

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.3572/Del./2016
Assessment Year 2012-2013

Shri Nikhil Agarwal, 9/49, 2 nd Floor, Punjabi Bagh West, New Delhi. PIN-110026. PAN AHJPA7494E	vs.,	The Income Tax Officer, Ward-71(2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Smt. Rano Jain, Advocate, Shri Pranshu Singhal, C.A. & Ms. Mansi Jain, C.A.
For Revenue :	Shri P.V. Gupta, Sr. D.R.

Date of Hearing :	18.04.2019
Date of Pronouncement :	18.04.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-21, New Delhi, Dated 25.04.2016, for the A.Y. 2012-2013.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. Briefly the facts of the case are that assessee filed return of income declaring income of Rs.6,46,720/-. During the relevant period, assessee has purchased half shares in two flats i.e., (1) 401 & (2) 402, 4th Floor, Ruprang Cooperative Housing Society, Juhu Verova Link Road, Seven Bungows, Versova Andheri West, Mumbai-400061. The case was referred to the DVO, Mumbai-12 for fair market value as on 30.03.2012 of the said flats. However, the valuation report in this case has not been received till the passing of the assessment order. The A.O, therefore, asked the assessee to show cause as to why the value of the property should not be adopted at Rs 2.1 Crore each. The assessee raised the legality of the proposed proceedings under section 55A read with section 16A of the Wealth Tax Act 1957. The assessee submitted that the A.O. is not competent to make any such estimation for valuing fair market value of the property. The

A.O, however, did not accept the explanation of assessee and in the absence of DVO report, estimated the fair market value of the property and made addition of Rs.80,45,500/- under section 69 of the I.T. Act, 1961, treating the same as unexplained investment.

3. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which assessee challenged the reasons given by the A.O. for making the addition. The Ld. CIT(A), however, held that A.O. was justified in making reference to the DVO. Therefore, view of the A.O. in making reference to the DVO was found justified and as per law. The Ld. CIT(A), however, noted that report from the DVO has yet not been received, therefore, A.O. was directed whenever report of DVO is available, fresh Order may be passed, after giving opportunity of being heard to the assessee. The operative portion of the findings of the Ld. CIT(A) is reproduced as under :

“So far as the valuation report of the DVO is concerned it has come to my notice that till the date of passing this assessment order, the impugned valuation report was not received by the AO from the DVO. In the light of the above facts and circumstances of the case where valuation report was still awaited I am constrained to hold that the assessment order so passed by the AO based on tentative estimates of fair market value, as adopted by the AO, has not reached its finality. In the light of the above facts, for want of finality of assessment in the case in hand, I am not inclined to interfere at this stage. In this regard, reference is invited to provisions of section 142A of the I.T. Act according to which on receipt of report from the valuation officer, the AO may after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment as per the relevant provisions of the Act It is only after the

assessment reaches its finality that the appellant would have legal remedy by preferring appeal, if any, against the final assessment order to be passed by the AO after taking into account the valuation report of the DVO. The appeal is decided with direction to AO as above.”

3.1. The assessee challenged the addition of Rs.80,45,500/- in the present appeal and Orders of the authorities below on the above matter in issue.

4. After considering the rival submissions, we are of the view that the matter requires reconsideration at the level of the A.O. Learned Counsel for the Assessee pointed-out that report of the DVO have been received now which is dated 06.08.2018 in which the DVO has taken the value of each Flat at Rs.85 lakhs as on 30.03.2012 as is declared in the return by the assessee. Learned Counsel for the Assessee, therefore, submitted that matter may be sent back to the A.O. for reconsideration of the issue in the light of the report of the

DVO. The Ld. D.R. also suggested that the matter may be directed to the file of A.O. for reconsideration. In this view of the matter and in the light of findings of the Ld. CIT(A) above, it is clear that the Ld. CIT(A) has already directed that the matter will be reconsidered by the A.O. whenever A.O. will receive the report from the Valuation Officer. Now, the valuation report has been received by the A.O. which is dated 06.08.2018. We, accordingly, set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to re-decide the same, by considering the report of the DVO dated 06.08.2018, by giving reasonable, sufficient opportunity of being heard to the assessee. Appeal of assessee is allowed.

5. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Delhi, Dated 18th April, 2019
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "A" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.