

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6114/Del/2016 : Asstt. Year : 2012-13

Sahajiv Rattan, C/o M/s RRA Tax India, D- 28, South Extension, Part-I, New Delhi-110049	Vs	Income Tax Officer, Ward-3(3), Noida
(APPELLANT)		(RESPONDENT)
PAN No. ACIPR8964N		

Assessee by : Dr. Rakesh Gupta, Adv.

Revenue by : Sh. N. K. Bansal, Sr. DR

Date of Hearing: 20.08.2019

Date of Pronouncement: 18.09.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-I, Noida dated 30.09.2016.

2. Following grounds have been raised by the assessee:

"1. That having regards to the facts and circumstances of the case, Id. CIT (A) has erred in law and on facts in confirming the action of Ld. A.O. in making addition of Rs.1,95,83,596/- on account of long term capital gain and that to without observing the principles of natural justice.

2. That in any case and in any view of matter, action of Id. CIT (A) in confirming the action of Ld. A.O. in making addition of Rs.1,95,83,596/- on account of long term capital gain is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Id. CIT (A) has erred in law and on facts in confirming the action of Ld. A.O. in making disallowance of Rs.1,45,235/- on account of expenses incurred on vehicle.

4. That having regards to the facts and circumstances of the case, Id. CIT (A) has erred in law and on facts in not allowing the benefit of exemption u/s 54F.

5. That having regard to the facts and circumstances of the case, Id. CIT (A) has erred in law and on facts in not reversing the action of Ld. A.O. in charging interest u/s 234A and 234B of the Income Tax Act, 1961."

3. Brief facts of the case are that the assessee and his two brothers namely Shri Rajiv Rattan Jain and Shri Vikram Jain have sold 8407.22 sqm (assessee's share 2802.41 sqm) out of total 9733.83 sqm. of land in Khasra No. 540, 541 & 544 (Nagar Nigam No. 19/6) in Moh. Khatena, Loha Mandi, Agra for Rs.6,40,30,380/- by way of three sale deeds duly registered with Sub-registrar-II, Agra on 12.12.2011 to M/s Shree Ram Ashiyana Pvt Ltd., which has started construction of residential flats thereon. One-third assessee's share in sale proceeds works out at Rs.2,13,43,460/-. In the return of income filed on 23.3.2014, the assessee has claimed cost of acquisition at Rs.2,26,79,297/- i.e. at the rate of **Rs. 6000/- per sqm** in the year 2008. It was explained that the land was inherited by the assessee and his two brothers after the death of their mother Smt Raj Ram Jain on 23.10.2008. She also acquired the land from her husband Shri Dhanender Kumar Jain (father of assessee) who expired on 28.02.1991. He also acquired the land in question from his father Shri Ram Gopal who died on 18.05.1976. Vide order sheet entry dated 4.3.2015, the

assessee was required to furnish cost of acquisition of property sold as on 1.4.1981, which is to be adopted for calculation of capital gains as per provisions of section 49. The assessee submitted that the property was acquired actually in 2008 after the death of assessee's mother, and computation of gains has been done in the ROI after taking the base year as 2008. In the computation of total income the assessee has taken the cost of acquisition in 2008 @ Rs.6,000/- per sqm and indexed cost of acquisition was worked out as under:

Indexed cost:

$$Rs. 6,000 \times 2802.41 = Rs 1,68,14,460/-$$

<i>Index</i>	$= 1,68,14,460 \times 785/582$	$= Rs 2,26,79,297/-$
<i>Sale consideration</i>		$Rs 2,13,43,460/-$
<i>Gain/Loss</i>	(-)	$Rs.13,35,837/-$

4. The assessee submitted copy of calculation fair market value of land assessed by the Approved Valuer as under:

- (i) *Circle rate in the year 2014 is 8500/- per sqm.*
- (ii) *Market rate in the year 2014 is considered Rs.12000/- per sqm. in my opinion.*
- (iii) *Based on index the market is derived as under:-*

*The index in the year is 1024
Hence the rate in 1980-81 when the index was 100 As such the market rate works out as under based on index - $12000 \times 100 / 1024 = \mathbf{Rs.1171.87}$ per sqm.*

Since, it is not the appropriate and authentic method for arriving at fair market value of land as on 1.4.1981, no cognizance could be taken thereupon.

5. Not satisfied with the valuer's report, the Assessing Officer referred the matter to the DVO, Agra under section 55A of I.T. Act, 1961 vide reference dated 6.3.2015 to elucidate the fair

market value of the capital asset as on 1.4.1981. Simultaneously commission under section 131(1)(d) of I.T. Act, 1961 was also issued to the ITO, Ward-2(4), Agra to obtain and furnish copies of three sale deeds registered on 14 1981 or nearby dates in the office of the Sub-registrar Agra in respect of vacant land V of Moh. Khatena, Loha Mandi, Agra or adjacent area. The Assessing Officer held that the DVO, has assessed the value of property @ Rs.654/- per sqm as under as against prevailing Circle Rates ranging Rs.80/- to Rs.300/- per sqm. fixed by the State Govt. for the purpose of stamp valuation as on 1.4.1981.

