

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष  
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 826/JP/2016  
निर्धारण वर्ष / Assessment Year : 2007-08

M/s Sunil Kumar Paliwal HUF, G-146, Makarwali Road, Vaishali Nagar, Ajmer.	बनाम Vs.	Income Tax Officer, Ward-2(1), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGHS 3758 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 827/JP/2016  
निर्धारण वर्ष / Assessment Year : 2007-08

Tara Devi Paliwal, G-146, Makarwali Road, Vaishali Nagar, Ajmer.	बनाम Vs.	Income Tax Officer, Ward-2(1), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJVPP 4222 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv)  
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27/07/2017  
उदघोषणा की तारीख / Date of Pronouncement : 20/09/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

Both the appeals have been filed by the two different assessees  
emanates from the two separate orders of the Ld. CIT(A), Ajmer dated  
14/07/2016 pertaining to the A.Y. 2007-08.

2. Both the appeals were heard together and for the sake of convenience and brevity, a common order is being passed.

3. For the facts and findings, I take ITA No. 826/JP/2017.

In both these appeals, a common issue is involved. For the self out, a jointly sold a property being plot No. 471, Gali No. 5, Adrash Nagar Vistar, Raja Park, Jaipur on 03/06/2006. The declared consideration as per the registered deed was Rs. 23,00,000/-. However, the Sub Registrar valued the property at Rs. 48,60,591/- U/s 54 of the Stamp Duty Act. Both these assesseees were having 50% shares in the property. On the assessee's request, the matter was referred to the valuation sale as per the provisions of Section 50C(ii) of the Act. The Assistant Valuation Officer, Jaipur proposed the value at Rs. 46,75,000/- and also invited objection from the assessee for the proposed valuation. The assessee submitted the objections before the Assistant Valuation Officer, Jaipur. After considering the objections and after physical inspection, it was assessed at Rs. 44,41,500/- and 50% of the same has been adopted the value by the Assessing Officer in each of the case while working out the long term capital gain.

4. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the Id. CIT(A), who after considering

the submissions, dismissed the appeal of the assessee by holding as under:-

*I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the assessee had sold Plot No. 471, Adarsh Nagar, Jaipur, the consideration of which, as per the registered sale deed was Rs. 23 lacs. The Sub Registrar valued the property at Rs. 48,60,591/- u/s 54 of the Stamp Duty Act. During the course of assessment proceedings, the assessee requested the AO to refer the valuation of the property to valuation officer u/s 50C(2). The Valuation Officer after considering the objection raised by the AO to the proposed valuation, valued the property at Rs. 44,41,500/-. The assessee's share in the property was 50%, hence, the AO took the sales consideration of the property in the hands of the appellant at Rs. 22,20,750/-. As the sales consideration of the property has been adopted by the AO at Rs. 22,20,750/- only after referring the property for valuation to the Valuation Officer at the request of the assessee as provided u/s 50C(2), therefore, I find no infirmity in the action of the A.O. adopting the sales consideration of the property at Rs. 22,20,750/- U/s 50C. Accordingly, the addition of Rs. 10,70,750/- made by the A.O. under the head 'capital gain' is hereby confirmed."*

The Id. CIT(A) has also given similar finding in the case of Smt. Tara Devi Paliwal and dismissed the appeal.

5. Now the assessee is in appeal before the ITAT by taking following grounds of appeal:

Grounds of ITA No. 826/JP/2016

“1.1 The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio hence, the same kindly be quashed. Consequently the impugned assessment framed u/s 143(3)/147 dated 24.06.2014 also kindly be quashed.

1.2 The impugned order u/s 143(3)/147 dated 24.06.2014 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. Rs.10,70,750/-: Addition on account of Long Term Capital Gain (LTCG)

2.1 The Id. CIT(A) erred in law as well as on the facts of the case in confirming the LTCG at Rs.10,70,750/-, as against the declared LTCG of Rs. 84,161/- only. The addition so made and confirmed by the Id. CIT(A) being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

2.2 The Id. CIT(A) erred in law as well as on the facts of the case in considering the full value of the sale consideration u/s 50C of the Act at Rs.22,20,750/- [being 50% of Rs.44,41,500/-], based on the report of the DVO, as against the declared sale consideration of Rs.11,50,000/-. The enhancement in the sale consideration by the AO and confirmation by the Id. CIT(A) being totally contrary to the provisions of law and facts of the case hence, the sale consideration as declared by the appellant, kindly be considered.

2.3 The Id. CIT(A) erred in law as well as on the facts of the case in not at all considering the various objections raised u/s 50C(2) of the Act and in blindly adopting the valuation done by the DVO as a final word even though the impugned valuation so made seriously suffered from various deficiencies apparent from the record itself, but were ignored & confirmed without any application of mind and therefore, the Id. CIT(A) erred in wrongly adopting the full value of sale consideration at Rs.22,20,750/- for the half share. Therefore, this part of the order of the Id. CIT(A) kindly be quashed being highly perverse and the declared

*sale consideration at Rs.11,50,000/- kindly be accepted and the consequent addition, kindly be deleted in full.*

- 2.4 *Rs.84,161/-: The Id. CIT(A) further erred in law as well as on the facts of the case in not correctly & judiciously appreciating the facts that as against the LTCG of Rs.10,70,750/- computed by the AO afresh, the appellant had already declared LTCG of Rs.84,161/- in the computation of total income and therefore, to that extent there was a clear case of double taxation of the same income yet the addition so made and confirmed by the Id. CIT(A) being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.*
3. *The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C & 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.*
4. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."*

Similar identical grounds have also been taken in ITA No. 827/JP/2016

6. Ground Nos. 1.1 and 1.2 of the appeals were not pressed at the time of hearing, therefore the same are dismissed as not pressed.

7. Grounds No. 2.1 to 2.4 of the appeal are with regard to sustain the addition on account long term capital gain. In this case, the Id AR of the assessee has submitted that the sale was a distress sale where neither the rent capitalization method nor land and building method could be

applied to work out fair market value and it tried to establish that there were peculiar facts and circumstances of the case, which has direct bearing on the valuation of the sold asset. The Id. AR has filed a detailed written submissions, the contents of the written submissions has reproduced hereunder:

1.1 At the outset, it is submitted that the present is a case of distress sale where neither the Rent Capitalization Method nor Land & Building method could be applied and the Fair Market Value (FMV) could and should have been ascertained only considering the peculiar facts of the case.

1.2 The undisputed facts having direct bearing over the controversy in hand are that the subjected property i.e. plots no. 471, Gali No.-5, Adarsh Nagar Vistar, Raja Park, Jaipur was earlier owned by Late Shri Ramlal Bhatia. On his death, the same was succeeded by his successors namely Smt Raj Bhatia w/o Shri Ramlal Bhatia, Raj Kumar, Rajendra, and Sanjay s/o Shri Ramlal Bhatia, who sold one half of the said property to Shri Sunil Kumar Paliwal and Smt. Tara Devi Paliwal, jointly with equal share. In the one half of portion the sellers continued to occupy/reside. The subjected property was sold on 23.04.2006 for total consideration of Rs.23,00,000/- i.e. Rs. 11,50,000/- each buyers. At the time of sale, the ground floor was under lease to State Bank of Patiala on monthly lease rental of Rs.12,400/- per month whereas the first floor was under lease to OTIS Elevators Co. (India) Ltd. on monthly lease of Rs.17,000/- per month which continued till the end of A.Y.2006-07.

It is submitted that unfortunately, right since the very purchase of the said property, a dispute was raised by the bank, who denied to make the payment of the entire lease rent to the buyers/lessees (assessee), mainly on the reasoning that late Shri Ramlal Bhatia had availed a loan which was to be repaid, partly out of the lease rent payable by the bank to Shri Bhatia (and now to Paliwals) and hence the bank was not making any payment of lease to the Paliwals. Accordingly, a suit was filed before the Trail Court in case no. 167/2001 which was decided vide order dated 10.12.2002 and against the same , the bank approached the Hon`ble

High Court by way of revision registered as CMA 407/2003 dated 30.01.2003. The court granted stay over rent payment. Out of court settlement was reached just a few days back to the sale. Though, the assessee continued getting rent from OTIS Elevators Co. (India) Ltd.

1.3 On the other hand because of this continuous and vexed litigation, the assessee was not finding suitable buyers. The fact of litigation was in the knowledge of the neighbors and also well known to the nearby property dealers, as a result of which, it became a case of a disputed property. A copy of certificate of a property broker was submitted support the contention (PB 7) who even confirmed that the assessee sold the property below price which remained undisputed who even confirmed that assessee sold the property below price which remained undisputed. On the one hand, the assessee being in the financial needs wanted to sale the property at the earliest possible however, the litigation was delaying the sale, on the other. This has resulted in a considerable downfall in the offers being made by the prospective buyers of the property to the assessee sellers.

1.4 It is further submitted that the present owner M/s Biranani Safe Deposit Vaults Pvt. Ltd., Jaipur had already been under negotiation with the assessee seller since long and the parties almost reached to a common consensus of the deal to be finalized at Rs. 23,00,000/- or around. However, it was only because of non settlement if the legal dispute, the registration of the said transaction in favour of the buyer, was not possible earlier. As soon as the legal dispute between the bank and the assessee seller settled in the month of March'2006 (when the bank paid arrears of rent), the buyer got the property registered in his name through registered sale deed executed on 03.04.2006 (PB 20-31). These facts might not have been narrated in the preamble of the registered sale deed yet however, the facts which otherwise prevails being the existence of a serious legal litigation going on and therefore, the buyer was in a dictating term, cannot be brushed aside.

1.5 It was submitted before the AO & DVO that:

“(vi) The property was disputed, court case was there on the property (photocopy enclosed) and placed at S.No.1 to 15. Smt. Taradevi, Age 70 years have to travel Jaipur by bus on every hearing, very much mental

tension was there in her old age due to court case and non-payment of rent by bank.”

However, the DVO in Pr-6 (PB 8-19) rejected the same stating that:

“6. The assessee has put the paper related to the year 2002-03. In the year or date of sale the property has free from encumbrance or any dispute (copy of sale deed page enclosed is proof) hence does not call any discount.”

The AO/DVO did not appreciate that because of prolonged adverse publicity due to continued litigation which fact is not denied, it was a case of distress sale. Various prospective buyers though initially willing but having the knowledge of dispute, did not turn up. Dispute settled only in March, 2006.

1.6 Unfortunately however, the Id. Sub registrar while adapting the value u/s 54 of the Registration Act and estimating the value at Rs.48,60,591/- and also the Id. DVO while estimating the value u/s 50C at Rs.44,41,500/-, did not take into consideration these facts and there implications, judiciously.

2. Rent Capitalization method not applicable:

2.1 It is submitted that admittedly the bank was not paying rent to the assessee since long and the dispute between the assessee and bank was pending before court of law for five to six years immediately before the sale. Admittedly the rent is foundation ingredient of rent capitalization method, however in the instant case since no rent for the entire subjected property existed, hence the adoption of rent capitalization method for estimating fair market value is without jurisdiction and improper.

2.2 It is submitted that because of the dispute going on as stated above, the assessee's were not getting any rent at least till A.Y.2005-06 and it was only in A.Y. 2006-07 when an out of court settlement was reached between the parties, pursuant to which the assessee were paid the full and final amount of lease rent. However, in A.Y. 2007-08 the property stood sold and therefore, the lease amount, if any, accrued to the new buyer and not to the assessee hence, no rental income shown by the assessee in the ROI filed for A.Y. 2007-08 (PB 1-3). Under these

circumstances when, there was no rent received/receivable at the time of sale, the Rent Capitalization Method was not proper method to be applied.

