

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.02.2013

+ **ITA 38/2013**

COMMISSIONER OF INCOME TAX-XI Appellant

versus

DELHI HOUSING & FINANCE
CORPORATION Respondent

Advocates who appeared in this case:

For the Appellant : Mr Karan Khanna, Sr. Standing Counsel with Ms Asmita
Kumar, Advocate.

For the Respondent : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

This appeal by the revenue is directed against the order dated 25.05.2012 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal') in ITA No.4917/Del/2010 pertaining to the assessment year 2003-04. The only issue that was before the Tribunal was with regard to the correct valuation of two plots sold by the respondent/ assessee during the financial year ending 31.03.2003 which was relevant to the assessment year 2003-04. One plot was of Radhey

Shyam Park and another of Rajinder Nagar Industrial Area. The impugned order passed by the Tribunal was the second round of litigation before the Tribunal. In the first round the Tribunal had passed an order on 28.11.2008 whereby it had noticed that the assessing officer while estimating the rate of the plots had taken a rate relying upon an Inspector's report with which the respondent had not been confronted. Consequently, the Tribunal had directed that the matter be restored to the file of the assessing officer to decide the same afresh after supplying the Inspector's report to the respondent/ assessee and also after allowing an opportunity to the assessee to cross-examine the Inspector. The assessing officer was directed to estimate the sale rates of the said plots after considering the entire material and the surrounding circumstances in accordance with law.

2. Pursuant to the directions given by the Tribunal in the first round, the assessing officer supplied a copy of the Inspector's report to the assessee and also produced the Inspector for cross-examination by the assessee. However, despite the said cross-examination the assessing officer maintained that the assessee had suppressed the sale prices and did not accept the explanation offered by the assessee. The assessing officer

once again adopted ₹6,000/- per sq. yd. as the rate for computing the value of the plots at Radhey Shyam Park and Rajinder Nagar Industrial Area. As such the assessing officer confirmed his earlier determination of ₹31,21,980/- in respect of land at Radhey Shyam Park and ₹23,93,000/- in respect of land at Rajinder Nagar Industrial Area. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The CIT (Appeals) held that the assessee was not justified in applying the rate of ₹1,000/- sq. yd. and held that ₹2,500/- per sq. yd. should be adopted for the land at Rajinder Nagar Industrial Area and ₹2,900/- per sq. yd. should be adopted for the land at Radhey Shyam Park.

3. The revenue as well as the assessee filed appeals before the Tribunal being aggrieved by parts of the decision of the CIT (Appeals). The cross-appeals have been disposed of by the order dated 25.05.2012 which is impugned before us by the revenue. The Tribunal had taken the view that so far as the plot at Radhey Shyam Park was concerned the circle rate was ₹1,338 per sq. yd. whereas the apparent sale consideration was @ ₹1,441/- per sq. yd. and, therefore, in the absence of any concrete evidence to the contrary the circle rate should be adopted as representing

the correct value of the land at Radhey Shyam Park since the circle rate was lower than the apparent sale consideration at the rate of ₹1,441/- per sq. yd. The Tribunal accepted at ₹1,441/- per sq. yd. As regards the land at Rajinder Nagar Industrial Area the Tribunal observed that circle rate was ₹2,508/- per sq yd. at the relevant time. The sale consideration that was shown at the rate of ₹1,000/- per sq. yd. was below the circle rate of ₹2509/- per sq yd. and, therefore, the Tribunal concluded that the CIT (Appeals) was justified in adopting the rate of ₹2,500/- per sq. yd

4. We have also gone through the order passed by the CIT (Appeals) which sets out in some detail the cross-examination of the Inspector by the assessee. The observations of the Commissioner of Income Tax (Appeals) with regard to the cross-examination of the Inspector are as under: -

“(iv) On the cross examination of Shri Dewan-Inspector, sought by the assessee and allowed by the AO, the following analysis and important aspects came into light which are narrated as under:

- a) Shri Dewan answered that he do not remember the exact facts as the matter is more than three years old.
- b) No written directions given to him.

- c) He was verbally asked to visit the area and make local enquiries as to the prevailing market rate for those properties.
- d) He could not point out the difference between the Radhey Shyam Park residential colony and Rajinder Nagar Industrial Estate area.
- e) He could not also point out the distance and location between two colonies.
- f) He made enquiries only from 2 to 3 persons.
- g) The visit was made on working day.
- h) Enquired from the male occupants of the colony present on that date.
- i) He could not answer whether rates were for residential or industrial colony plots.
- j) No documentary evidence was collected or based.
- k) He explained general method used for collecting income tax enquiries, identity is not disclosed, as to get the true picture of the situation prevailing.
- l) I disguised myself as a prospective buyer for the properties in those colonies and enquired about the likely rate at which I could buy the property at that time of visit.
- m) From his statement it is apparent that the alleged rate ₹6000 to ₹7000 per sq. yd. existed on the date of his visit i.e. 2.3.2006. Such rate was not prevailing during the F. Y. 01.04.2002 to 31.03.2003. No cogent or worthy material or reliable, relatable or referable in the form of any documents which could be used as evidence, or could be used as the basis was procured and available with the department even to justify their existing rate (on 2.3.2006) for the alleged rate of ₹6000/- to ₹7,000/-. The information provided was thus not sufficient material and has not been ascertained or

verified, for the existing rate prevailing during the A.Y. 2003-04.”

5. It appears from the aforesaid cross-examination that the Inspector was, at the time of cross-examination hardly aware of the facts of the case. It is also pertinent to note that he had only made verbal inquiries with regard to the prevailing market rate of the property and had not collected any instances of actual sales in the said areas. Furthermore, the inquiry that he made was as on the date of his visit, that is, on 02.03.2006, whereas the sales had taken place in the financial year ending 31.03.2003. He also stated that he had made inquiries from only 2-3 persons. It is obvious that when such statements are made in cross-examination, his report with regard to the rate of land being ₹6,000/- per sq. yd. to ₹7,000/- per sq. yd. in the two localities would not have much evidentiary value, if at all. He had specifically indicated in his cross-examination that he had inquired about the likely rate at which he could buy property at that time. Thus, even the rates indicated by him in his report, were not of financial year ending 2003-04 but, were of the date he visited, that is, 02.03.2006. Therefore, the Commissioner of Income Tax (Appeals) as also the Income Tax Appellate Tribunal were fully justified in not placing any reliance on the Inspector's report and by describing it only as an opinion

without any material evidence to back the same. Consequently, the Tribunal was justified in adopting the only other values that were available to it and those were the circle rates of the two localities at the time of the sales of the said plots. Going by the circle rates, the Tribunal has concluded that no inference was called for in respect of the plot at Radhey Shyam Park, whereas, the value of the plot at Rajinder Nagar Industrial Area was to be re-calculated at the rate of ₹2,500/- per sq. yd.

6. In these circumstances, we are of the opinion that no substantial question of law arises for our consideration. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

FEBRUARY 12, 2013

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