IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "B" NEW DELHI)
BEFORE SHRI R.P. GARG, HON'BLE SR. VICE-PRESIDENT &
SHRI RAJPAL YADAV: HON'BLE JUDICIAL MEMBER

I.T.A. No. 1580/Del/2008
Assessment Year: 2004-05

Assistant Commissioner of Income-tax, Gurgaon Circle, Gurgaon (Hr.)	Vs.	Smt Chandni Bhuchar, C-2/2449, Vasant Kunj, New Delhi.
(Appellant)		(Respondent)

Appellant by: Shri MSA Khan, DR
Respondent by: Shri Kapil Goyal, CA

ORDER

PER RAJPAL YADAV: JUDICIAL MEMBER

The revenue is in appeal before us against the order of learned CIT(Appeals) dated 05.02.2008 passed for assessment year 2004-05.

2. The grounds of appeal taken by the revenue are not in consonance with Rule 8 of the ITAT Rules, they are argumentative and descriptive in nature. The common issue in ground Nos. 1 to 3 raised by the revenue is that learned CIT(Appeals) has erred in deleting the addition of Rs.13,25,000/- which has been added by the Assessing Officer on the ground that assessee has made unexplained investment in the purchase of the property.

3. The brief facts of the case are that the assessee has filed her return of income on 24.3.2005 declaring total income at Rs.31,26,694/-. On scrutiny

of the accounts, learned Assessing Officer found that assessee had purchased 4.063 heaters of land for a consideration of Rs.17,06,700/- vide two sales deeds executed on 17.11.2003. The value of the agricultural land for the purpose of stamp for getting the sale deed registered was Rs.30,32,000/-. According to Assessing Officer, it is well known fact that circle rate for the purpose of fixing the stamp while getting the sale deeds registered are always lower than the fair market price. On the basis of this notion, he observed that assessee must have paid handsome premium on the properties purchased by her. He took the help of sec. 50-C which has been inserted in the Act vide Finance Act, 2002 applicable w.e.f. April 1, 2003. According to the Assessing Officer, this section provides that the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of land or building or both, shall for the purpose of sec. 48 be deemed to be the full value of the consideration received or accruing as a result of such transfer. In this way, Assessing Officer has adopted the purchase price of the property at Rs.30,32,000/- and held that assessee must have paid Rs.13,25,300/- over and above the purchase price disclosed in the sale deed at Rs.17,06,700/-. He made the addition of this difference as income from unexplained source.

4. On appeal, learned CIT(Appeals) deleted this addition on the ground that sec. 50-C is a deeming provision for the purpose of bringing to tax the difference as capital gain. It does not provide that valuation done for the purpose of sec. 50-C represents actual consideration passed on to the seller in the absence of any other evidence. Learned Ist Appellate Authority has relied upon the decision of Hon'ble Allahabad High Court rendered in the case of CIT vs. Raj Kumari Bimla Devi and Ors. 279 ITR 360 wherein the Hon'ble High Court has held as under:

> "The Apex Court in the case of Jawajee Nagnatham vs. Revenue Divisional Officer (1994) 4 SCC 595 has held that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty cannot form the foundation to determine the market value mentioned there under in instruments brought for registration. Equally it would not be a basis to determine the market value under sec. 23 of the Land Acquisition Act, of the lands acquired in that area or town or the locality or the taluk, etc.
>
> This court in the case of Dinesh Kumar Mittal vs. Ito (1992) 193 ITR 770 [1991] UPTC 1209 has held that we cannot recognize any rule of law to the effect that the value determined for the purpose of stamp duty is the actual consideration passing between the parties to a sale. The actual consideration may be more or may be less. What is the actual consideration that passed between the parties is a question of as.

fact to be determined in each case, having regard to the facts and circumstances of that case.

In this view of the matter, we are of the considered opinion that the rules framed under the Stamp Act cannot be pressed into service for determining the market value of the property".

5. Learned Ist Appellate Authority has observed that there is no independent evidence possessed by the Assessing Officer to prove that assessee has paid anything more then the one disclosed in the purchase deed.