3.1 Moreover, as per Guidelines for Valuation of Immovable Properties, 2009 published by the Directorate of Income Tax, Income Tax Department, Delhi (For official Use only), has provided that approach and method of valuation should be rational.

It has been guided that "Normally there would be an appropriate method for a particular situation. For instance for owner occupied property, as vacant possession can be given to the buyer, land and building method would be appropriate. Similarly for rented property rent capitalization method would be appropriate. When the building is partly occupied by owner and partly rented then both the methods can be applied for respective portions." The DVO referred but (PB 18) but ignored.

3.2 Land & Building Method: In any case, if it is held that it is not a case of distress sale and also when Rent Capitalization Method is not found proper, the only method left is the Land & Building Method. On this account however, various objections were raised before the authorities below and in particular before the DVO, however, were not considered judiciously. The assessee claimed that the fair market value of the land was less than the valuation adopted for the purpose of stamp duty/Valued estimated by the Id. DVO for different reasons, which are extracted hereunder for the sake of reference together with our submissions on the observations made by the DVO thereon:

<b>S. No.</b>	<b>Assessee</b>	<b>DVO</b>	<b>Our comment</b>
(i)	That this property is a residential house property and built up by, covering the set back portion of the house. Ex owner is still residing in balance portion house.	1. The AR of assessee submitted in para that the property is residential is totally wrong. The subject property is fully	The fact was not denied that the property was a residential property and half Portion i.e. 129.40 Sqmtr of Ground Floor and 106.25 Sqmtr of First Floor was occupied by the original seller Bhatia family and admittedly, no application was filed by any one concern for change use / conversion from

			residential to commercial. Notably, DVO itself in para 6.4 page 3 <b>(PB 10)</b> has stated <i>Particulars of tenants/ leases /licences etc and portions occupied by each</i> – fully self occupied. Even the subjected registered sale deed itself, in the preamble, states the property to be a residential property <b>(PB 20-31)</b> .
(ii)	No site plan was sanctioned by Nagar Nigam, Jaipur.	2. Assessee did not submitted any site plan may not be commented. The use is commercial	The DVO did not comment on this aspect. Needless to say that such a fact discourages the buyer and he takes help in bargaining to reduce the sales consideration. No commercial activity.
(iii)	No lease Deed was executed by the bank due to disputed property. The bank was without the strong room.	3. Regarding lease deed the matter is in between lessee and lessor. This is their matter will may not be commented.	DVO did not comment but also ignored that due to this RCM was not applicable.
(iv)	No strong room was constructed by the bank as the portion was constructed after covering the set back portion of the house and due to dispute with owner. The stairs are common for whole building.	4. The construction of strong room is requirement of bank does not change the nature of commercial.	The focus was on the fact that the construction of strong room was done in the set back area which is against the building by laws and such construction was illegal. Therefore, a prospective buyer shall certainly make a discount in the sale consideration. DVO completely ignored this aspect.
(v)	Over head water tank was also common for the whole building. Many times, there	5. The building is valued by rent capitalization method. The water	The fact of there being common stairs & common over head water tank will certainly make difference in the Land &

