

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 138/Del/2019
Assessment Year: 2015-16**

Verender Chand Dhoundiyal C/o CA H.L. Madan, A-3/76, Sector-3, Rohini, New Delhi. PAN No. AAPPD7495R	vs	ITO Ward 72(1) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Mayank Jain, Advocate
Revenue by	Ms. Ekta Vishnoi, Sr. DR

ORDER

This appeal filed by the assessee against the impugned order dated 15.11.2018 passed by the Ld. CIT(Appeals)-21, New Delhi in relation to assessment year 2015-16 on the following grounds:

- 1. "That Ld. AO erred both in law as well as on facts of the case in accepting valuation of flat made by AVO-II at Rs. 25,11,740/- ignoring the written objections submitted by the assessee and without recording any reason in the assessment order.*
- 2. That Ld. AO erred in not considering the closer comparable instance of AY 2015-16 submitted before him by the assessee and accepting the valuation made by AVO-II on the basis of a distant comparable instance of AY 2018-19.*

3. *That Ld. AVO-II erred in stating that value of the flat is lower in the AY 2018-19 as compared to AY 2015-16 and, therefore, enhancing the valuation by 16.5% without having any evidence placed on record. Ld. AO also erred in accepting this report.*
 4. *Ld. CIT(A) also erred in ignoring the closer comparative instance of AY 2015-16 for valuation of flat and in accepting the valuation made by AVO-II based on distant comparative instance of AY 2018-19 and ignoring that valuation in AY 2018-19 was higher than AY 2015-16 based on the comparative instances for respective years.*
 5. *Ld. CIT(A) has erred in making observation that both assessee's approved valuer as well as AVO-II has not considered that flat being valued is a freehold property.*
 6. *That assessee craves leave to add/amend/delete any of the ground at the time of hearing of appeal."*
2. Assessee filed his return of income on 18.03.2017 of Rs. 2,86,940/-. After claiming the deduction under chapter VIA of the I.T. Act, 1961 of Rs. 57,868/-. The AO processed the return of income u/s 143(1) of the Act and later on the case of the assessee was selected for limited scrutiny through CASS with reason whether capital gain/loss on sale of property has been correctly shown in the return of income. The AO issued notice u/s 143(2) and 142(1) of the Act which was served upon the assessee in response to the same. Authorized Representative of the assessee appeared and filed details.
3. AO perused the AIR Information and notice that assessee has sold the property for an amount of Rs. 18,50,000/- and after indexation cost of acquisition of Rs. 19,92,482/- shown loss of Rs. 1,42,482/- in his return of income under the head "Long term

capital gain". Assessee has shown sale consideration of Rs. 18,50,000/- as against the circular rate of the property value at Rs. 36,89,280/-. The AO asked the assessee to give the justification regarding difference of Rs. 18,39,280/- between the sale consideration of Rs. 18,50,000/- made by him and circle rate of the property of Rs. 36,89,280/- along with documentary evidence. AR of the assessee submitted reply dated 17.11.2017 by stating that the actual sale consideration of property is less than circle rate because the property under consideration is situated in poor/middle locality and basic amenities like public transport, school market are far away from the locality and prevailing market price of the property was very low as compared to the value as per stamp duty authority. Assessee also submitted copy of valuation report issued from approved valuer and also requested that for determine the correct value of property, the matter may be referred to the Valuation Officer u/s 50C(2) of the Income Tax Act, 1961.

4. The AO referred the matter to the Valuation Officer and in compliance of the same the Valuation Officer vide report dated 21.12.2017 submitted the valuation report of the said property and assessed the value at Rs. 25,11,740/- against the declared value of Rs. 18,50,000/- by the assessee.

5. After considering the facts of the case and submission made by the assessee the AO held that the same consideration of property at Rs. 25,11,740/- and worked out the calculation of long term capital gain and worked out the difference of Rs. 6,61,740/-

and assessed the income of the assessee at Rs. 8,06,200/- vide order dated 28.12.2017 u/s 143(3) of the I.T. Act, 1961.

6. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. First Appellate Authority who vide impugned order dated 15.11.2018 dismissed the appeal filed by the assessee. Now the assessee has filed the appeal before the Tribunal.

7. At the time of hearing, Ld. Counsel for the assessee stated that assessee is an individual and a salaried person filed its return of income showing long term capital loss on 18.03.2017 and claim a loss of Rs. 182,482/- because the assessee sold the plot on 16.02.2015 for Rs. 18,50,000/- as against the circle rate of Rs. 36,90,000/- as sale value of the said property was much below the circle rate at the time of sale. Assessee has also produced the sale deed at page no. 29 to 132 of the Paper Book. Ld. Counsel for the assessee further stated that during the course of assessment proceedings the assessee submitted before the AO that valuation report from the Government approved valuer at Rs. 17,70,000/- the copy of the same assessee has also attached in the Paper Book at page 39 to 45 of the Paper Book. He stated that Ld. Assessing Officer has ignored the valuation report of the approved valuer and determining the cost of Rs. 25,11,470/-.

