

(2010) 12 DEL CK 0167

Delhi High Court

Case No: ITA No. 758 of 2005

Commissioner of Income Tax XI

APPELLANT

Vs

Shri Puneet Sabharwal

RESPONDENT

Date of Decision: Dec. 3, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 45(5), 48, 55A, 69B

Citation: (2011) 1 AD 724 : (2011) 338 ITR 485 : (2012) 204 TAXMAN 16

Hon'ble Judges: Suresh Kait, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Abhishek Maratha, for the Appellant; O.S. Bajpai and B.K. Singh, for the Respondent

Judgement

A.K. Sikri, J.

This appeal was admitted on the following two questions of law:

1. Whether the Assessing Officer was right in referring the question of fair market value of the property sold by the Assessee, to the District Valuation Officer in terms of Section 55A of the Income Tax Act, 1961 ("Act")? alternatively, was the Assessing Officer in terms of Section 48 read with Section 45(5) of the Act bound to accept the value stated in the registered sale deed?.
2. Whether the Income Tax Appellate Tribunal was right in holding that notwithstanding the report of the DVO, the Revenue had to prove that the Assessee had in fact received extra consideration over and above the declared value of the sale?
2. The facts leading to the framing of the aforesaid questions, in brief, are as follows.
3. The Respondent Assessee, who is an individual, had filed his return of income for the assessment year 1997-98 declaring income of 8,13,910/-. The Assessing Officer,

during the assessment proceedings took a note of the fact that during the previous year the Assessee had purchased three properties, particulars of which are as under:

1. A-54, New Friends Colony, New Delhi

2. Plot No. 417, Block A-I, Sushant Lok, Phase II, Gurgaon

3. Flat 5-A, Ground Floor, Taimoor Nagar, New Delhi.

4. The Assessing Officer was of the view that cost of acquisition of the aforesaid property as shown in the sale deed was much lower than the fair market value of these properties. Because of this doubt in the mind of the Assessing Officer, he referred the matter to the Valuation Cell of the Department for determining the cost of aforesaid properties on the date of acquisition. The District Valuation Officer (DVO) submitted his report as [(sic) which the value was higher by an amount of 12,54,206/-in respect of one aforesaid three properties. After following the requisite procedure laid down under the Act for issuance of show cause notice etc, the Assessing Officer made the additions in the income of the Assessee while passing the assessment order by the aforesaid amount of " 12.54 lacs. The Assessee, not being satisfied with the aforesaid order preferred an appeal before the CTT (A). After considering the matter at length, the CTT (A) allowed the appeal and deleted the addition on the ground that apart from the said report of the DVO, there was no evidence on record that some extra consideration was paid by the Assessee for acquiring the property over and above the consideration stated in the sale deeds. The CTT (A) in support of this conclusion relied upon the judgment of the Apex Court in the case of [K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another](#), . He was also of the view that the condition precedent for invoking the provisions of Section 69B of the Act was not fulfilled.

5. The aforesaid decision of the CTT (A) is upheld by the Tribunal reiterating the position of law in the following manner:

Aggrieved by the order of the CTT (A), the Revenue is in appeal before us. We have considered the rival submissions. The learned DR relied on the order of the AO and learned Counsel for the Assessee placed reliance on the order of the CTT (A). After considering the rival submissions, we are of the view that the order of the CTT (A) does not call for any interferences as rightly held by the CTT (A). There was no material on record to show that the Assessee in fact invested much more than what was claimed by him as the actual cost of acquisition. In such circumstances the principle laid down by the Hon"ble Supreme Court in the case of K.P. Varghese (supra) will squarely apply. An addition u/s 69B cannot be made unless it is established that the Assessee has made investments which is in excess of the amount recorded in the books of accounts. There is no evidence to show such excess investments having "been" made by the Assessee. In such circumstances the condition precedent for applicability of Section 69B was not fulfilled. In view of the

above, order of the CTT (A) is confirmed and the appeal filed by the Revenue is dismissed.

6. Coming with the statement of facts narrated above, further we proceed to answer the questions on which the appeal was admitted.

7. Coming to the first question, it does not arise for consideration. As per the question formulated, the property was sold by the Assessee whereas, in the instant case, the properties in question were purchased by the Assessee and were not sold by him. Even if we treat the same as typographical mistake, we are of the view that it would not be necessary to decide this question in view of the answer that we propose to give to question No. 2.

8. As far as the question No. 2 is concerned, as already indicated above, the Assessing Officer solely relied upon the report of the DVO. Apart from this, there was admittedly no evidence or material in his possession to come to the conclusion that the Assessee had paid extra consideration over and above what was stated in the sale deed. This very issue has come up for consideration before this Court repeatedly and after following the judgment of the Supreme Court in the case of K.P. Varghese (supra), the aforesaid proposition of law is reiterated time and again. For our benefit, we may refer to the latest judgment of this Court in the case of CTT v. Smt. Suraj Devi 328 ITR 604, wherein this Court had held that the primary burden of proof to prove understatement or concealment of income is on the Revenue and it is only when such burden is discharged that it would be permissible to rely upon the valuation given by the DVO. It was also held that the opinion of the Valuation Officer, per se, was not an information and could not be relied upon without the books of accounts being rejected which had not been done in that case.

9. The aforesaid principle of law has been reaffirmed in CTT v. Naveen Gera 328 ITR 516 stating that opinion of the District Valuation Officer per se was not sufficient and other corroborated evidence is required. Mr. Maratha, learned Counsel appearing for the Revenue submitted that the judgment of the Supreme Court in K.P. Varghese (supra) has been explained by the Rajasthan High Court in the case of. [Smt. Amar Kumari Surana Vs. Commissioner of Income Tax](#), .

10. Having regard to the consistent views taken by this Court in the aforesaid and other judgments which bind us, we decide the question of law No. 2 in favor of the Assessee and against the Revenue, as a consequence, this appeal is dismissed.