

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 88 of 2010

Date of Decision: 21.7.2010

Varinder Kumar

....Appellant.

Versus

Commissioner of Income Tax

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. S.K. Mukhi, Advocate for the appellant.

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 24.6.2009 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', (hereinafter referred to as "the Tribunal") in ITA No. 44/CHANDI/2009, for the assessment year 2004-05 proposing to raise the following substantial questions of law :-

"I. Whether the ITAT was justified in confirming the findings of CIT (A) in adopting the rate of land at Rs.70/- per sq. yd. being the basic allotment rate by the Housing Board as against

the rate of Rs.1260/- per sq. yd. as adopted by Registered Valuer which is the Market Value on the date of Valuation as per the normal practice and the provisions of law so that so the findings of the ITAT are perverse and thus bad in law?

- II. Whether the ITAT was justified in confirming the findings of CIT (A) in ignoring the valuation of working shed at Rs.5,54,400/- as per Government Registered Valuers report being in conformation to the existence of the same as authenticated by him on personal visit/ inspection of the impugned property and as supported by the decree of trial Court and copy of Sale Deed confirming the existence of Oil Mill also so that the findings of the ITAT are perverse and thus bad in law?
- III. Whether on the facts and circumstances of the case, the ITAT was justified in confirming the order of CIT (A) and thereby reversing the order of the A.O., qua the value of land wherein the A.O. has accepted the value of land as declared by the appellant at Rs.18.40,130/- without rebutting the findings of the A.O., but blindly confirming the findings of the CIT (Appeals) which is erroneous and bad

in law in view of the fact that even the CIT (A) never conformed to the procedure of law regarding enhancement of income which is against the provisions of law and thus needs consideration by this Hon'ble Court?

IV. Whether on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidences on record thus unsustainable in law?

V. Whether the ITAT has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue in dispute?"

2. Briefly stated, the facts of the case are that the assessee sold a plot by adopting sale consideration of Rs.1,20,00,000/- and the cost of acquisition as on 1.4.1981 was taken at Rs.26,13,850/-. The Assessing Officer did not accept the cost of acquisition as claimed by the assessee and also that the cost of acquisition was only with regard to 1/6th share initially acquired by Shri Baldev Krishan, the previous owner. Accordingly, the cost of acquisition was taken at Rs.14,19,965/- by the Assessing Officer after applying the cost inflation index and the capital gain from the sale of plot was computed at Rs.1,05,80,035/-. On appeal, the CIT (A) applied the rate of land at Rs.70/- per square yard as on 1.4.1981 and enhanced the income from capital gain to Rs.1,10,18,953/-. The plea of the assessee was that the cost of acquisition should be calculated at the rate of Rs.1260/- per square yard

as against Rs.70/- per square yard applied by the Assessing Officer. The assessee relied upon the valuation report from a registered valuer and submitted that the allotment rate does not reflect the fair market value. On further appeal, the Tribunal did not accept the plea of the assessee and held as under:-

“.....Ostensibly, ascertaining the Fair Market Value as on 01-04-1981 does involve an exercise of estimation, so however, the same is required to be done with reference to the appropriate and credible material. The assessee adopted the rate of land at Rs.1260/- per sq. yds valuing it at Rs.18,40,130/-. The CIT (Appeals) has adopted the rate of Rs.70 per sq yds leading to a value of Rs.1,02,229/-. In this connection, we find that the reason advanced by the CIT (Appeals) to disregard the rate adopted by the assessee is quite justified. The CIT (Appeals) observes that the rate adopted by the assessee, based on the report of the Registered Valuer, is without any basis. In this connection, we have perused the valuation report dated 19.3.2005 of the registered valuer, a copy of which is placed on record. It is discernible from the report, that no basis has been referred to by the Registered Valuer to adopt the rate of land at Rs.1260/- per sq. yds. On the contrary, the CIT (Appeals) has referred to the rate at which land allotment was being done by the

authorities at the relevant point of time. The evidence sought to be relied upon by the CIT (Appeals), when compared with bald unsupported assertion of the Registered Valuer, in our view, deserves to be preferred. Even before us, apart from making a generalized assertion, no material has been led by the appellant to support the rate of Rs.1260/- per sq yds adopted by the Registered Valuer. Therefore, on this aspect, in our considered opinion, the CIT (Appeals) made no mistake in applying the rate of Rs.70/- per sq yds to value the land as on 01.04.1981 in order to compute the cost of acquisition for the purpose of Capital Gain.

....Though we agree with the Revenue that there is no direct evidence available but considering the circumstantial evidence and the certificate of the Inspection by the Registered Valuer and in the absence and the certificate of Inspection by the Registered Valuer and in the absence of any clinching adverse evidence on record, in our view, the CIT (A), was not justified in ignoring the value of the working shed in its entirety for the purpose of computing the cost of acquisition. The only other aspect left to be decided is the value of the building/structure to be considered to arrive at Fair Market Value as on 01.04.1981. The assessee has

considered it at Rs.7,73,720/- including the working shed and the CIT (Appeals) has adopted the same at Rs.1,09,660/- excluding the working shed.

.... We, therefore uphold the action of the CIT (Appeals) in adopting the value of the building/structure at 50% of the value estimated by the Registered Valuer, with the modification that while doing so, the value of the Working shed should also be taken into consideration, subject of course, to it being valued at 50% of the amount estimated by the Registered Valuer. We, therefore, set aside the order of the CIT (Appeals) and direct the Assessing Officer to re-work the cost of acquisition on the above lines and recomputed the Long Term Capital gains.”

3. We have heard learned counsel for the appellant.
4. Learned counsel for the appellant submitted that the report of the registered valuer was produced by the assessee but the Assessing Officer and the appellate authorities have not accepted the same without any basis.
5. We are unable to accept the submission of the learned counsel for the appellant. It was not incumbent upon the Assessing Officer or the appellate authorities to have accepted the report of the registered valuer merely because there was no other evidence to rebut the report of the registered valuer. It is not essential that whatever material is produced by the assessee regarding valuation must be accepted. The authorities below have relied upon the rate of allotment

by the Housing Board as against the rate adopted by the registered valuer which is alleged to be the market value as on 1.4.1981. The difference being extra-ordinary and there being no acceptable material to support the report, the rate of allotment of the Housing Board was accepted on the basis of allotment which could not be held to be irrelevant. No specific instances were produced by the assessee. In any case the finding of the CIT (A) as well as the Tribunal, against the assessee cannot be held to be a perverse finding. No substantial question of law arises in the appeal.

6. Accordingly, the appeal is dismissed.

**(ADARSH KUMAR GOEL)
JUDGE**

July 21, 2010
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**(AJAY KUMAR MITTAL)
JUDGE**