“Calculation of Fair market Value (F.M.V.)

Property: Land at Khasara No. 540, 541, 544 Nagar Nigam No. 19/6, Moh-Khatena, Lohamandi, Agra (One-third share)

Assessee:- Shri Sahjeev Ratan S/o Shri Dhanendra Kumar

Date of Valuation:- 01.04.1981

Area of land of share of Assessee = $1/3 \times 8407 = 2802.33 \text{ M}^2$

Location and merits of Land:- The land is situated on main road of Khatena/Pratap Nagar adjoining Jaipur House Colony at distance of 250 meter (Approx) from Loha Mandi Police Station and from one of main road of Agra, Lohamandi - Jaipur House - Kothi Meena Bazaar - Panchkuiya road.

The land is surrounded at left and right side and across the road with Commercial/Business premises, Offices, Shops, market, Police Station, inter colleges, Jaipur House (Posh Colony of Agra), office of Sale Tax, Office of ADA Agra, banks, Doctors, Clinic, Nursing Homes, Cinema halls, ATM Chamber, Chemist Shops, Hotel/Restaurants, Lohamandi, Chauraha within 200

meter to 500 meter. There are main market/malls, railway station, degree colleges, Big Hospital/Nursing Homes, Big malls, M.G. Road, of Agra within 500 meter to 1 Km.

Basis and determination of Fair Market Rate of land as on 1.4.1981

Comparable sale instances as on and around 01.04.1981 are not available. Fair market rate is determined on the basis of circle rate of Govt., and enhancement of circle rates due to various merits of land to obtain Fair market Rate of land as on 01.04.1981:

Circle rate of this land being situated on more than 40'-0" wide road and is surrounded by commercial Premises as on 1979.	=@Rs.300/M ² ...(A)
Add for various merits of land as mentioned above to obtain fair market rate of land as on 1979 @ 100% on "A"-	+@Rs.300/M ²
Fair market Rate of Land as on 1979	=@Rs.600/M ²
Fair market Rate of land as on 01.04.81 (Taking increasement of rate @ 8% per annum)	=@Rs. 600x1.16M ²
Deduct on account of big size of plot @ 6% of 'B'	=@Rs.696/M ² ...(B)
	<u>(-)@Rs.42/M²</u>
	<u>@Rs.654/M²</u>

6. Not satisfied with the report of the DVO, the Assessing Officer based on the comparables cases of three salaries sale deeds collected from the Sub-registrar, Agra has valued the FMV @Rs.80 per sqm. as on 01.04.1981.

7. The Id. CIT (A) confirmed the order of the Assessing Officer.

8. Before us, during the hearing, the Id. AR argued that the assessment order has been passed 30.03.2015 whereas the letter from the ITO, Ward-2(4) containing the data collected from the Sub-registrar office, Agra was received only on 27.03.2015 and the same has not been confronted to the

assessee and no opportunity was given to rebut the findings of the Assessing Officer before making the addition. It was argued that the assessment made behind the back of the assessee without affording any opportunity is liable to be quashed.

9. On the other hand, the Id. DR strongly relied on the report of the Sub-registrar, Agra in determining the FMV.

10. Heard the arguments of both the parties and perused the material available on record.

11. It is a matter of record that no show-cause has been issued to the assessee before making the addition and the report of the Sub-registrar was received on 27.03.2015. Hence, we hereby hold that the assessee has been disadvantaged and did not get even the basic right of rebuttal on the proposed addition. Even, the Id. CIT (A) passed the order without giving any proper opportunity while deciding the matter. Hence, in fitness of things, we remand the matter back to the file of the Id. CIT (A) to confront the assessee with the material collected by the revenue from the third party agencies and afford an opportunity to the assessee before coming to a final conclusion in accordance with the provisions of the Act. We also direct the assessee to comply with the notices issued by the revenue authorities from time to time without seeking unnecessary adjournments. In the result, the appeal of the assessee on this ground is treated as remanded back. Ground Nos. 1, 2 disposed off, ground no. 3 to be determined by the Id. CIT (A) *denovo* after determining the capital gains in the remand proceedings. Ground Nos. 4 & 5 are consequential, hence, not required to be adjudicated at this juncture.

12. Ground No. 3- During the year the assessee has purchased vehicle namely Mahindra XUV 500 which was claimed to have been used solely for the purpose of the business. The Assessing Officer held that in the absence of maintenance of any lock book, the claim of exclusive use for business purpose cannot be accepted and hence 50% of the uses of the car along with depreciation has been disallowed. During the arguments, the Id. AR vehemently argued that such action on the part of the revenue cannot be accepted but however in order to minimize the litigation conceded for 20% disallowance on the running expenses of the car which we fairly accept with the consent of all the parties.

13. In the result, the appeal of the assessee is allowed for statistical purpose.

(Order Pronounced in the Open Court on 18/09/2019).

Sd/-

(Amit Shukla)
Judicial Member

Dated: 18/09/2019

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR