

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A.No.5703/Mum/12

(निर्धारण वर्ष / Assessment Year: 2007-08)

Shri Mutiur Rehman Naushadali Ashiana, Carter Road, Bandra(W), Mumbai - 400050	<b>बनाम/</b> Vs.	Income Tax Officer Ward 19(3)(3) Room No. 303, Piramal Chambers, Lalbaug, Mumbai - 400012
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आयकर अपील सं/ I.T.A.No.5722/M/12

(निर्धारण वर्ष / Assessment Year: 2007-08)

Income Tax Officer Ward 19(3)(3) Room No. 303, Piramal Chambers, Lalbaug, Mumbai - 400012	<b>बनाम/</b> Vs.	Shri Mutiur Rehman Naushadali Ashiana, Carter Road, Bandra(W), Mumbai - 400050
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPN6589P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Snehal R. Shah
Department by:	Shri Sumit Kumar

सुनवाई की तारीख / Date of Hearing: 18.03.2016

घोषणा की तारीख /Date of Pronouncement: 08.07.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

This order shall disposed of both the appeals filed by the assessee as well as by the revenue against the order dated 29.06.2012 passed by the Commissioner of Income Tax (Appeals) 30, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2007-08. These appeals are taken up together for adjudication being both the appeals accrued with the single order in which the parties are the same and can conveniently adjudicated by a single order.

2. The assessee has raised the following grounds of appeal:-

- “1. *The learned Commissioner of Income Tax (Appeals) {herein referred as Ld. CIT(A)} has erred in the facts and circumstances of the case by partially upholding the Assessing Officer’s (A.O.) decision.*
2.
  - a. *The Ld. CIT(A) has erred in law by holding the decision of A.O. to refer the matter u/s.55A of the Act to the Valuation Officer, which was beyond the scope of 55A and as such it was void-ab-initio.*
  - b. *The Ld. CIT(A) should have appreciated the fact that the appellant had taken the valuation report from the Registered Government Valuer who had had determined the fair market value as on 01.04.1981 at Rs.1,750/- per sq.ft.*
  - c. *The Ld. CIT(A) should have appreciated the fact the value of the property valued by the Registered valuer were less than the indicators for the year 1981.*
3. *The Ld. CIT(A) has erred in estimating the value of the property as on 01.04.1981 at Rs.1,100/- by*

*averaging out the rates as per the rates derived by the Registered valuer and the Department Valuation Officer as against the value considered by the appellant at Rs.1,750/- per sq.ft.*

4. *The Ld. CIT(A) has erred in considering the Built up area (BUA) of the property at 2190.85 sq.ft. (203.53 sq. meter) as per the valuation report instead of BUA considered by the registered valuer at 2760 sq.ft. (256.51 sq. meter) based on the sale agreement wherein the carpet area of the property was considered at 2300 sq. ft.*
5. *The Ld. CIT(A) has erred in not considering the prime location of the property and its proximity with regard to the sea view and transportation for deriving at the value of property.*
6. *The Ld. CIT(A) has erred in not considering the fact that in case of Vijaykumar M. Shah V/s. Dy.Addl. CIT, the Honorable Mumbai Tribunal had worked out an average rate of the property at RS.1,677/- per sq. ft., located at B G Kher Road (Ridge Road), while the Ld. CIT(A) has worked out the average rate of property at just Rs.1,100/- per sq. ft. which is located near Opera House near the sea-face.*

**ADDITIONAL GROUND:-**

1. *Without prejudice to the Ground No.5, the Ld. Income Tax Officer was wrong in passing the assessment order in confirming with the estimation made by the Valuation Officer by issuing valuation report u/s.16A(5) of the Wealth Tax Act r.w.s. 55A of the Income Tax Act.*
2. *The Valuation Officer – II (VO) had wrongly valued the property as on 01.04.1981 at Rs.9,86,103/-*

3. *The VO had valued the property u/s.55A of the Income Tax Act. r.w.s.16A(5) without considering the objection raised by the Appellant.*

3. The revenue has raised the following grounds of appeal:-

- “1. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the Assessing Officer to work out FMV of the property by applying the rate of Rs.1100/- per Sq. Ft. on the area of 203.53 Sq. Mtrs as on 01.04.1981 as against 450/- per Sq. Ft. adopted in the assessment order without appreciating the fact:-*
- a. *While valuation of the impugned property, the DVO has brought 4 comparable sale instances on record which are of commercial units and the rates of commercial units are always much higher than the residential units and therefore, the DVO has correctly taken the rate of the residential units and therefore, the DVO has correctly taken the rates of the residential units at a lower rate than commercial units.*
- b. *The valuation of the DVO is mandatory and binding for the A.O. and A.O. has correctly valued the property as on 01.04.1981 after taking into consideration the Valuation Report of the DVO.*
- c. *The decision of the ITAT Delhi Bench in the case of Gulab Singh Vs. ACIT (ITAT Delhi) 89 ITD 510. Wherein it was held that order of the District Valuation Officer is binding on the A.O.*
- d. *The Hon'ble ITAT, Hyderabad 'B' Bench, in the case of G.Pratap Reddy, Hyderabad Vs. ACIT 10(1), Hyderabad, has held that provisions of section (2), (3), (4), (5) and (6) of section 16A and some other provisions of Wealth Tax Act 1957 shall, with modifications, apply in relating to such reference as they apply in relation to a reference made by the A.O.*
- e. *The Provisions of section 16(A)(6) of the Wealth Tax Act provides that on receipt of the order of the Valuation*

*Officer, the AO shall, as far as the valuation of the asset is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer and the provisions of section 16A(6) of the Wealth Tax Act makes the Valuation made by the DVO binding on the A.O.*

*2. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored.*

4. The brief facts of the case are that the assessee filed return on income declaring total income to the tune of Rs.6,86,580/- on 26.07.2007. The return of income was processed u/s.143(1) of the Income Tax Act, 1961( in short “the Act”) accepting the return of income. Thereafter, the case was selected for scrutiny and accordingly statutory notice u/s.143(2) of the Act was issued and served upon the assessee. A fresh notice u/s.142(1) of the Act was also issued on 28.04.2009 and served upon the assessee. The assessee had sold Flat No.601 & 602 at Sukh Sagar Premises Co-op. Society Ltd., N.S.Patkar Marg, Mumbai – 400007 for a total consideration of Rs.1,86,31,000/-. The market value as per the section 50C of the Act was taken at Rs.2,12,89,500/-. The property was acquired on 30.09.1964 for a total consideration of Rs.53,001/-. To assess the long term capital gain on sale of the said property, the assessee filed a valuation report dated 27.05.2006 in which the value of property was shown at Rs.48,30,000/- as on 01.04.1981. The report did not consider the sale instances. The said report was prepared on the basis

rates published in the Times of India dated 31.10.1996 in which the value of the similar properties pegged at Rs.1,300/- to Rs.2,400/- per sq.ft. Thereafter, the Assessing Officer issued the notice u/s.133(6) of the Act to Sukh Sagar Premises Co-op. Society Ltd. for providing the details of the sale transaction of similar units in the said building. The society provided the following details:-

Sr. No.	Unit No.	Area as per sale deed per sq. ft.	Agreement year	Value of Transfer
1	UG-8	555	1979-80	61,000/-
2	UG-11	355	1980-81	45,000/-
3	F-102	1250	1980-81	2,00,000/-
4	F-103	65	1980-81	8,000/-
5	F-105D	300	1980-81	42,000/-
6	F-201B	710	1980-81	2,58,000/-
7	F-203	360	1979-80	90,000/-

Since the valuation report was not in accordance with law. Therefore, the Assessing Officer called the details of the DVO-II, Mumbai who assessed the value of the property to the tune of Rs.9,86,103/-. Thereafter, the Assessing Officer relying upon the report submitted by the DVO-II, Mumbai assessed the total income to the tune of Rs.1,12,45,720/-. Since the assessee was not satisfied with the valuation report submitted by the DVO-II, Mumbai, therefore, the assessee filed an appeal before CIT(A) who decided the matter of controversy on the basis of average value of both the reports i.e. report of Shri A.V.Vora furnished by the assessee and the report of the

DVO-II, Mumbai. Since the assessee as well as revenue were not satisfied with the order passed by the CIT(A), therefore both the parties filed appeals before us.

5. All the issues which have been raised by the revenue as well as assessee are in connection with the proper valuation of the sold property i.e. Flat No.601 & 602 at Sukh Sagar Premises Co-op. Society Ltd., N.S.Patkar Marg, Mumbai – 400007 as on 01.04.1981 to assess the Long Term Capital Gain for the purpose of tax. It is on record that the assessee sold the Flat No.601 & 602 at Sukh Sagar Premises Co-op. Society Ltd., N.S.Patkar Marg, Mumbai – 400007 for a total consideration of Rs.1,86,31,000/-. The assessee acquired the said property by virtue of agreement dated 30.09.1964. The market value as per the section 50C of the Act has been taken at Rs.2,12,89,500/-. The property was acquired on 30.09.1964 for a total consideration of Rs.53,001/-. Since the property was purchased earlier to 01.04.1981, therefore for the purpose of computation of long term capital gain u/s.55A of the Act, the assessee opted for fair market value of the property and got the property valued by valuer Dag-doo S. Bhonsale who filed his valuation report dated 27.05.2006 and assessed the value of the property to the tune of Rs.48,30,000/- as on 01.04.1981. The appellant purchased the residential property at Rs.51,75,000/- and claimed the deduction u/s.54 of the Act. The property which was sold for the consideration of Rs.1,86,31,000/- was

valued for the purpose of stamp duty, as per the provision of Section 50C of the Act to the tune of Rs.2,12,89,500/-. The Assessing Officer relied upon the report of DVO-II, Mumbai and accordingly valued the property as on 01.04.1981 to the tune of Rs.9,86,103/-. The assessee filed an appeal before CIT(A) who assessed the value of property @ Rs.1100 per sq. ft. which is average value of DVO-II, Mumbai valuation report i.e. Rs.450 per sq. ft. and the valuer report who assessed the value of property as Rs.1750 per sq. ft. in view of the publication of the report in the Times of India.

6. However, the said valuation was determined by the CIT(A) on the basis of the order passed by the Income Tax Appellate Tribunal in case of Vijay Kumar Shah Vs. Dy. Addl. CIT, Range 16(2), Mumbai 124 ITD 93 (2010)(Mum). The learned representative of the assessee has argued that the valuation of the property assessed by the Government approved valuer who valued the property in question in his valuation report dated 27.05.2006 is not liable to be ignored in view of the law settled in 2007(1) Supreme 1, Supreme Court of India in case of Sumangalam Co-Op. Housing Society Ltd. Vs. Suo Motu, High Court of Gujarat & Ors. Civil Appeal No. 3986 of 2004. While on the other hand the learned representative of the department has argued that DVO report is binding upon the Assessing Officer which is not liable to be declined in view of the law settled in Gulab Singh Vs. ACIT (ITAT Delhi) 89 ITD 510.

7. Now it is to be seen which valuation report is having credence and reliable and is liable to be applicable in the present case justifiably. The assessee while submitting his return of income has placed reliance upon the report of the Government valuer Dag-doo S. Bhonsale dated 27.05.2006 in which the valuer assessed the value of the sold property to the tune of Rs.48,30,000/- as on 01.04.1981. However, the Assessing Officer was not satisfied with the said report and called the report of DVO who assessed the value of the property in question to the tune of Rs.9,86,103/-. At the cost of repetition, the valuation report dated 27.05.2006 furnished by the Dag-doo S. Bhonsale was prepared upon the approximate rate of property published in the news paper times of India dated 31.10.1996 wherein the commercial rate has been reflected of Rs.1,300/- to Rs.2,400/- per sq. fit. So far as the report of DVO is concerned, the DVO relied upon the following transactions:-

#### SALE INSTANCES

<b>Sr. No.</b>	<b>Date of Agreement / Conveyance</b>	<b>Property</b>	<b><u>Transferor</u> <u>Transferee</u></b>	<b>Consideration</b>	<b>Build Up Area</b>	<b>Rate per Sqm.</b>	<b>Remarks</b>
1.	05.07.1979	Unit No.22, Ground Gloor, Panchratna CHS Ltd., Girgaon, Mumbai-04	<u>M/s.Sagar Investment Corpn.</u> Smt. Tarubala R. Daftary	Rs.2,30,000/-	53.41 Sqm. (Carpet area)	Rs.4306/-	YOC-1976,26 storeyed building
2.	21.04.1979	Unit No.23, Ground Gloor, Panchratna CHS Ltd. Girgaon, Mumbai-04	<u>M/s.Sagar Investment Corpn.</u> Ramesh M. Daftary	Rs.1,17,200/-	18.21 Sqm. (Carpet area)	Rs.6436/-	---do---
3.	02.03.1983	Office premises No. 22, Ground Gloor,	<u>M/s.Sanghavi Textiles</u>	Rs.3,59,037/-	26.66 Sqm.	Rs.13,467/-	---do---

		Panchratna CHS Ltd., Mumbai-04	The Bombay Diamond Merchant Association		(Carpet area)		
4.	21.04.1984	Office No.2014, 2 <sup>nd</sup> Floor, Mani Mahal, Mother X cross road, opera house, Mumbai- 04	<u>Smt. Saritri H.</u> <u>Lalyyani</u> M/s. Finolex Cables Ltd.	Rs.4,70,000/-	43.66 Sqm. (Carpet area)	Rs.10,765/-	G+4 floors, YOC- 1969

However, the average value of the above mentioned property comes to the tune of Rs.8743/- per sq. mtr. The DVO assessed the value of the property @ Rs.4845/- per sq. mtr. But on appraisal of the entire report we nowhere find any reasons to arrive at this conclusion that the rate of the property was to the tune of Rs.4845 per sq. mtr. at the relevant time. If the average value of the sale deed which have been relied by the DVO in his report is to be taken then the same should be to the tune of Rs.8743/- per sq. mtr. The CIT(A) decided the matter of controversy on the basis of the case titled as Vijay Kumar Shah Vs. Dy. Addl. CIT, Range 16(2) (Supra) wherein the average value of both the valuers i.e. valuation report of the DVO and the valuation report of Government valuer relied by the assessee were taken into consideration. The report of the Government valuer nowhere seems justifiable because the said valuation is based upon the prices which have been reflected in Times of India newspaper, however, the transactions during the relevant period of property have not been mentioned at all. Accordingly, the DVO assessed the value to the tune of Rs.4845/- per sq. mtr. without any reasons just taking the

average value of the property assessed. The DVO assessed the average value of the property to the tune of Rs.8743/- per sq. mtr. As on 01.04.1981. The report of the DVO is based upon the transaction effected during the said period. However, the transaction of the relevant year nowhere seems to be considered while assessing the value of the property in question. The CIT(A) took average value of both the reports which are not on any basis or without any cogent and convincing reasons. As per the report the four sale deeds which have been mentioned above are on record, therefore the average value of the said sale deed seems justifiable because no other comparable are on record. At the relevant time of assessment i.e.01.04.1981 considering the valuation of the DVO on the basis of the sale deeds mentioned therein we are of the view that the average value of the property in question should be to the tune of Rs.8743/- per sq. mtr. as on 01.08.1981. Taking average value of both the reports lowered down the value of the property below Rs.8743/- per sq. mtr. which is quite justifiable and based upon the average value of sale deeds available on record as mentioned by the DVO.

8. There is no dispute with regard to the law relied by the parties are concerned but the applicability of the law is based on the facts and circumstances of the each case. The law relied by the learned representative of the assessee is concerned, the Hon'ble Supreme Court relied upon the report of the valuer to decide the certain matter

but it nowhere speaks that when the valuation report of the Government approved valuer and DVO are on the file then in the said circumstances the valuation report of the Government approved valuer relied by the assessee is only required to be acceptable.

9. So far as the reliability of the report of DVO is concerned and the law relied by the learned departmental representative is concerned we are of the view that each and every aspect of the report is required to be analysed in view of the facts and circumstances of the each case. Coming to the instant case there is no basis to assess the value of the property @ Rs.4845/- per sq. mt. In view of the said circumstances we set aside the order of CIT(A) and direct the Assessing Officer to assess the valuation of the property @ Rs.8743/- per sq. mtr. for assessing the Long Term Capital Gain. The Assessing Officer is directed to decide the matter of controversy in the observations made above in accordance with law after providing an opportunity of being heard to the assessee. Accordingly appeal of the assessee is allowed and revenue is dismissed.

10. In the result, both the appeals filed by the assessee is hereby **allowed and appeal filed by the revenue is hereby dismissed.**

Order pronounced in the open court on 8<sup>th</sup> July, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :8<sup>th</sup> July, 2016

*MP*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
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**