

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'F' DELHI**

**ITA No.1678 (Del) of 2011  
Assessment Year: 2007-2008**

**ASSTT DIRECTOR OF INCOME TAX  
CIRCLE-1 (2), INTL TAXATION  
NEW DELHI**

**Vs**

**SHRI RANJAY GULATI  
C-2/53, SAFDARJUNG DEV  
AREA, NEW DELHI-110016  
PAN NO:ALAPG9873C**

**Rajpal Yadav, JM and K D Ranjan, AM**

**Dated: June 17, 2011**

**Appellants Rep by:** Shri Ajay Vohra, Adv. & Shri Avdhesh Bansal, AR  
**Respondent Rep by:** Shri B Kishore, Sr. DR

**ORDER**

**Per: K D Ranjan:**

This appeal by the Revenue for assessment year 2007-08 arises out of order of the Id. CIT (Appeals)-XXII, New Delhi.

2. The ground of appeal raised by the Revenue reads as follows :-

*"On the facts and in the circumstances of the case, the Id. CIT (Appeals) has erred in deleting the additions and holding that the report of DVO is unjustified."*

3. The only issue for our consideration relates to deleting the addition made by the assessing officer on the basis of DVO's report. The facts of the case stated in brief are that the assessee, a non-resident during the year under consideration had sold an industrial plot at Naraina Indl. Area, Phase-II, which was inherited by him from his late mother. The assessee's share in the property sold was 2/3rd. The assessee's share of sale consideration of Rs.2,90,00,000/- works out to Rs.1,93,33,333/-. Out of the declared capital gains of Rs.1,80,83,239/- the assessee had invested Rs.50 lakhs in REC Bonds and Rs.1,44,00,000/- in a specified capital gain account to be utilized for purchase or the construction of a residential house to avail the benefit of exemption under section 54-EC and 54-F of the Act. The assessing officer made a reference to the Distt. Valuation Officer (DVO) to ascertain the fair market value of the plot on the date of sale. The DVO arrived at a valuation of Rs.5,36,00,000/- as opposed to declared sale consideration of Rs.2,90,00,000/- of the whole plot. The assessing officer received valuation report on 31st December, 2009 and the assessment was getting barred by limitation on the same day, he completed the

assessment without allowing any opportunity to the assessee of being heard. The AO after allowing credit for investments in REC Bonds and capital gain account, charged the amount of Rs.1,51,23,238/- under the head capital gains.

4. Before the Id. CIT (Appeals) the assessment order was challenged on the ground that the AO had finalized the assessment without affording opportunity of being heard to the assessee. The basis for valuation taken by the DVO was also incorrect. It was submitted that the plot of the assessee was situated in Naraina Indl. Area, Phase-II, New Delhi, which is under G category whereas the value of the reference plot taken for valuation purpose was situated in Okhla Indl. Estate, which is under D category for circle rate purposes and MCD. The DVO had applied arbitrarily adjustment to the valuation taken six years prior to the sale of the property. It was also submitted that the DVO in his report had stated that during the period from 18/02/2001 to 31st December, 2003, the rates were more or less static and hence no adjustment had been made for this period in his report. During the period 1/04/2004 to 5/01/2007 the DVO had arbitrarily added an increase of 1 per cent per month without any basis and on his own presumptions and surmises to arrive at the value of the plot. Further the circle rates for category D was Rs.21,800/- per sq. mt. and for category G was Rs.13,700/- per sq. mt. Therefore, there was a difference of Rs.8,100/- per sq. mt. in two categories. The Id. DVO had not made any adjustment for the difference in the category of the two plots, which is completely incorrect and against the facts and circumstances of the case. The Id. CIT (Appeals) considered the additional evidence filed by the assessee as the assessee had not been provided opportunity of being heard by the AO. The Id. CIT (A) noted that the assessee had sold plot on 5/01/2007 shortly before the notification of circle rates by the Delhi Development Authority on 18/07/2007. As per the said notification the land in Naraina was placed in category G for which circle rate was prescribed at Rs.13,700/- per sq. mt. By applying this circle rate, the value of plot of land sold by the assessee worked out to Rs.2,00,98,722/-. As against this the assessee's sale consideration declared was Rs.2,90,00,000/-. He further noted that the assessee vide his letter dated 18/12/2009 had furnished copy of notification dated 18/07/2007 to the DVO with the working of value of land as per circle rates. However, the DVO in his report dated 30/12/2009 had adopted a base, a sale instance of plot of 2,023.41 sq. mts. at Okhla Indl. Estate, New Delhi sold on 18/02/2001 for Rs.48,899/- per sq. mt. The DVO had adjusted the land rate by an increase of 1 per cent per month 1/4/2001 to 5/1/2007 and an increase of 10 per cent as the plot of land belonging to the assessee was of a smaller size and arrived at a value of Rs.73,133/- per sq. mt. as on 5/1/2007. The Id. CIT (A), therefore, came to the conclusion that the method of valuation was arbitrary and unreasonable. The DVO's valuation report was 2.67 times the circle rates prescribed by the DDA for Naraina Indl. Area, which was Rs.27,400/- (13,700x2). He also noted that there could not be any comparison between the land in Naraina and in Okhla. The circle rates prescribed by the DDA in July, 2007 varied from Rs.43,000/- for category A land to Rs.6,900/- for category H land. The circle rates in Naraina category G the second lowest was Rs.13,700/- and for Okhla at Category D was Rs.21,800/-. The DVO had not patently made any effort to find out a comparable sale transaction in Naraina Indl. Area whereas the assessee had obtained under RTI seven certified instances of land of Naraina Indl. Area and its neighboring area of Mayapuri Indl. Area of dates of sale from April, 2006 to June, 2007 having sale value ranging from Rs.8,969/- per sq. mt. to Rs.13,953/- per sq. mt. in Naraina and of Rs.6,503/- to Rs.10,758/- in Mayapuri. The Id. CIT (A) on the basis of the above facts came to the conclusion that the value adopted by the AO based on the DVO's report at Rs.73,153/- per sq. mt. was excessive and unfounded. The legal validity of the addition was further impaired by the lack of opportunity

