

\* **HIGH COURT OF DELHI : NEW DELHI**

**ITR No. 112/1988**

% Judgment reserved on: 9<sup>th</sup> January, 2008

Judgment delivered on: 18<sup>th</sup> January, 2008

Smt.Kavita Khandelwal  
(Nee Aggarwal)  
133, Mandakini Enclave,  
Kalkaji, New Delhi. .... Petitioner  
Through: Mr.K.R.Manjani, Adv.  
Vs.

The Commissioner of Income-tax  
Delhi-VIII, New Delhi. .... Respondent  
Through: Mrs.P.L.Bansal, Adv.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**V.B.Gupta, J.**

The Income Tax Appellate Tribunal (Delhi Bench

“E” Delhi) (in short as 'Tribunal') has referred the following question under Section 256(1) of the Income Tax Act, 1961 (in short as 'Act') for opinion of this Court:-

“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in not holding that the value of the properties as on 1<sup>st</sup> January, 1964 be taken by capitalisation method?”

2. The brief facts of the present case are that the Assessee who is an individual, acquired plot No.1 of 281 Sq.Yds and the well and another plot No.3 of 229 Sq. Yds. containing an old house of 695 Sq.ft. in partial partition of Sh.D.P.Aggarwal & Family (HUF) during the assessment year 1978-79. The said properties appear to have been sold by the Assessee. The Income Tax Officer scrutinised the computation of capital gains filed by the Assessee. The Assessee claimed costs of acquisition of the property as on 1<sup>st</sup> January, 1964 at Rs.26,780/- for plot No.1 and well and at Rs.33,710/- for plot No.3 and the old house. The

cost of acquisition was shown on the basis of the valuation report of Sh.Dinesh Krishna, registered valuer dated 30<sup>th</sup> March, 1979. It was noticed by the Income Tax Officer that for the assessment year 1971-72, the same registered valuer has valued these very properties along with others vide valuation report dated 31<sup>st</sup> May, 1971. The land was valued at Rs.4 per Sq.ft. and the old house also at Rs. 4 per Sq.ft. The value in the case of HUF for assessment year 1971-72 declared on the basis of the said report of the registered valuer was accepted by the Department. Against this background, the Assessee was given an opportunity to explain this discrepancy. However, no explanation was given by the Assessee and under these circumstances, the Income Tax Officer computed the value of the property on 1<sup>st</sup> January, 1964 taking the valuation report of the valuer dated 31<sup>st</sup> May, 1971. In 1971, the land was valued at Rs. 4 per Sq.ft. and the old house was valued at Rs. 4 per Sq.ft. or Rs.36 per

Sq.Yd. Taking into account the appreciation in the value of the land from 1964 to 1971, the Income Tax Officer took the value of amount as on 1<sup>st</sup> January, 1964 at Rs.20 per Sq.Yd. and the value of the old house at Rs.36 per Sq.Yd as on 1<sup>st</sup> January, 1964. Thus the capital gain was determined by the Income Tax officer on the basis of the cost of acquisition.

3. The Assessee contested the decision of the Income Tax Officer before the Assistant Commissioner of Income Tax. The Assistant Commissioner of Income Tax agreeing with the reasoning of Income Tax Officer, refused to interfere.

4. Thereafter, the matter was brought before the Tribunal by the Assessee and the Tribunal dismissed the appeal filed by the Assessee and thus, this reference has been made to this Court.

5. In the present case, the same registered valuer has valued the same properties twice, that is, first on 31<sup>st</sup> May, 1971 and subsequently on 30<sup>th</sup> March, 1979.

The Assessee's case before the lower authorities was that the registered valuer's earlier report should be given a total go-by. However, the Assessee has not given any reason as to how it can be done.

6. With respect to these properties, the report of the registered valuer dated 31<sup>st</sup> May, 1971 was utilised by the Assessee and such utilisation was accepted by the Revenue. Against this background, it is not clear as to how for determining the costs of the property on 1<sup>st</sup> January, 1964, the first report of the registered valuer could not be relevant. No reason has been shown that the earlier report should be ignored altogether.

7. As per findings of the Tribunal, the Income Tax Officer had worked out the cost of acquisition relying upon the Assessee's own evidence. There is no evidence that the house property of plot No.3 was being occupied by any tenant on rent. Further, as per observation of the Tribunal, certain pages regarding rent are there in the paper book but the same were not

considered as the same were not placed before the lower authorities.

8. Under these circumstances, we have no hesitation in holding that the Tribunal has not erred in holding that the value of the properties as on 1<sup>st</sup> January, 1964 be taken by capitalisation method.

9. Under these circumstances, we answer the question referred to us, in the negative, that is, in favour of the Revenue and against the Assessee.

10. The reference is disposed of accordingly.

**(V. B. GUPTA)**  
**JUDGE**

**January 18, 2008**  
Bisht

**(MADAN B. LOKUR)**  
**JUDGE**