

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI PAWAN SING, JM**

आयकर अपील सं./I.T.A. No. 5373/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Shri Vijay S. Jobanputra Cama Building, 2 <sup>nd</sup> Floor, 24, Dalal Street, Fort, Mumbai-400 001	<b>बनाम/ Vs.</b>	A.C.I.T.-17(3) Aayakar Bhavan, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AADPJ 0975 E		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri K. Shivram/Rahul K. Hakani
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Pooja Swaroop

सुनवाई की तारीख / <b>Date of Hearing</b>	:	14.03.2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	17.05.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed the against order of the Id. Commissioner of Income Tax (Appeals) dated 15.06.2016 and pertains to assessment year 2012-13.

2. The grounds of appeal read as under:

1. The C. I. T. (A) erred in dismissing the additional ground and holding that the valuation proceedings are valid.
2. The C. I. T. (A) erred in enhancing the assessment on the basis of Valuation Report of DVO II. Mumbai as the valuation proceedings initiated by the

Assistant C. I. T. have become infructuous because the Assistant C. I. T. completed the assessment before the receipt of the Valuation Report by substituting his own valuation.

3. Without prejudice to Ground No. 1 & 2, Appellant submits that the Valuation Report dated 31<sup>st</sup> December, 2015 of DVO II can not be acted upon as he has not properly considered the objections of the Appellant filed vide his letter dated 28<sup>th</sup> December, 2015, viz;

i) Sales instances relied upon by DVO II are of a far inferior locality than the locality where Appellant's property is located.

same by land and building method.

iii) In the absence of any specific comparable sale instances and unbridgeable gap between different modes of valuation, average of different valuation should have been taken.

iv) Where ready reckon rate is not available and there is a very wide gap between Sale Agreement Value and prevailing ready reckon rate, the valuation should be increased in the same proportion for arriving at the reasonable fair market value of the property at 01.04.1981.

4. The Asst. C. I. T. erred in estimating fair market value of the property as cost of acquisition on 01.04.1981 at Rs.87.58.119/- instead of Rs.2,50,00,000/- taken by the Appellant on the basis of Valuation Report of a Registered Valuer.

3. Brief facts of the case are as under :

The assessee filed return of income on 28.07.2012 declaring a total income of Rs.5038182/-. The assessee is an individual deriving income from capital gains and other sources. During the year under consideration, the assessee had sold a property at plot no. 36, Koregaon Park, Pune for which he had claimed long term capital gain of Rs.56250000/-. It was seen that the said property was acquired by the assessee from his father by way of will dated 09.08.1995. The assessee submitted valuation report from a registered valuer wherein the FMV of the land as on 01.04.1981 was worked out at Rs.2,50,00,000/-. The Assessing Officer found that the value taken by the valuer as on 01.04.1981 was excessive. In his report the valuer had mentioned that the locality is High Class and he has not mentioned the reason for such valuation nor given any comparative

sale instances. The Assessing Officer noted that the valuer had taken current rate as Rs.60,000/sq.m. for the F.Y. 2011-12 and determined rate of Rs.10,712/- sq.m. for 1980-81. The valuation of the property is Rs.5 crores where the assessee is 50% stakeholder and area of total property is 4667.3 sqm for 1980-81. The Assessing Officer observed that there was 460% increase from the base price for 1980 whereas the cost inflation index used for I T Act, 1961 which is a composite index reflects a growth of 685%. The Assessing Officer was at a loss to understand how the real estate rate growth for a "High Class" locality can be at a slower rate than the normal inflation index. It was seen that the Valuer's report lead to a contradictory inference in view of the fact that the real estate prices have grown at a faster rate than normal prices. Considering the above facts, the Assessing Officer rejected the Valuer's report and made a reference to DVO. However, the report of the DVO was not received till the date of passing of the assessment order and therefore the Assessing Officer opined that the Stamp Duty Value of the property as on 17.09.2011 be discounted by the cost inflation index provided by the I T Act, 1961 which was worked out at Rs.87,58,119/-. Thus the Assessing Officer worked out the long term capital gain at Rs.7,12,48,764/-.

4. The report of the DVO came subsequently before the appellate proceedings of the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) found that the fair market value of the property as on 1/4/1981 as per the DVO was less than that adopted by the assessing officer. Hence, the Id. Commissioner of

Income Tax (Appeals) proposed enhancement of the capital gains assessed as the cost of acquisition was now lower than that determined by the assessing officer.

5. The assessee filed the additional ground objecting that the valuation proceedings initiated by the assessing officer have become infructuous, as the assessing officer has completed the assessment before receipt of the valuation officer's report. In this regard assessee also placed reliance upon honourable Calcutta High Court decision in the case of *Reliance Jute Industries Ltd. vs. ITO* [1984] 150 ITR 643 (Cal).

6. Considering the above, the Id. Commissioner of Income Tax (Appeals) placed reliance upon the decision of honourable Delhi High Court in the case of *ACC Ltd vs. DVO* [2012] 21 taxman.com 488 (Del). Following the decision of honourable Delhi High Court, the Id. Commissioner of Income Tax (Appeals) held that additional ground raised by the assessee fails.

7. On merits of the District Valuation Officer's valuation, the Id. Commissioner of Income Tax (Appeals) noted the assessee's objections as under:

'The DVO-II has dealt with the objections in a very casual and mechanical manner without giving any convincing reasons. Moreover his Valuation Report can not be relied upon on following grounds.

