

## **No sec. 263 revision merely on ground that AO didn't refer matter to DVO for valuation of property**

**Summary – The Delhi ITAT in a recent case of Jitindar Singh Chadha, (the Assessee) held that In terms of section 55A, Assessing Officer has discretionary power to refer matter to DVO for valuation of property and, thus, where Assessing officer was satisfied with valuation made by assessee and did not refer matter to DVO, it could not be a ground to invoke revisional power of Commissioner under section 263**

### **Facts**

- For relevant year, the assessee filed his return declaring certain taxable income. In course of assessment, the Assessing Officer found that the assessee had entered into land development agreement with a builder.
- In return of income, the assessee declared certain amount of gain arose from said agreement. The Assessing Officer completed assessment under section 143(3) making certain addition to income disclosed by the assessee.
- The Principal Commissioner noted that Assessing Officer had referred matter relating to land development agreement to DVO under section 55A in subsequent assessment year. He thus taking a view that matter should have been referred to DVO in relevant year as well, initiated revisional proceedings under section 263.
- The Principal Commissioner finally passed an order directing the Assessing Officer to make addition to assessee's income on basis of valuation report submitted by the DVO.
- On appeal:

### **Held**

- In the present case, it is an admitted fact that the Principal Commissioner passed the assessment order which could have been passed by the Assessing Officer only, since the powers have been given under sections 143(3), 144, 147, 153A and 153C to the Assessing Officer who has been defined under section 2(7A) and means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the ITO who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or (2) of section 120 or any other provision of the Act and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of the said section but nowhere it is provided that the Principal Commissioner can pass an assessment order. In the instant case, the Principal Commissioner passed the impugned order as an assessment order which has been mentioned on the front page of the order dated 31-3-2018 passed by him, therefore, the said order was not a valid order under section 263.

- Moreover, nowhere the Principal Commissioner mentioned in the said order that there was any relevant material before him for the year under consideration to substantiate that the Assessing Officer had not applied his mind while framing the original assessment under section 143(3) rather the Principal Commissioner acted only on the basis of the valuation report obtained by the Assessing Officer for the assessment year 2015-16 on 15-12-2017. Therefore, it cannot be said that the Principal Commissioner came to the conclusion on the basis of the relevant record pertaining to the assessment order under consideration *i.e.* assessment year 2013-14 that the order passed by the Assessing Officer was prejudicial to the interest of the revenue or it was erroneous. On the contrary, the Assessing Officer applied his mind and did not accept the revised claim of the assessee and had taken a possible view.
- It is well settled that the provisions of section 55A provide that the Assessing Officer may refer the matter to DVO for valuation of the property. The use of the word 'may' makes it discretionary so it is not mandatory. In this case, it appears that the Assessing Officer was satisfied from the valuation of the property, he did not refer the matter to the DVO and accepted the valuation report of the Registered Valuer furnished by the assessee. Therefore, it can be said that the Assessing Officer has taken one of the possible view in this case, therefore, it cannot be said that the assessment order passed was erroneous or prejudicial to the interest of the revenue.
- Therefore, it is opined that the Assessing Officer passed the assessment order after application of mind and considered the revised computation of long-term capital gain furnished by the assessee as well as the Valuation Report of Government Approved, Registered Valuer, therefore, he has taken a possible view. Therefore, the Principal Commissioner was not justified in interfering only on the basis of valuation report obtained for the subsequent assessment year *i.e.* assessment year 2015-16. Moreover, the Principal Commissioner passed the assessment order himself which he should not have passed in view of the provision of the Act which provides that only the Assessing Officer is authorized to pass the assessment order and not the Principal Commissioner.
- In view of the above, the impugned order passed by the Principal Commissioner was to be quashed and the assessment order passed by the Assessing Officer was to be restored.
- In the result, the appeal of the assessee is allowed.