	were hot talks with land lord in the matter of water supply, toilet water, roof leakage etc. in these premises.	tank does not related the tenancy.	Building Method. The very fact of the presence of the original seller together with the common uses of civic amenities, certainly discourages a prospective buyer and this considerably reduce the FMV sale consideration of the property.
(vi)	The property was disputed and court case was there on the property, placed at S.No.1 to 15. Smt. Taradevi, aged 70 years have to travel Jaipur by bus on every hearing, very much mental tension was there in her old age due to court case and non-payment of rent by bank.	6. The assessee has put the paper related to the year 2002-03. In the year or date of sale the property has free from encumbrance or any dispute (copy of sale deed page enclosed is proof) hence does not call any discount.	DVO clearly ignored the facts relevant for the issue in hand in view of the case laws, papers and in absence of contrary evidence brought by the AO & DVO. It cannot be said that the property was free from encumbrance / any dispute and facts of prolonged negative cannot be ignored.
	<i>(ix) That the house was constructed in the year 1972 and building was rented out in the year 2006 to the bank. The building is 43 years old, no deduction of depreciation has been given by your honour.</i>	9. Here AR mentioned the year of constructed depreciation. There it is mention that property is valued on the basis of rent capitalization method hence does not call any change. The depreciation is being ---- on L & B method only.	Since Land & Building Method is appropriate hence depreciation has to be reduced as admitted by the DVO also.

3.3 Guidelines for Valuation of Immovable Properties 2009 published by the Directorate of Income Tax, Income Tax Department, Delhi (For official Use only), has not kept in mind by the DVO. It has been provided that Approach and method should be rational. It is provided that for

determination of fair market value of commercial properties if compared to land and building method, the profit method indicates lesser value, then the former should be applied.

It should correctly reflect the real life situation. All factors affecting value should be considered, like.

- Shape, size, location, low lying, allowable FAR etc., for land valuation.
- Type of foundation, specification, No. of storeys, standard of construction and finishing planning efficiency etc for building valuation.
- Lease hold or free hold.
- Under litigation or not.
- Title is clear or not: owner ship & possession.
- Tenanted or Self-occupied.
- Encroachment / unauthorized occupant exist or not etc.
- Valuation should be correctly done.
- The following points should be carefully noted.
- Plinth area rates should be correctly applied.
- Cost indices of relevant time & place should be considered. Guidelines of Valuation of Immovable Properties 96
- Extra items should be properly framed based on correct rates of materials and labour.
- For ascertaining comparable land values public auction or sale cleared by the Appropriate Authority should be considered more authentic. Reliance should be placed on sale instances of registration offices only under circumstances where Appropriate Authority instances are not available. Reliance may also be made on the local guidelines rates issued by relevant authority.
- It should be based on facts noted during inspection of property and facts intimated by assessee and verified.
- It should depict the property in simple terms bringing out the position on the date of inspection through a note.
- The detailed measurements and specification should be noted and got accepted from the assessee or his authorized representative for avoiding contradiction.

4. Approved Valuer's Report should be Applied: Since the Id. DVO did not follow the Guideline prescribed by the Department nor he considered the various objections objectively and the facts are not

denied that the assessee also submitted a report of an expert i.e. the Approved Valuer (by the department) M/s S.K. Associates, Jaipur, who has also submitted his valuation report dated 30.04.2014, estimating the Fair Market Value (FMV) of the property at Rs. 23,14,948/- following the Land & Building Method. Once, it is held that Rent Capitalization Method is not applicable and the DVO not having applied Land & Building Method, the report of the other expert, has to be applied, being a report by a technical expert. There is no contrary evidence or report was brought by the AO of an expert, following the same method. Therefore, it is requested that the valuation done by the registered valuer at Rs.23,14,948/- must be accepted.

#### 5. Supporting Case Laws:

5.1 In Krishna Kumar Rawat & Ors. v/s Union of India & Ors. (1995) 123 CTR 61/214 ITR 610 (Raj) held that

*"12. ----- The respondents have to make the valuation of the property by taking into consideration all relevant facts and thereafter a decision has to be taken by the Appropriate Authority. The Viscount Simon, J. in Gold Coast Selection Trust Ltd. vs. Humphrey (Inspector of Taxes) (1949) 17 ITR (Suppl) 19 (HL) observed that, 'valuation is an art, not an exact science, mathematical certainty is not demanded nor is possible. Certain element of guess has to be there based on objective factors having reasonable nexus with the evidence on record. The various factors are there on the basis of which out of the various methods by which the valuation of the immovable property can be made, appropriate method is to be adopted. It depends on the location of the property, the purpose for which the property is used, the nature of the property, the time when the agreement is entered into and similar other objective factors. The valuation, therefore, has to be done by a method which is more objective and could furnish the reliable data to arrive at a just conclusion.*

13. In respect of the land, the comparable cases provide the better guide. The comparable cases could be which are in respect of the land having similar character and is in the proximity of the land under agreement having similar advantages and amenities. The proximity in time is also the important factor in such a case. The location, frontage, transport facility and other amenities beside the size of the plot are the relevant considerations. The method of belting is also applied in respect of land having large area as the front of the land on the main side

fetches higher price than of the next belt and so on. In this method the plot is divided into belts on the basis of distance from the main road and the value of such belts have to be determined separately.

14. In Raghubans Narayan Singh vs. State of U.P. AIR 1967 SC 465, it was observed by the Apex Court that the value to be ascertained is the price to be paid for the land with all its potentialities and with all the use that can be made of it by the vendor. Similarly in U.P. Government vs. H.S. Gupta AIR 1957 SC 202, the market price was considered the highest value the property could fetch when laid out in the most advantageous manner. The potentialities or the capacity to use therefore is also an another relevant factor. The instances of the comparable cases which are taken into consideration must be of the genuine cases.

15. ----- (viii) Land and building method:

Under this method the valuation of the land is done separately on the basis of comparable instances of sale of the plots and the cost of construction as prevailing is taken from which the depreciation looking to the year of construction is reduced. This method is normally applied in cases of compulsory acquisition.-----

----- 21. In Debi Prosad vs. CWT (1977) 109 ITR 760 (Cal), the following principles were laid down for the valuation of immovable property under the WT Act :

(i) Attempt must be made to find out the price which the immovable property would fetch on the valuation date imagining a willing buyer to purchase the property from a willing seller in respect of the property;

(ii) In respect of the immovable property there is no fixed market such as market for shares or for other commodities, like sugar, cloth, etc. In order to arrive at a valuation in respect of the property, there must necessarily be certain element of guess. But the guess must be based on certain facts and according to certain principles which would be, in the facts and circumstances of each case, as fair as possible to the Revenue as well as to the assessee in trying to imagine reasonably and

intelligently the price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date.

(iii) Such a determination, therefore, involves adopting certain methods in determining the valuation and there are different kinds of methods, as mentioned in the circulars of the Board and the principles enunciated in the several decisions of the Court as noticed before.

(iv) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which one of the various methods will be most suitable to reach as accurate as possible guess as to the valuation on the valuation date.

(v) Another factor that has to be borne in mind is that such a method should be preferred which has more objective reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another, then that method for a particular land should be preferred. If, however, there is any objective reliable evidence of any transaction of sale of the land or property similar in quality or of the same type and in approximately same time then that would, however, provide more reliable method to follow.-----”

5.2 CWT vs. P.N Sikand (1977) 107 ITR 922 (SC)(DPB 1-8) wherein it was held that the valuation of the property should always be made after giving effect to the disadvantages attached to it. Therefore, when the leasehold interest in the land has to be valued, this burden or disadvantage attaching to the leasehold interest must be duly discounted in estimating the price which the leasehold interest would fetch. To value the leasehold interest on the basis that this burden or disadvantage was to be ignored would be to value an asset different in content and qualify from that actually owned by the assessee.

5.3 Kindly refer CIT v/s R.P. Kacholia (2016) 137 DTR 61 (Raj) (DPB 31-34)

5.4 Also kindly refer Ravikant v/s ITO (2007) 110 TTJ 297 (Del Trib) in Para 9 (DPB 26-30)

Thus, whatever be the nature of the property, a due deduction of the disadvantages attached to the property has always to be reduced while valuing the property.

In the instant case, the drawbacks attached with the plot were odd size of the plot, illegal construction in the set back portion, common stairways, overhead water tank, the fact of the continued occupancy of the original sellers and the on-going litigation which was known to neighbors and property dealers, which factors were completely ignored by the AVO/DVO and Id. CIT(A) while valuing the property.