6. With the assistance of learned representatives, we have gone through the record carefully. Learned Ist Appellate Authority has made a lucid enunciation of law and facts on this issue in the detailed order. The Assessing Officer has made the addition simply with the help of sec. 50-C of the Act. This section reads as under:

"Section 50-C----- Special provision for full value of consideration in certain cases. (i) Where the consideration received or accruing as a result of the transfer by an assessee of a capital assets, being land or building or both, is less than the value adopted or assessed by any authority of a State Government. (hereinafter in this section referred to a the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purpose of section 48, be deemed to be the full

value of the consideration received or accruing as a result of such transfer-------"

7. From a plain reading of this provision, it emerges out that the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of land or building or both, shall for the purpose of sec. 48 be deemed to be the full value of the consideration received or accruing as a result of transfer. It nowhere provides that the valuation done by the State Government for the purpose of stamp duty etc., would ipso facto take place the actual consideration as being passed on to the seller by the purchaser in the absence of any other evidence. The Assessing Officer is required to bring positive evidence on record indicating the fact that assessee has paid anything more then the one disclosed in the purchase deed. The department has taken an argument in the grounds of appeal that Assessing Officer should be directed to make a reference to the Valuation Officer under sec. 142A of the Act. It also raised a plea that Assessing Officer has wrongly made a reference of sec. 50-C while making the addition, in fact, the addition is made under sec. 69-B on account of unexplained investment in the property. We have taken cognizance of both these arguments. It is the Assessing Officer who himself ought to have

collected the evidence indicating the fact that assessee has paid more money then the one disclosed in the purchase deed. The ITAT while sitting in the second appeal is not supposed to give directions on the appeal of revenue that a reference to the Valuation Officer is to be made in order to substantiate the addition. The steps which Assessing Officer could have taken, if not taken then that lacuna cannot be filled up at the end of the ITAT. In the absence of any evidence exhibiting the fact that assessee has made unexplained investment in the house property, no addition can be justified. Learned Ist Appellate Authority has appreciated the facts and circumstances in right perspective. We do not find any error in the impugned order on this ground. Thus, the ground of appeal raised by the revenue is rejected.

8. In ground Nos. 4 & 5, the common issue raised by the revenue relates to deletion of Rs.7 lacs added by the Assessing Officer by disbelieving the gift received by the assessee.

9. The brief facts of the case are that assessee has received a sum of Rs.4 lacs and Rs. 3 lacs from her daughter-in-law Smt. Sweta Bhuchar and Vibha Bhuchar. The Assessing Officer recorded a finding that gift of Rs. 7 lacs was not disclosed in the return of income filed by the assessee nor any statement of affairs/balance sheet was enclosed. The donors could not be

produced before him and, therefore, he disbelieved the transaction and accordingly made the addition.

10. Before learned CIT(Appeals), assessee has made the following submissions:

"i) The appellant has produced the name of the donors, their PAN numbers along with income tax jurisdiction. In fact, the donors are daughter-in-law of the donee and the PAN details of donors have already been placed on record. Thus, the aforesaid evidence being produced by the appellant clearly establishes the identity of donors.

ii) Further, the return of income for A.Y. 2004-05 is being filed by the donors with the ACIT, Circle 24(1), New Delhi along with statement of income.

iii) The gift declaration duly signed by the donors and donee evidencing the fact of the transfer is on account of gift has also been placed on record by the appellant before the A.O.

iv) Further submitted that the amount of the gifts made to their daughter-in-law are duly reflected by the donors in their respective statement of affairs which were furnished by them with their return of income and the same has also been verified by the Assessing Officer. The source of making the gift is duly reflected in the statement of affairs which clearly established the credit worthiness of the donors.

v) It is also pertinent to note the fact, that the gift has been made through account payee cheques and the fact has been duly placed on record before the A.O.

vi) Also, reliance has been placed on the decision delivered in the judicial precedents, wherein such additions being made by the A.O. were held bad in law and deleted"

11. The learned CIT(Appeals) sent the evidence produced by the assessee to the Assessing Officer for his comments. He conducted an inquiry and asked the assessee to produce original bank statement. After perusal of the original bank statement, he responded to the learned CIT(Appeals) that assessee has identified the donors also disclosed their PAN cards and the details of the Assessing Officer where they are assessed to tax. He accepted that both the donors are assessed to tax and are filing return of income with himself. Thus, assessee has discharged the burden. She has proved the identity of the donors, their credit worthiness and genuineness of the transaction. Learned Ist Appellate Authority deleted the addition.

12. Before us, learned DR relied upon the order of the Assessing Officer whereas learned counsel for the assessee relied upon the order of the CIT(Appeals). He pointed out that Assessing Officer in the remand proceedings himself accepted that assessee has established the genuineness

of the transaction, creditworthiness of the donors and identity of the donors. On due consideration of the facts and circumstances, we find that learned Ist Appellate Authority has examined the issue in detail. He called for a remand report from the Assessing Officer and reproduced that remand report at page Nos. 6 and 7 of the impugned order. After going through the submissions of the assessee extracted supra along with remand report, we do not find any error in the order of learned CIT(Appeals). These grounds of appeal are also rejected.

13. In the result, the appeal filed by the revenue is dismissed.

Decision pronounced in the open court on 27.02.2009

(R.P. GARG)
SENIOR VICE-PRESIDENT

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: 27/02/2009
Mohan Lal

Copy forwarded to:

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

ASSISTANT REGISTRAR