No objection was raised about the Assessee not having received a notice from the DVO in the valuation proceedings. It was urged, on the strength of the decision in ***K.P. Verghese v. ITO (1981) 131 ITR 597 (SC)*** and other decisions, was that an addition could not be made only on the basis of the valuation report.

8. The above objections were negated by the AO and a re-assessment order came to be passed on 10th March, 2014 making an addition of Rs.48,21,216/-. After the CIT (A) confirmed the above addition by dismissing the Assessee's appeal on 18th March 2015, the Assessee went before the ITAT which by the impugned order has dismissed her appeal. In the impugned order, the ITAT noted that grounds on which the re-assessment order was challenged were not raised by the Assessee in the re-assessment proceedings themselves.

9. Mr. Rajesh Mahna, the learned counsel for the Appellant/Assessee relied on the decisions in ***CIT v. Dharamveer Sardana*** (decision dated 4th May,

2012 in ITA No.266/2012); *The Assistant Commissioner of Income Tax v. Dhariya Construction Co. (2010) 328 ITR 515 (SC)*; *Commissioner of Income Tax v. Naveen Gera (2010) 328 ITR 516 (Del)*; *Commissioner of Income Tax v. Smt. Suraj Devi (2010) 328 ITR 604 (Del)*; *Commissioner of Income Tax v. Puneet Sabharwal (2011) 338 ITR 485 (Del)*; *Principal Commissioner of Income Tax v. G & G Pharma India Ltd. (2016) 384 ITR 147 (Del)* and *Commissioner of Income Tax v. Subhash Sharma* (decision dated 8th November 2013 in ITA No. 497 of 2013) and urged that there was no justification for re-opening the assessment on the basis of the valuation report. He submitted that the ITAT has made a factual error in observing that no objection was taken by the Assessee as regards the validity of the valuation report.

10. The Court finds that even in the original assessment order, the AO noted that the re-opening of the assessment order would depend on the valuation report received from the DVO. The reference to the DVO was made by him even during the course of original assessment proceedings. The order passed by the DVO under Section 55A of the Act further reveals that the Assessee had a full opportunity of pointing out to the DVO why the value proposed by him should not be finalized. For the reasons best known to her, the Assessee chose not to participate in the proceedings before the DVO. Consequently, it is too late in the day for the Assessee to question the determination by the DVO of the fair market value of the property in question. In the circumstances of the present case where the Assessee was fully conscious of a reference having been made to the DVO and chose not to participate in the resultant proceedings, the reopening of the assessment

on that basis cannot be said to be erroneous. The AO was conscious that the valuation report would necessitate the re-opening of the assessment if it was found that what was declared by the Assessee as the value of the property was different than what emerged in the report of the DVO. The Assessee too was aware of this consequence. As is evident the value of the property in question as disclosed by the Assessee was far too less when compared to the fair market value as of that date as has been determined by the DVO.

11. On merits, therefore, the re-opening of the assessment was entirely justified. Consequently, the Court sees no error having been committed either by the CIT (A) or the ITAT in confirming the addition. No substantial question of law arises for determination from the impugned order of the ITAT.

12. The appeal is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 28, 2017

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