given by the AO or the DVO, to rebut the valuation arrived at on the last working day of the year. The Id. CIT (A) further observed that unless the AO obtained evidence that more than what was stated was received, no higher price could be taken to meet the basis of computation of capital gains. Relying on the decision of Hon'ble Supreme Court in the case of *K. P. Verghese Vs. ITO 131 ITR 597 (SC)* the Id. CIT (A) held that onus of proving understatement of consideration has not been discharged by the Department. He accordingly deleted the addition.

5. Before us the Id. AR of the assessee submitted that the industrial plot has been sold at much higher rate than circle rates prescribed for G category of land. Under Section 50-C of the Act the full value of consideration is to be taken on the basis of value fixed by any authority of a State Govt. for the purpose of stamp valuation i.e. at Circle Rates. He further submitted that in a case where the assessee claims before the AO that the value adopted or assessed or assessable by stamp valuation authority exceeds the fair market rate of the property as on the sale date of transfer, the AO may refer the case for valuation of capital assets to the valuation officer. It means that as per provisions of section 50C(1) the maximum value can be taken as per circle rates, prescribed by the State Govt. for the purpose of stamp valuation. Since the assessee had sold the property at much higher rate above the circle rates prescribed in the concerned area, the Id. CIT (A) was justified in deleting the addition based on the DVO's report. On the other hand, the Id. Sr. DR supported the order of the Id. CIT (Appeals).

6. We have heard both the parties and gone through the material available on record. Under section 48 of the Income Tax Act, 1961 the income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely (i) expenditure incurred wholly and exclusively in connection with such transfer; (ii) the cost of acquisition of the asset and the cost of any improvement thereto. Therefore for the purposes of computation of capital gains full value of consideration of capital asset transferred is to be taken and not the fair market value of the asset transferred. Under section 50C of the Act for the purpose of computation of capital gains the full value of consideration has to be adopted as per circle rates. In a case where circle rates are higher than the fair market value of the property, sub section (2) of section 50C provides that the assessee can make request to the assessing officer to refer the matter to valuation officer for valuation of the property, as per market rates. Thus from the provisions of section 50C of the Act it is clear that for the purpose of computation of capital gains under section 45, the full value of consideration has to be taken as per circle rates prescribed by the State Govt. for the purpose of stamp valuation unless the AO has material in his possession to prove that the assessee had received higher amount than the circle rates. In that situation the AO will be justified to adopt amount received by the assessee as the full value of consideration. In the case of the assessee from the facts stated above, it may be seen that the circle rate for the property sold by the assessee was Rs.13,700/- per sq.mtr. as against the sale instances adopted by the DVO for Okhla Indl. Estate, which falls in category D. The value of assessee's share of the property as per circle rates applicable in the case of the assessee works out to Rs.2,00,98,722/- as against sale consideration of Rs.2,90,00,000/- admitted by the assessee. In the case of the assessee, there is nothing with the AO to suggest that the assessee had received more than what is stated in the sale deed and, therefore, full value of consideration cannot be adopted as per the DVO's report which represent fair market value of industrial plot sold. Adoption of DVO's report without providing opportunity of being heard is also against the principles of natural justice.

Accordingly we do not find any infirmity in the order passed by the Id. CIT (A) deleting the addition based on the report of the DVO.

7. In the result, the appeal filed by the Revenue is dismissed.

(The order pronounced in the open court on 17.6.2011.)