6. All these detailed submissions together with the facts and legal position were submitted before the Id. CIT(A), which he has even reproduced in his order from Pages 3 to 9 unfortunately however, he did not utter a single word thereon but dismissed the appeal by merely and blindly relying upon the report of the DVO, as if that was the final word. He did not appreciate that the DVO acted only in the capacity of a commissioner who was appointed by the Trial Court judge/ Appellate Authority and such report given by the commissioner was to be considered objectively by the Appellate Authority, who was not at all bound by the report of the DVO. Has this being the intention of the legislature, after filing the objection u/s 50C(2) and getting a report from the department valuation officer, the law wouldn't have provided any appeal even u/s 246A against the addition resulting after giving effect to the report of the DVO. However, no such amendments is found in provisions of S. 246A. The assessee feeling aggrieved from the addition made by the AO, only after considering the report of the DVO, was aggrieved and its appeal was fully maintainable as was also rightly

admitted by the Id. CIT(A). The Id. CIT(A) having admitted such an appeal, also admitted that the appellant was aggrieved by the addition which was based/consequent to the DVO's report. Therefore also, the Id. CIT(A) could not have rested his decision solely on the report of the DVO. He was supposed to make his comment and grant relief, if thought fit. By not doing so and by not rejecting the specific factual and legal submission made duly supported by the binding judicial pronouncements, it has to be presumed that Id. CIT(A) had nothing to rebut/negate the same and hence his confirmation was completely contrary to the provisions of law and facts. Hence the impugned addition kindly be deleted in full."

8. After hearing both the sides and considering the factual position of the property, I hold that basically the property was a residential property. The property was let out but it was constructed in the back portion of the plot of land. The District Valuation Officer has treated the property as fully commercial, which is not justified. It is also a fact that no site plan was sanctioned by the local bodies, which the assessee could submit to the District Valuation Officer, therefore, the District Valuation Officer's observation was that the assessee did not file site plan is factually incorrect. Further it is also important to note that to invoke the rent capitalization method, the period of tenancy has to be considered. Further the termination date of tenancy is also relevant factor to invoke the rent capitalization method. The dispute with tenant is also very relevant aspect which needs consideration while valuing the property. No lease deed was executed with the bank due to dispute in the

property. The strong room facility was not constructed due to dispute with the owner. It was only constructed in setback area illegally. Further the stairways were common and other facilities like overhead water tank were also common with part owner of plot, which reduces the fair market value in terms of salable price and also in terms of the rent. It is also important to note that the property was in dispute and the court cases were going on. The assesseees were residing outside the Jaipur. It was difficult for them to travel to Jaipur every time to negotiate the deal when they were senior citizens. The structure was very old as it was constructed in 1972. Considering all these aspects, I hold that the District Valuation Officer has not considered all these various aspects which has direct bearing on the fair market value of the land on the date of transfer. The facts of the case also suggest that it can be termed as distress sale, therefore, the District Valuation Officer was not justified in estimating the fair market value by adopting rent capitalization method, therefore, I direct to delete the same.

9. Now I take ITA No. 827/JP/2016.

Since the facts and issues are identical to the facts of ITA No. 826/JP/2016, therefore, similar submissions of the A.R. of the assessee and similar findings of the Bench shall apply in this case also. Accordingly the addition made and confirmed in this case is also deleted.

10. In the result, both the appeals of the assesseees are allowed.

Order pronounced in the open court on 20/09/2017.

Sd/-  
(भागचंद)  
(BHAGCHAND)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 20<sup>th</sup> September, 2017

\*Ranjan

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

1. अपीलार्थी / The Appellant- 1. M/s Sunil Kumar Paliwal HUF, Ajmer.  
2. Smt. Tara Devi Paliwal, Ajmer.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-2(1), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 826 & 827/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar