* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 27.08.2008

\+ **ITA No. 154/2008**

COMMISSIONER OF INCOME TAX. ..... **Appellant**

-versus-

SMT. NILOFER I. SINGH ..... **Respondent**

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal
For the Respondent : Mr Abhishek Maratha

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

yes

BADAR DURREZ AHMED, J (ORAL)

1. The revenue has filed this appeal against the order passed by the Income Tax Appellate Tribunal on 23.02.2007 in respect of the assessment year 1998-99. The learned counsel for the appellant proposed several questions but essentially two issues were canvassed before this Court. The first issue was with regard to the Tribunal

deleting the addition of Rs 34,72,000/- on account of capital gains made by the Assessing Officer on the basis of the Valuation Officers' reports. The second issue was with regard to the Tribunal deleting the disallowance of Rs 1,74,55,243/- made by the Assessing Officer on account of bad debts claimed by the assessee.

2. Insofar as the first issue is concerned, the facts are that the assessee sold two properties and disclosed capital gains of Rs 21,17,357/-. One of the properties was a residential flat at Tilak Nagar, Dharti Cooperative Society, Chembur, Bombay and the other was a building bearing No. 227A, Sant Nagar, East of Kailash, New Delhi. The Bombay flat was sold for a consideration of Rs 10,00,000/-. The Delhi property was sold at the price of Rs 23,50,000/-. In the course of the assessment proceedings under section 143(3) of the Income Tax Act, 1961 (hereinafter to be referred as "the Act"), the Assessing Officer was of the view that the sale consideration of the two properties did not reflect the fair market value and, therefore, he referred the matter to the Valuation Officers as according to the Assessing Officer the sale consideration appeared to be on the lower side. The Valuation Officers indicated

the fair market value of the property at Bombay to be Rs 14,55,200/- and the property at Delhi to be Rs 53,73,000/-.

3. The learned counsel for the appellant submitted that for the purposes of computing capital gains, the fair market value has to be determined and the valuation reports given by the Valuation Officers indicate the fair market values to be much higher than what had been disclosed in the return filed by the assessee as also the sale deeds executed in respect of the said properties. She, therefore, contended that the Assessing Officer was right in adding Rs 34,72,700/- to the income of the assessee by way of capital gains based on the valuations arrived at by the Valuation Officers. She submitted that the Tribunal had gone wrong in law in deleting the said addition. The learned counsel for the appellant further submitted that the Tribunal had over looked the provisions of section 55A of the said Act which specifically provide for determination of fair market value. The learned counsel for the appellant also submitted that in similar circumstances, this Court in the case of ***CIT v. Amar Nath Narang: ITA No. 931/2005*** has admitted the following question of law:-

> "Whether on the facts of the present case the Assessing Officer was right in referring the question of the fair market

> value of the property sold by the assessee to the Valuation Officer in terms of Section 55A of the Income Tax Act, 1961('Act')? or, was he in terms of Section 48 read with Section 45(4) of the Act bound to accept the value stated in the registered sale deed?

She submitted that the present case also raises a similar question and, therefore, the present appeal should also be admitted on this ground. The counsel for the respondent was also heard and he supported the order passed by the Tribunal.

4. Capital gains are subjected to tax in view of section 45 of the said Act. Section 45(1) of the Act provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income-tax under the head "Capital gains". It stipulates that capital gains shall be computed by deducting from the "full value of consideration" received or accruing as a result of the transfer of the capital asset, the amount of expenditure incurred wholly and exclusively in connection with such transfer as also the cost of acquisition of the asset and the cost of any improvement thereto. From a combined reading of section 45(1) and section 48 of the said Act, it is apparent that when a sale of property takes place, the capital gains arising out of such a transfer has to be computed by looking at the full value of the consideration received

or accruing as a result of such transfer. From the said full value of the consideration, the amount of expenditure incurred wholly and exclusively in connection with such transfer as also the cost of acquisition of the asset and the cost of any improvement thereto have to be deducted. In the present case, there is no dispute with regard to the expenditure incurred in connection with the transfer or with regard to the cost of acquisition of the asset and the cost of any improvement. The entire dispute centres upon the expression "full value of consideration". According to the revenue, the full value of consideration refers to the full market value. However, according to the assessee, the expression "full value of consideration" cannot have any reference to the fair market value.

5. This controversy has already been settled by the Supreme Court in the case of ***CIT v. George Hinderson & Co. Ltd****: 66 ITR 622*, the very expression "full value of consideration" was under consideration of the Supreme Court though in the context of the provisions of the Income Tax Act, 1922. The provisions of section 12B of the 1922 Act pertain to capital gains. Sub-section (1) was in pari-materia to section 45(1) of the present Act and sub-section (2) of section 12B of the 1922 Act was in pari-materia to the provisions

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of section 48 of the present Act. The Supreme Court was of the view that the expression "full value of consideration" in the main part of section 12B (2) of the Act cannot be construed as having a reference to the market value of the asset transferred but the expression only meant, the full value of a consideration received by the transferee in exchange of the capital asset transferred by him. The Supreme Court also observed that in the case of a sale the full value of consideration is the full sale price actually paid. It was further of the view that the expression "full value" means the whole price without any deduction, whatsoever, and it cannot refer to the adequacy or inadequacy of the price bargained for. Nor did it have any necessary reference to the market value of the capital asset which is the subject matter of the transfer.

6. In ***CIT v. Gillanders Arbuthnot & Co.**: 87 ITR 407*, the Supreme Court while considering the provisions of section 12B of the 1922 Act again observed that in the case of a sale price of an asset, there would be no question of any market value, unlike in the case of an exchange and the Supreme Court also observed that, in the case of a sale, all that one had to see was - what was the consideration bargained for?

7. These decisions make it more than clear that the expression "full value of consideration" that is used in section 48 of the present Act does not have any reference to the market value but only to the consideration referred to in the sale deeds as the sale price of the assets which have been transferred.

8. With regard to the arguments of the learned counsel for the appellant based on the provision of section 55A of the said Act, it is immediately to be noticed that the said provision begins with the expression "with a view to ascertaining the fair market value of a capital asset". In other words, the reference to a Valuation Officer under section 55A is for the object of ascertaining the fair market value of a capital asset. It is only when the Assessing Officer is required to ascertain the fair market value of a capital asset that the provisions of section 55A can be invoked. There may be certain situations where the Assessing Officer is required to determine the fair market value. One of the situations is indicated in section 45(4) of the said Act where the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals are to be computed is in question. In such a situation,

the provision itself makes it clear that for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer. In a situation, as one obtaining under section 45(4) of the Act, since there is no apparent consideration for the transfer of the asset, the full value of the consideration has to be determined in an indirect manner and that indirect manner has been indicated to be the fair market value of the asset. Thus, when the fair market value of the asset under section 45(4) is to be determined, it is obvious that section 55A of the Act would get triggered and a reference to the Valuation Officer would be necessary.

9. Another instance where the fair market value would have to be determined is provided in section 45(1A) of the Act. Under this provision, where the assessee receives an amount from the insurer on account of damage or destruction to any capital asset as a result of natural calamities such as floods or fires, explosions etc., the question of determining the capital gains is also connected with the determination of the fair market value of the asset on the date of receipt of such amounts from the insurer. In section 45(1A) of the

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said Act also, it is indicated that for the purposes of section 48 of the said Act, that is for computation of capital gains, the value of any money or the fair market value of the asset on the date of such receipts shall be deemed to be the full value of the consideration received or accruing as a result of such transfer of capital asset. In this situation also the Assessing Officer would be required to compute the fair market value of the asset and, therefore, a reference to the Valuation Officer under section 55A of the said Act would be necessary.

10. But, the facts of the present case are entirely different. The present case involves sales simpliciter where the full value of the considerations are the sale prices of the two properties indicated above. For the purposes of computing capital gains in such a case as the one before us, there is no necessity for computing the fair market value and, therefore, the Assessing Officer could not have referred the matter to the Valuation Officer.

11. This leaves us to consider the argument of the learned counsel for the appellant that a similar question has already been admitted by this Court in ***CIT v. Amar Nath Narang*** (supra). The question that has been admitted in ***CIT v. Amar Nath Narang*** (supra) is specific

to the provisions of section 45(4) of the said Act. This, in itself, clearly indicates that the fact situation is entirely different from the present case. The requirement of ascertaining the fair market value as contemplated under section 45(4) of the said Act does not arise in the present case at all and, therefore, the framing of the question in ***CIT v. Amar Nath Narang*** (supra) does not, in any way, advance the case of the appellant for the purposes of this appeal.

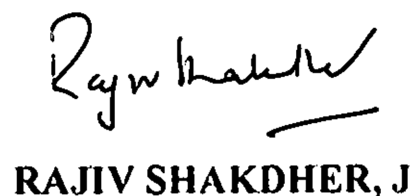
12. For the aforesaid reasons, the decision arrived at by the Tribunal cannot be faulted. No substantial question of law, as proposed or otherwise, arises for the consideration of this Court.

13. As regards the second issue pertaining to bad debts, we find that section 36 (1) (vii) of the said Act clearly stipulates that the said deduction is allowed provided the bad debt is written off as irrecoverable in the accounts of the assessee for the concerned previous year. This is, however, subject to the provision of sub-section (2) of section 36 of the Act. Nothing has been pointed out before us to indicate that any of the provisions of sub-section (2) of the Act would come in the way of the assessee in the facts of the present case. It is also an admitted position that the assessee had, in fact, written off the bad debt as irrecoverable in its accounts in the

relevant previous year. The only argument sought to be raised on behalf of the revenue was that the Reserve Bank of India's permission had been communicated by the assessee's bank to the assessee on 05.05.1998 which was the year next to the previous year in question. It is relevant to note that the Reserve Bank of India had already taken the decision for granting permission to write off the said amount on 18.03.1998. In any event, this is not a relevant consideration inasmuch as all that the assessee had to do was to write off the debt as irrecoverable in its accounts of the relevant previous year. The Tribunal has arrived at a finding of fact based upon a correct appreciation of the law. No substantial question of law arises for our consideration.

14. In view of the above discussion, the appeal is dismissed.

BADAR DURREZ AHMED, J



RAJIV SHAKDHER, J

August 27, 2008
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