

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, सी, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.5501/Mum/2013
Assessment Year: 2006-07**

ACIT,16(1) 2 nd Floor, Matru Mandir, Tardeo Road Mumbai-400007.	बनाम/ Vs.	Mr. Pradeep G. Vora, Rungta House,68, Nepean Sea Raod, Mumbai-400006
(Revenue)		(Respondent)
P.A. No.AAAPV3259J		

Revenue by	Shri Pradeep K. Singh (DR)
Respondent by	Shri Ambrish Mehta (AR)

सुनवाई की तारीख / Date of Hearing :	5/11/2015
आदेश की तारीख / Date of Order:	20/11/2015

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals) -5, Mumbai {(in short Ld. CIT(A)} dated 31.05.2013 for the assessment year

2006-07, decided against the assessment order passed by the Assessing Officer (in short 'AO') u/s 143(3) of the Act. The Revenue has raised following grounds of appeal:

"Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in allowing assessee to take long term capital gain at Rs.53,34,360/- on the basis of DVO report instead of Rs.1,46,33,733/- as mentioned in the return of income by the assessee for A.Y. 2006-07.

Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in allowing appeal in favour of assessee without considering the fact that assessee himself did not accept the DVO report called for by the AO for the A.Y.2001-02 and appeal is pending before Hon'ble ITAT on this issue.

The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. During the course of hearing, Shri Pradeep K. Singh Departmental Representative (DR) on behalf of the Revenue and Shri Ambrish Mehta Authorised Representative (Ld Counsel) on behalf of the respondent, argued the case.

3. During the course of hearing it was fairly submitted by the Ld. Counsel of the assessee that in this case the issue involved has genesis to A.Y.2001-02, which had reached up to the Tribunal, and the Tribunal had passed an order dated 30.05.2014, accepting the claim of the assessee made in that

year, by directing that valuation of land should be adopted on the basis of report of approved valuer submitted by the assessee and not on the basis of DVO report as was adopted by the AO in the assessment order passed for that year. But, the assessee, while filing the return of the impugned year under appeal, computed the amount of capital gain taking the value based upon the DVO's report, as was done by the AO in A.Y. 2001-02. But, now since the Tribunal has held that the value should be adopted based upon the approved valuer of the assessee, and therefore, Tribunal's order should be followed in the impugned year also, and therefore, the AO's action of computing the capital gain on the basis of approved valuers report would stand justified. Consequently, the relief allowed by the Ld. CIT(A), becomes unsustainable in law, in the given facts. Therefore, in these peculiar facts, the appeal of the Revenue may be allowed, restoring the order of Ld. AO, so as to bring this year's assessment in line with the order of the Tribunal for AY 2001-02.

3.1. On the other hand, Ld. DR also, for a change, supported the fair submissions made by the Ld. Counsel of the assessee, and submitted that in view of the decision of the Tribunal of A.Y.2001-02, the appeal of the Revenue was to be allowed.

3.2. We have gone through the submissions made by both the sides, orders of lower authorities and order of the Hon'ble Tribunal dated 30.05.2014 for A.Y. 2001-02 (ITA No.2187/Mum/2006).

3.3. The brief facts as culled out from the orders are that the assessee has been carrying on the business of development of property at Pune under the trade name of M/s. Vora Enterprises. The assessee owned a plot of land situated at Boat Club Road, Poona Cantonment, Poona. This land was converted into stock-in-trade at a market value of Rs. 31,35,03,800/- on the basis of valuation report of the approved valuers of the assessee in A.Y. 2001-02. The AO did not accept the valuation report adopted by the assessee and substituted the same with value of report of DVO at Rs.12,82,41,000/-. The assessee contested this matter before Ld. CIT(A), wherein order of AO was confirmed. Thereafter an appeal was filed by the assessee before the Tribunal contesting the order of CIT(A) for A.Y. 2001-02. While the appeal for A.Y. 2001-02 was pending before the Tribunal, the assessee filed return for impugned A.Y. 2006-07, by taking the value of the said land, portion of which was sold during the year under consideration, as per the report of the DVO for the reason that DVO's value was adopted by the AO in A.Y. 2001-02, and accordingly computed the amount of 'capital gain' of Rs. 53,34,360/-. But, the AO did not accept the same in the assessment order, and re-computed the amount of long term capital gain on the sale of aforesaid land (being part of stock-in-trade at Rs.1,46,33,733/-) by taking the value of land as per the value suggested by the approved valuer of the assessee. The assessee contested this matter before the Ld. CIT(A), wherein appeal of the assessee was allowed. Ld. CIT(A)

accepted the return of the assessee and directed the AO to assess long term capital gain at Rs. 53,34,360/-.

3.4. Being aggrieved, the Revenue filed the appeal before the Tribunal.

3.5. Under the aforesaid facts and circumstances, we have to decide that whether, for the purpose of computing long term capital gain of the impugned assessment year, the value of land is to be adopted as per assessee's approved valuer's report or as per DVO's report. It is noted by us that the Tribunal in its order dated 30.05.2014 for A.Y.2001-02 has put this controversy to rest by holding that the AO has no jurisdiction to make reference to the DVO, and therefore the value suggested by the DVO could not have been adopted, and therefore the value of land adopted by the assessee based upon the approved valuer was correct in law. In this year, we are bound to give effect to the order of the Tribunal, as the genesis of the issue before us lies in the issue that was involved in A.Y.2001-02. Thus, respectfully following the order of the Tribunal, we hold that the AO was justified in adopting the value of land as per the report of the approved valuer of the assessee, as was taken in the return filed by the assessee for assessment year 2001-02. Therefore, grounds raised by the Revenue are allowed.

4. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court on 20th November, 2015.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated ; 20/11/2015

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**