8. Ld. Counsel for the assessee further submitted that the letter of the assessee from DDA Housing Scheme allotted in 2014 at that time the average price of Rs. 17,81,000/- and after that the valuation of the sale countdown very low due to the reason

mentioned in the reply of the assessee. He finally stated that allotment of similar flats in the same locality at average price of Rs. 17,81,000/- in AY 2015-16 but the Revenue Authority has not considered the same and wrongly accepted the value made at Rs. 25,11,740/- without any reason. Finally the Ld. Counsel for the assessee stated that file a chart and stated that difference of value of assessee as well as the Valuation Officer is only 84,060/- i.e. less than 5% which can be ignored. He requested that the appeal filed by the assessee may be accepted and addition in dispute may be deleted in support of his contention. He filed various case laws but specially draw my attention towards the following judgments:

- *“359 ITR 314 (P&H) in the case of ATM Forgings vs. Commissioner of Income-tax,*
- *ITAT Delhi Benches ‘A’ Bench, New Delhi in the case of ITO vs. Late Shri Asha Dalmia in ITA No. 3117/Del/2007 for AY. 1993-94*

9. I have heard the both parties and perused the orders passed by the Revenue Authorities especially the documentary evidence filed by the assessee in the shape of Paper Book containing page 1 to 55 in which the assessee has attached Form No. 36, Facts of the case, Grounds of Appeal, Order at CIT(A)-21, Form No. 35 with Grounds of Appeal (CIT), Assessment Order, Acknowledgement of Return filed, Computation of Income, Sale deed of Flat sold, Valuation report by Asstt. Valuation Officer-II of Income Tax Department, Letter filed by assessee dated 08.12.2017, Valuation Report by approved valuer submitted by assessee, Final Show Cause notice by ITO, Letter filed by assessee dt. 27.12.2017 in

response to show cause notice, Brochure for DDA Housing Scheme 2014, Brochure for DDA Housing Scheme 2017, Proof of draw of lots held on 30.11.2017, Proof of draw of lots held on 25.11.2014, Court Fee, Power of Attorney and assessee has also filed one comparative instance in which the assessee has shown the difference of total cost of the flat including some charges and sale price of the flat and established that the only difference between the both is Rs. 84,060/- i.e. less than 5% and requested that it may be ignored. Keeping in view of various decisions rendered by the ITAT, Delhi Benches and other Benches in the country for the sake of convenience, a chart of comparative instance filed by the Ld. Counsel for the assessee is reproduced as under:

VERENDER CHAND DHOUNDIYAL

A.Y. 2015-16

Flat Sold on 16.02.2015 for Rs. 18,50,000/-

COMPARATIVE INSTANCE

<i>GIVEN BY ASSESSEE TO LD. AA Avasiya Yojna 2014 Draw of Lots done On 25.11.2014 (pg 49 of PB) Average Prices-Rs. 17.81 lacs (16.58+19.04)/2 (page 50 of PB)</i>	<i>APPLIED BY DVO-II Avasiya Yojna 2017 Draw of Lots On 30.11.2017 (pg 52 of PB)</i>
<i>Rs. 17,81,000</i>	<i>Average Price= $\frac{20.33+22.78}{2}$ = 21.56 Lacs</i>
<i>Add: Conversion Charges payable to DDA (As per Annexure 'A' at page no. 5 of scheme of conversion from Leasehold to Freehold of DDA)</i>	<i>Add: Gap charges from 2017 to 2015 (33 Months) *0.5% i.e. 16.5</i>
<i>28,080</i>	<i>3.55 Lacs <u>25.11 Lacs</u> Rs. 25,11,740/-</i>
<i>- Conveyance Deed 6% of 17,81,000/- (Payable to Collector of stamp/SDM)</i>	
<i>1,06,860</i>	
<i>- Affidavit & Indemnity Bond (Stamp Duty)</i>	
<i>210</i>	
<i>- Registration Fee 1% of</i>	

Note Since the sale price as per DDA allotment scheme in 2014 was lower than 2017, hence Gap charges should have been reduced from the average price determined by

Rs. 17,81,000/- (Payable to Sub Registrar)	17,810			DVO-II. In that case, valuation should have been Rs. 18.01 Lacs (Rs. 21.56 Lacs - Rs. 3.55 Lacs)
- Pasting Fee (Payable to Sub Registrar)	100			
		1,53,060		
		19,34,060		
		<u>18,50,000</u>		
Flat Sold for			Rs. <u>84,060</u>	
Difference				

Difference being less than 5% to be ignored.

10. After going through the aforesaid comparative chart given by the Ld. Counsel for the assessee and I am of the view that the assessee has purchased a flat in dispute on 27.01.2011 which was sold on 16.02.2015 for consideration of Rs. 18,50,000/- as against the circle rate of Rs. 36,90,000/-. As per the registered sale deed the value of sale consideration of Rs. 18,50,000/-. The assessee filed its objection before the Assessing Officer and matter was referred to the DVO, who determined the value at Rs. 25,11,740/- and the assessee has not accepted the same and stated that in view of the aforesaid chart this 5% difference is very minor can be ignored and value declared by the assessee may be accepted. Ld. Counsel for the assessee stated that the actual sale consideration of the property is less than the circle rate because the property under consideration is situated in poor/middle locality and basic amenities like public transport, school market are far away from the locality and prevailing market price of the property was very low as compared to the value as per stamp duty authority. He also submitted copy of valuation report issued from approved valuer and requested to determine the correct value of the

property which was wrongly determined by the DVO at Rs. 25,11,740/-. Keeping in view the evidence filed by the assessee in the shape of Paper Book and this comparative instance chart and the argument advanced by the Ld. Counsel for the assessee deserves to be accepted. Keeping in view of the locality of the property in dispute and other non availability of amenities, no adverse evidence has been filed by the Revenue Authority contrary to the evidence filed by the Ld. Counsel for the assessee. Therefore, the impugned order passed by the Revenue Authorities especially the Ld. First Appellate Authority made the addition in dispute without any basis which deserves to be cancelled. In my view the addition in dispute is merely on the basis of surmises and conjectures and without any evidence and is not sustainable in the eye of law. I delete the addition in dispute and by accepting the appeal filed by the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 31/10/2019

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI