

were heard together and are being disposed of by this common order for the sake of convenience and brevity.

2. Almost identical grounds have been raised in both the appeals. First of all, I am taking up the appeal in ITA No. 3823/DEL/2017 in the case of Padam Kumar Mittal. The assessee has raised the following grounds of appeal:

“1. That Ld. A.O. is in error taking the valuation of the property sold during the F.Y. 2008-09 of Rs. 98,21,000/-. However, as per circle rate it was Rs. 1,09,47,000/- and sale consideration was only Rs. 17,00,000/- and Ld. CIT(A) has reduced the cost of acquisition Rs. 86,80,800/- on the basis of valuation that made by the DVO but DVO has not provided any opportunity being heard and valuation made by DVO and adopted by A.O. as well as CIT(A) is erroneous and against the principle of natural justice.

2. That the A.O. has taken the cost of the land as on 01-04-1981 @ Rs. 300/- per sq. yd. and CIT(A) confirmed the same @ Rs. 350/- per sq. yd. both the authorities have ignored the fact that the assessee's land was commercial land and as per Tehsildaar the rate of the commercial land @ Rs. 2460/- per sq. yd. and the assessee also filed the valuation as on 01-04-1981 by Govt. Approved Valuer. The A.O. has not considered this fact and CIT(A) also ignored the same. Therefore, both the authorities has passed the order against the principle of natural justice.

3. That Ld. A.O. issued penalty proceedings U/s 271(1)(c) without satisfaction of A.O.

3. Facts, in brief, in the case of Shri Padam Kumar Mittal are that the Assessing Officer observed that the property sold by the assessee was shown at Rs. 19 lakhs whereas the value determined as per the stamp duty valuation was at Rs. 1,09,47,000/-. The assessee requested the Assessing Officer to refer the matter to the Departmental Valuation Officer [DVO] which was referred accordingly. But till the date of completion of assessment, no such report was received from the DVO. The Assessing Officer, in the absence of valuation report, computed long term capital gain on the basis of circle rate.

4. The Id. CIT(A), in the first round partly allowed the appeal of the assessee. When the assessee went in appeal before the Tribunal, the Tribunal came to the conclusion that the DVO has not considered the objections of the assessee and the Assessing Officer was directed to refer the matter to the DVO to consider the objections of the assessee.

5. Before the Assessing Officer, in the second round, the assessee requested the Assessing Officer to keep the assessment in abeyance till the disposal of the objections by the DVO. In fact, the DVO has written that he has considered the objections and disposed of the objections

and whatever fair market value is conveyed, is the fair market value.

6. The ld. CIT(A) confirmed the action of the Assessing Officer.

7. I have heard both the sides and perused the relevant material on record. Before us, the ld. counsel for the assessee submitted that the assessee has received valuation report by DVO dated 02-12-2015 received on 06-12-2015. In this regard, the assessee strongly objected that the valuation of the property was made without providing any opportunity of being heard, even no **notice for valuation is received by the assessee**. This is against the principle of natural justice and validation of I.T.A.T. It was further submitted that the as per letter from UP Administration, **that the valuation of commercial property can be made by DVO with the following directions, he will take 15 Mt. property for the purpose of valuation as per direction the property is approximately 6 mtr. away from the road side, which is to be excluded from the 15 mtr. of the property. According to which commercial area of the land is $(105 \times 27/9) = 310$ sq. mtr.. However, ITAT has taken the commercial land 480.15 sq. mtr. @ 13,000/- per sq. mtr. for the remaining land has taken value of remaining property as residential rates, which is not a correct fact. Because on the date of valuation,**

there was residence area of 27.50 sq. mtr. Balance land was on agriculture land for which agriculture value is to be taken circle rate, which is mentioned in sale deed your honour has not taken the area of the land on the basis of sale deed. As per direction ITAT has taken circle rate of the property to determine valuation of the property has not taken as determined stamp etc, but for the purpose of capital gain market rate based upon local inquiry should be taken, which exercise has not been done. The assessee also furnished valuation report of departmental approved valuer Sh. B.B. Gupta, which is based upon market value of the property, which is more appropriate to determine valuation of the property. Therefore, valuation determined is erroneous as no opportunity was provided to the assessee and no efforts were made to determine market value after local inquiry and not considered the valuation report.

8. In that view of the matter, I am of the considered opinion that the DVO has not considered and disposed of the objections raised by the assessee as directed by the ITAT. Therefore, in the interest of justice, the Assessing Officer is directed to refer the matter to the DVO to dispose of the objections of the assessee and after considering the

same to decide the appeal afresh. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purposes.

9. Now coming to ITA No. 3824/DEL/2017, I find that the issues raised in this appeal are identical to the issues involved in the case of Shri Padam Kumar Mittal in ITA No. 3823/DEL/2017 decided by me hereinabove. Accordingly, my order hereinabove on these issues shall be identically applicable in this case also. Grounds raised by the assessee are allowed for statistical purposes.

10. In the result, both the appeals of the assessee are allowed for statistical purposes.

The order is pronounced in the open court on 11.10.2017.

Sd/-

[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: 11th October, 2017

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi