

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1030/Del/2013
(Assessment Year: 2009-10)**

Ram Prakash & Co. Pvt. Ltd. 4/17-B, MGF House, Asaf Ali Road, New Delhi. PAN No. AAACR0078A	vs	ITO Ward 15(2), Central Revenue Bldg., New Delhi.
APPELLANT		RESPONDENT

Appellant/Assessee by	Sh. Ajay Wadhwa, CA Ms. Rashi, CA
Respondent/Revenue by	Sh. Atiq Ahmad, Sr. DR

Date of Hearing	14.06.2018
Date of Pronouncement	20.06.2018

ORDER

PER PRASHANT MAHARISHI, A.M.

This appeal is filed by the assessee against the order dated 03.12.2012 passed by the Ld. CIT(Appeals)-XVIII, New Delhi for AY 2009-10.

2. The Grounds of appeal are as under:

1. *“On the facts & circumstances of the case, the Ld. CIT(A) has erred in upholding the rejection of valuation report as on 01.04.1981 obtained by the assessee from a Govt. approved registered valuer.*
2. *On the facts and circumstances of the case, reference to DVO u/s 55A of the Act is invalid in the absence of mention of any particular clause under which reference has been made by the ld. AO.*
 - 2.1 *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in upholding the validity of the reference to DVO since the assessee’s case is not covered under clause (a) of section 55A because of the fact that the value as per registered valuer is more than the FMV calculated by DVO.*

- 2.2 On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in upholding the validity of the reference to DVO since the assessee's case is not covered under sub-clause (ii) of clause (b) of section 55A as no opinion has been either formed or recorded by the Ld.AO while referring the matter to DVO.*
- 2.3 On the facts and circumstances of the case, the Ld. CIT(A) has erred in upholding the validity reference to DVO by the Assessing Officer u/s 55A(b)(ii) of the Act.*
- 2.4 On the facts and circumstances of the case, reference to DVO is invalid as there has been no application of mind while referring the valuation of the land property to DVO.*
- 3. That the appellant craves leave to add, alter, amend, substitute, delete and modify any or all the grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal.”*

2. The only issue in this appeal is the manner of determination of the capital gain on sale of land. The assessee company filed its return of income on 30.9.2009 declaring income of Rs.6,15,914/-. It was found that during the year the assessee has sold its property at Roshanara Road for Rs.2,23,50,000/-. The property was consisting of land and building. The assessee sold it vide Sale Deed dated 23.3.2009. During the course of assessment proceedings the assessee filed revised computation of income raising the short term capital gain u/s 50 of the Income Tax Act, 1961 (the Act) with respect to the sale of building. However, with respect to the sale of land the assessee has shown long term capital loss of Rs.21,66,914/-. The computation of long term capital gain was computed by the assessee by obtaining the fair market value of the property as on 1.4.1981. The Ld.A.O. for verification of the correctness of the computation made a reference u/s 55A of the Act to the District Valuation Officer (DVO) who submitted his valuation report on 28.12.2011 valuing the cost of land as on 1.4.1981 at Rs.18.21 lakhs against Rs.38.85 lakhs claimed by the assessee. After meeting with the objection of the assessee, the Ld.AO adopted the valuation of the property as at 1.4.1981 as per the Valuation Report of the DVO.

Consequently assessment u/s 143(3) of the Act was passed on 30.12.2011 at Rs.1,23,40,464/-. The assessee aggrieved with the order of the A.O. preferred appeal before the Ld.CIT(A). Ld.CIT(A) dismissed the appeal. Therefore, the assessee is in appeal before us.

3. Ld.A.R. made a detailed submission before us objecting the assessment on various counts with respect to the computation of capital gain and submitted the written synopsis. He further submitted a detailed paper book consisting of 134 pages. During the course of hearing he also made a reference of his application dated 15.11.2017 for admission of additional evidences. He also submitted a paper book of case laws, wherein, he relied upon 10 decisions on the issue.

4. Ld.D.R. vehemently supported the orders of lower authorities and stated that there is no infirmity in the order passed by them.

5. We have carefully considered the rival contentions and perused the orders of lower authorities. We have also perused the written submissions made by the assessee along with various decisions relied upon by him. The only issue involved in this appeal is whether the Ld.AO is empowered to refer the matter to the Valuation Cell to determine the fair market value of the assets as on 1.4.1981 for computation of capital gain. The issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of CIT vs. Puja Prints reported in 360 ITR 697, wherein it has been held that a reference can be made to the Valuation Cell u/s 55A of the Act

only if the value determined by the assessee is less than the fair market value. In the present case the value declared by assessee as on 1.4.1981 is more than the fair market value determined by the Valuation Cell. The Hon'ble High Court is dealt with the whole issue and held as under.

“7. We find that S.55A(e) of the Act very clearly at the relevant time provided that a reference could be made to the D.V.O. only when the value adopted by the assessee was less than the fair market value. In the present case, it is an undisputed position that the value adopted by the respondent-assessee of the property at Rs.35.99 lakhs was much more than the fair market value of Rs.6.68 lakhs even as determined by the DVO. In fact, the AO referred the issue of valuation to the DVO only because in his view the valuation of the property as on 1981 as made by the respondent-assessee was higher than the fair market value. In the aforesaid circumstances, the invocation of Section 55A(e) of the Act is not justified.”

6. Respectfully following the decision of Hon'ble Mumbai High Court, we do not approve the action of the Ld.A.O. to refer the matter to the Valuation Cell for determining the fair market value of the assets as at 1.4.1981 by applying the provisions of S.55A of the Act. In view of this the orders of the lower authorities are reversed and the A.O. is directed to compute the Capital Gain with respect to the sale of land by taking the fair market value as on 1.4.1981 at Rs.38,85,420/-. Our view is further

supported by the amendment made in the law by the Finance Act, 2012 w.e.f. 01.07.2012 in the provisions of Sec. 55A of the Act.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.06.2018

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20.06.2018

*Kavita Arora/Mv

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR

ITAT NEW DELHI