

ORDER SHEET

ITA 293 OF 2008
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

NIRMAL KUMAR RAVINDRA KUMAR - HUF
Versus
COMMISSISONER OF INCOME TAX & ANR.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ASHA ARORA

Date : 9th June, 2016.

For Revenue : Mr. P.K.Bhowmik,Advocate
Mrs. Jyotsna Roy Mukherjee,Advocate

The Court : This appeal is directed against a judgement and order dated 28th December, 2007 passed by the learned Income Tax Appellate Tribunal, 'D' Bench, Kolkata in I.T.A.NO.1006/Kol/2006 and Cross-objection No.57/Kol/2006. The appeal was preferred by the Revenue and the Cross-objection was filed by the assessee both pertaining to the assessment year 1996-1997.

Aggrieved by the order of the learned Tribunal, the assessee came up in appeal which was admitted on 10th December, 2008 and the following questions of law were formulated :

- "1. *Whether on the facts and in the circumstances of the case order of Tribunal was erroneous in law in ignoring the inherent scheme in valuation certain assets (as was in the present case) as per Section*

55A (2)(b) of the Income Tax Act, 1961 and directing the matter to be redone in the light of a special Bench of the Tribunal.

- II. *Whether on the facts and in the circumstances of the case the order of the Tribunal was perverse on the question of legality of reference under Section 55A of the Income Tax Act, 1961 having been passed in total disregard of principles of legal precedents ?*

The factual background behind the controversy is to be found in paragraph-4 of the impugned judgement which reads as follows :

“Brief facts are that the assessee did not file its return of income for assessment year 1996-97. The Assessing Officer while perusing Balance Sheet for the assessment years 1995-96 and 1997-98 observed that there was a substantial increase in the capital of the assessee from 31.3.1995 to 31.3.1997. Considering the fact, the Assessing Officer issued notice u/s. 148. In response to which the assessee has filed a return of income disclosing net loss of Rs.6,96,180/-. The Assessing Officer found that during the year the assessee has sold a property owned by it for Rs.97,50,000/-. Such property was purchased by the assessee on 31.7.1979 at a purchase price of Rs.2,80,882/-. However, while calculating the long term capital gain the assessee adopted the market value of the property at Rs.34,55,000/- as on 1.4.1981. The Assessing Officer considered such estimation of fair market value at a higher side and referred the matter to DVO who vide his report dated 3.2.2005 computed the fair market value of the property at

Rs.3,77,250/- and computed the assessment u/s. 143(3)/147 on a total income of Rs.79,65,410/-.”

In dismissing the cross-objection of the assessee and allowing the appeal of the revenue, the learned Tribunal held as follows :

“So far as clauses (a) and (b)(i) to section 55A are concerned, the same cannot be invoked in case of the assessee as the fair market value shown by the assessee is more than the fair market value estimated by the Assessing Officer on the basis of DVO’s report. The revenue has mainly harped upon the clause (b)(ii) to section 55A which mentions the power of Assessing Officer to make a reference having regard to the nature of the assets and other relevant circumstances. In our considered opinion, such clause carries a broader spectrum which certainly empowers the Assessing Officer to make reference to the DVO wherein in his opinion the fair market value estimated by the assessee is not proper and since in the present case the reference has been made by the Assessing Officer u/s.55A(b)(ii) of the Act, in our considered opinion such action of Assessing Officer was well within the parameters of the spirit of the section which empowers the Assessing Officer to make a reference to DVO i.e. “in any other circumstances which he thinks that it is necessary to refer the matter to the DVO” and, therefore, in the present case, the action of Assessing Officer in making reference to DVO while not accepting the valuation shown by the assessee on the basis of the registered valuer’s report was well permissible under the law and, therefore, we do not see any infirmity in the order of the Ld.CIT(A) in upholding such

action of Assessing Officer in making reference to DVO. We, therefore, uphold his order and reject the ground raised by the assessee.”

When the appeal was taken up for hearing, Mr. Ananda Sen, learned advocate submitted that the appellant has disengaged him. He is, therefore, no longer in the matter. When the appellant himself has disengaged the learned advocate on record and has thereafter not taken steps to appoint a learned advocate to represent him at the hearing of the appeal it can safely be inferred that he is no longer interested in the matter.

Considering, however, the fact that the appeal was admitted, we have heard Mr. Bhowmik, learned advocate for the respondent/revenue.

The principal contention before the learned Tribunal was that the Assessing Officer could not have made a reference for evaluation of the property under section 55A(a) as the fair market value estimated by the registered valuer engaged by the assessee is higher than the actual fair market value. This contention is inherently incorrect. Policy of law is to take the fair market value as on 1st April, 1981 as the basis for the purpose of indexation. If the assessee has shown more than the fair market value he obviously, is interested in increasing the index cost for the purpose of avoiding to pay capital gains. Therefore, the practice adopted by him cannot be permitted. Even assuming that there is a case in which the assessee has offered more than the market value, it is not the policy of law to recover more than what is actually due from the assessee. In either case, the contention of the assessee is wrong and not acceptable. In the case before us, the assessee, however, was inspired by sinister motive of avoiding to

pay capital gain and that was the reason why he inflated the fair market value on 1st April, 1981. The reference made by the Assessing Officer was competent. The learned Tribunal was correct in holding that the clause (b)(ii) to section 55A carries a broader spectrum which certainly empowers the Assessing Officer to make reference to the DVO wherein in his opinion the fair market value estimated by the assessee is not proper and since in the present case the reference has been made by the Assessing Officer u/s.55A(b)(ii) of the Act, in our considered opinion such action of Assessing Officer was well within the parameters of the spirit of the section which empowers the Assessing Officer to make a reference to DVO i.e. “in any other circumstances which he thinks that it is necessary to refer the matter to the DVO” and, therefore, in the present case, the action of Assessing Officer in making reference to DVO while not accepting the valuation shown by the assessee on the basis of the registered valuer’s report was well permissible under the law.

For the aforesaid reasons, the appeal fails and is dismissed.

Both the questions formulated at the time of admission of the appeal are answered in the negative and in favour of the revenue.

(GIRISH CHANDRA GUPTA, J.)

(ASHA ARORA, J.)