

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", NEW DELHI  
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.4247/Del/2017  
Assessment Year : 2008-09**

AI-Barkat Frozen Pvt. Ltd., C/o Mohammad Jahid (Director), H.No.328, Sari Behleem, Shorab Gate, Meerut.	<b>Vs.</b>	ITO, Ward- 1(1), Meerut.
<b>PAN : AAFCA4096G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri V. K. Goel, Adv.  
Department by : Shri Amit Jain, Sr.DR  
Date of hearing : 25-10-2017  
Date of pronouncement : 30-10-2017

**ORDER**

**PER R. K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 30.05.2017 of CIT(A), Meerut relating to assessment year 2008-09.

2. Facts of the case, in brief, are that in response to notice u/s 148, the assessee filed its income tax return on 04.02.2016 declaring loss of Rs.6,85,000/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee company sold a property having Khasra No.483, Area 0.0630 Hectare, situated at Village Nangli Esa, Pargana, Tehsil Mawana, District- Meerut vide Sale Deed dated 18.02.2008 for consideration of Rs.50,00,000/-. The Stamp Valuation Authority had valued the said property at Rs.1,19,27,000/-. The assessee had filed computation of capital gain in his

submission declaring loss on sale of assets at Rs.6,85,000/-, after considering the cost of acquisition at Rs.16,85,000/- and cost of improvement at Rs.40,00,000/-. He, therefore, asked the assessee to substantiate the claim of such loss on sale of assets at Rs.6,85,000/-. It was argued by the assessee that property was purchased at Rs.15.60 lakhs. Thereafter, construction of building was done with planning to start a meat plant over there. Due to obstruction created by the local people, the assessee could not start his business and NOC was cancelled by the District Magistrate and, therefore, the value of land was devalued. The assessee objected to the fair market value determined by the Stamp Valuation Authority. Therefore, the Assessing Officer referred the matter to the Departmental Valuation Officer (DVO) for determining the fair market value of the property who assessed the value of the property at Rs.1,00,37,000/-. The assessee objected to the said valuation stating that the value adopted by the DVO at Rs.600/- per sq.ft. is highly excessive and arbitrary. However, the Assessing Officer rejected the arguments advanced by the assessee and determined the short term capital gain at Rs.43,52,000/-. While doing so, he however allowed the cost of acquisition at Rs.16,85,000/- and cost of improvement at Rs.40,00,000/- as stated by the assessee in the computation of income.

3. In appeal, the Id. CIT(A) upheld the action of the Assessing Officer.

4. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal with the following grounds :-

*“1. That there is huge difference between cost of land and cost of construction as determine by the OVO and Government Approved Valuer, who ignored the facts that land is business property on which Provision of Section 50C is not applicable. The DVO has not taken into account the difference, even he is unable to consider the cost of the land and construction taken by Government Approved Valuer. Hence, A.O. fails to determine correct valuation which is given by DVO and Government Approved Valuer, who ignored the concept of slump sale and CIT(A) also in error in confirming the same.*

*2. That A.O. has allowed cost of construction of Rs. 40,00,000/- as claimed by the assessee but cost of the land was taken as taken by assessee and DVO. He must provide the reason that how the cost of construction is higher between two years of construction and sale date of property, therefore, difference of cost and value of the property as per circle rate and DVO is erroneous. Therefore, A.O. has not justified the difference of short term capital gain as income of the assessee and CIT(A) is also in error in confirming the same.*

*3. That A.O. has not justified in ignoring the loss shown by the assessee of Rs. 6,85,000/- and taken at Zero, no reason to disallowance of loss is given in the computation of income and CIT(A) is in error in confirming the same.*

*4. That the assessee has right to add, delete or modify any grounds during the appeal proceeding.*

5. Ld. counsel for the assessee at the outset submitted that the DVO has given his report dated 29.03.2016 and the Assessing Officer has passed the order on 31.03.2016. This otherwise indicates that the assessee was not given sufficient opportunity to raise the objections to the report given by the DVO. He submitted that in the interest of justice the matter may be restored to the file of the Assessing Officer to give sufficient opportunity to the assessee to file his objections to the report of the DVO and decide the issue afresh.

6. Ld. DR while supporting the order of the Id. CIT(A) however, submitted that he has no objection if the matter is restored to the file of the Assessing Officer for fresh adjudication of the issue.

7. I have considered the rival arguments made by both the sides and perused the material available on record. A perusal of the order of the Assessing Officer at page 3 shows that the Assessing Officer received the report of the DVO on 29.03.2016 and confronted the same to the assessee on 29.03.2016 itself asking the assessee to explain as to why the fair market value of the property be not taken at Rs.1,00,37,000/-. It is also an admitted fact that the order has been passed on 31.03.2016 meaning thereby the assessee was not given sufficient opportunity to counter the report of the DVO. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate his case to the satisfaction of the Assessing Officer. The Assessing Officer shall decide the issue afresh and in accordance with law after giving the due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on this 30<sup>th</sup> day of October, 2017.

**Sd/-**  
(R. K. PANDA)  
ACCOUNTANT MEMBER

Dated: 30-10-2017.

*Sujeet*

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

//True Copy//

By Order

Assistant Registrar  
ITAT, New Delhi