3.1 Sales instance relied upon by him are of far inferior locality than the locality where the Appellant's property is located. The Appellant's property is located at Koregaon Park in the vicinity of VVIP residential bungalows like those of a) Bajaj Family b) Shapoorji Paloonji c) Rajnish Ashram etc. where as the DVO has relied upon sale instances of properties situated at Ravivar Peth and Bhavoni Peth of Pune. If we compare the ready recknor rate in 2012 for Ravivar Peth & Bhavani Peth and -Koregaon Park it will be seen that rate for

- i) Ravivar Peth is Rs.26,900/- per sq. mtr.
- ii) Bhavani Peth is Rs.28,750/- per sq. mtr.

iii) Koregaon Park is Rs.81,900/- per sq. mtr.

Copy of Ready Recknor Rates in 2012 of Pune City showing above facts is enclosed as per Page Nos. 133 to 137 of Paper Book No.2

Thus the rate of Ravivar Peth and Bhavani Peth is just 1/3<sup>rd</sup> of Koregaon Park rate and therefore the same can not be relied upon for valuing property located at Koregaon Park and accordingly without prejudice, logically the valuation of Appellant's property as on 01.04.1981 should be three times that as valued by the DVO as per his report dated 31.12.2015 which will come to Rs.1,01,49,000/- (i.e. Rs.33,83,000 x 3) as he has valued the property by relying on sale instances of Ravivar Peth/Bhavani Peth.

3.2 He has valued the property by physical method instead of valuing the same by land and building method.

3.3 In the absence of any comparable sale instances and unbridgeable gap between different mode of valuation, average of such different valuation should have been taken which such average valuation of the property comes to Rs.1,37,43,87s/- as explained in our letter dated 28<sup>th</sup> December, 2015 filed before the DVO. (Ref. Para 7 - Page Nos. 90-91 of Paper Book No.2).

3.4 Where the ready reckon rate is not available and there is a wide gap between Sale Agreement Value and prevailing ready reckon rate the valuation could be increased in the same proportion for arriving at reasonable Fair Market Value of property at 01.04.1981.

These criteria have been laid down by Hon. ITAT, Pune Bench 'E' Sathé Biscuits vs ITO, Pune reported in ITA No.1568/PN/2008 and 1329/PN/2009 copy of which is at page nos. 93 to 132 of Paper Book No. 2

In view of the above it is submitted to your Honour that Report of the DVO -II, Mumbai dated 31.12.2015 should not be relied upon and there should not be any enhancement in the assessment on the basis of the said Report.

8. Thereafter, the Id. Commissioner of Income Tax (Appeals) held as under:

5.3.1 I have carefully considered the objections of the appellant. I the appellant continues to argue that the valuation proceedings are infructuous placing reliance on the decision of the Calcutta High Court. I have already dealt with that issue in detail w.r.t the additional ground raised and therefore am not repeating the arguments again. The other limb of the appellant's arguments is that the DVO did not consider the objections of the appellant properly. I have perused the report of the DVO and find that the DVO has considered each and every objection of the appellant in para 8 of his report. The DVO followed proper procedure, called for

the objections and has rebutted each one separately. I therefore cannot agree with the appellant on this count. Based on the above discussion, I hold that the AC is bound by the valuation of the DVO which in the case of the appellant is Rs 33,83,000 as on 01/04/1981. The AC is therefore directed to recompute the capital gains by adopting the COA as on 01/04/1981 at Rs 33,83,000. Ground 3 is dismissed.

9. Against the above order, the assessee is in appeal before us.
  
10. We have heard both the counsel and perused the records. As regards the jurisdictional challenge by the assessee to the reliance by the Id. Commissioner of Income Tax (Appeals) on the DVO report, we find that the same is covered in favour of the Revenue by the decision of honourable jurisdictional High Court in the case of Rallis India Ltd vs. CIT-A [2015] 56 taxman.com 282 (Bom). In the said case, honourable jurisdictional High Court had expounded that where assessing officer fails to make enquiry under section 55A while passing assessment order, the Id. Commissioner of Income Tax (Appeals) during the appellate proceedings before him can make such an enquiry by making reference to the DVO either himself or directing the assessing officer to do so. In view of the aforesaid decision of the honourable jurisdictional High Court which confers due right to the Id. Commissioner of Income Tax (Appeals) to make reference to the DVO, in our considered opinion, there is no infirmity in the order of learned CIT-A on this issue. The Id. Commissioner of Income Tax (Appeals) has taken note of the DVO report which was not done by the assessing officer. Accordingly, following the precedent from honourable jurisdictional High Court, ground nos. 1 & 2 of the assessee's appeal are dismissed.

Apropos ground nos. 3 & 4 :

12. In this ground, the assessee has challenged the merits of valuation done by the DVO.

13. We have heard both the counsel and perused the records on this issue. We note that assessee's challenge to the merits of DVO valuation was there before the Id. Commissioner of Income Tax (Appeals). This the Id. Commissioner of Income Tax (Appeals) has noted and reproduced in his order. However, we note that the Id. Commissioner of Income Tax (Appeals) has summarily dismissed and rejected the same by observing that the DVO has dealt with each of the objection in his report. The Id. Commissioner of Income Tax (Appeals) has failed to refer/reproduce the relevant portion of the DVO order leave alone his comment and adjudication there on. The order of the DVO has also not been placed before us. We find that honourable apex court in the case of *M/s Sahara India (Farms) Vs. CIT & Anr.* 300 ITR 403 (SC) has held that even administrative orders have to be consistent with the rules of natural justice.

14. Accordingly, in the background of aforesaid discussion and precedent we direct the Id. Commissioner of Income Tax (Appeals) to pass a speaking order on the assessee's challenge to the merits of the valuation done by the DVO. Needless to add assessee should be granted adequate opportunity of being heard.

15. In the result, this appeal by the assessee stands partly allowed.

परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

*Order pronounced in the open court on 17.05.2018*

Sd/-  
(Pawan Singh)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 17.05.2018

व.नि.स./Roshani, Sr. PS

**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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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

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