

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND**

**SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER  
ITA.No.4039/Del/2013**

**Assessment Year: 2008-09**

**Dy. Commr. Of Income-tax, vs Shri Abhinav Arora,  
Central Circle -19, New Delhi. Unit No.134, First Floor,  
Saket Distt. Centre,  
New Delhi.  
PAN: AIDPA1948G**

**ITA.No.4113/Del/2013**

**Assessment Year: 2008-09**

**Shri Abhinav Arora, vs DCIT, Central Circle -19,  
Unit No.134, First Floor, New Delhi.  
Saket Distt. Centre,  
New Delhi.  
PAN: AIDPA1948G**

**ITA.No.4040/Del/2013**

**Assessment Year: 2008-09**

**Dy. Commr. Of Income-tax, vs Smt. Ranju Arora,  
Central Circle -19, New Delhi. Unit No.134, First Floor,  
Saket Distt. Centre,  
New Delhi.  
PAN: AELPA8331B**

**ITA.No.4114/Del/2013**

**Assessment Year: 2008-09**

**Smt. Ranju Arora, vs DCIT, Central Circle -19,  
Unit No.134, First Floor, New Delhi.  
Saket Distt. Centre,  
New Delhi.  
PAN AELPA8331B**

(Appellant)

(Respondent)

Revenue by: Shri Sanjay Goel, CIT DR  
Assessee by: Shri Salil Kapoor, Advocate  
Ms Soumya Singh, Advocate

Date of hearing: 07.10.2019

Date of order : .10.2019

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

These are four appeals filed by the Revenue as well as two assessees against two separate orders of the Id. learned Commissioner of Income Tax (Appeals)-XXXIII, New Delhi ("Ld. CIT(A)"), both dated 28.03.2013 in Appeal Nos. 522/10-11 in the case of Shri Abhinav Arora and 530/10-11 in the case of Smt. Ranju Arora, pertaining to Assessment Year 2008-09. passed by the learned Commissioner of Income Tax (Appeals)-XXXIII, New Delhi.

2. Since the transaction which gave rise to the capital gains, which is the subject matter in all the four appeals, is one and the same, we deem it just and proper to dispose of all these appeals by way of common order.

3. Brief facts of the case are that Shri Abhinav Arora is the son of Smt. Ranju Arora and have purchased a residential ploy No.8, Kachnar Marg, DLF, Gurgaon on 1.6.2007 in their name for a consideration of Rs.1.55 crores. Such property was, however, valued

at Rs.7,40,95,000/- as on 3.11.2007 by M/s M.L. Arora/Arun Aggarwal for the purpose of obtaining loan from the Axis Bank.

4. There was a search on the Dawat Group of cases u/s 132 of the Income-tax Act, 1961 ("the Act") on 10.02.2009 wherein it was found that another property at A-25/9, DLF, Gurgaon was purchased by some members of the Dawat group at Rs.1.80 crores as per sale deed and Rs.5,66,40,600/- was taken as money paid in cash on the basis of a seized document. Though there was no incriminating material relating to property No.8, Kachnar Marg, DLF, Gurgaon, Id. AO based on the documents recovered relating to property No.A/25/9, Gurgaon drew an inference that the purchase price at 8, Kachnar Marg was Rs.5,92,76,000/- i.e. Rs.7,40,95,000/- reduced by 20% as on 1.6.2007. On this premise, Id. AO took the sale consideration at Rs.5,92,76,000/- and reduced the same by Rs.1.55 crore being the registered amount and brought the balance of Rs.4,37,76,000/- as on money having paid in cash over and above the registered amount. Id. AO apportioned the said amount between the mother and son and made an addition of Rs.2,18,88,000/- as unexplained investment u/s 69 of the Act in the hands of each assessee.

5. Being aggrieved by the said addition, both the mother and son preferred appeal before the Id. CIT(A). They have submitted before the Id. CIT(A) that the query was raised by the Id. AO at the end of the time barring date and, therefore, they could not produce

certain documents before the Id. AO to substantiate their claim that the sale consideration was only Rs.1.55 crores and nothing more and also that the valuation of Rs.7,40,95,000/- was made by M/s M.L. Aggarwal only for the purpose of obtaining loan from Axis Bank and it has nothing to do with the sale consideration received. They produced before the Id. CIT(A) the valuation report of the property dated 1.12.2011 showing the same at Rs.1,55,61,000/- @ Rs.18,200/- per sq. mt and also the copy of the sale deed of adjoining plot no.3 to show price at Rs.20,460/- per sq.mt.

6. Learned CIT(A) while forwarding the documents to the Id. AO called for the remand report. Learned AO during the remand proceedings recorded the statement of Shri M.L. Aggarwal on 2.5.2012. It was stated by Mr. M.L. Aggarwal that the valuation of the property in question was done by them for the purpose of bank loan as is evidenced by the confirmation received from the Axis Bank to establish that the said property was provided as a collateral security for extending the loan.

7. Learned CIT(A) considered the valuation report and also the submissions of the assessee on that aspect. It was submitted by the assessee that the valuation report which was relied upon by the AO was not reflecting the correct valuation because it was prepared for the purpose of obtaining higher amount of loan. Assessee further argued that in the absence of any incriminating material obtained at the time of search in relation to the property in question, it is not

open for the AO to make any additions. Assessee also objected to drawing an analogy between the property at 8, Kachnar Marg and property at A-25/9, Kachnar Marg.

8. Learned CIT(A) having considered the assessment order, written submissions, fresh evidences filed, remand report and the facts in their entirety, reached a conclusion that there is no direct evidence of unaccounted payment for the acquisition of the property, circumstantial evidence show that some unaccounted money have made not in acquiring the property in question but for obtaining the bank loan, the valuation of the property was done at a higher rate. Learned CIT(A), therefore, declined to take the valuation done for bank purpose at the yardstick to reach a conclusion that there was any unaccounted investment. On this premise, learned CIT(A) brushed aside the valuation as per P&A Valuetech (P) Ltd. and relied upon the valuation document relating to the adjoining property submitted by the assessee to reach a conclusion that the total investment comes to Rs.1.71 crores @ Rs.20,000/- per sq. Mt. On this premise, ld. CIT(A) determined the unaccounted investment at Rs.16 lacs and sustained the addition in the hands of each, mother and son, at Rs.8 lacs.

9. Revenue is, therefore, aggrieved by the finding of the learned CIT(A) deleting Rs.2,10,88,000/- preferred ITA Nos.4039 & 4040/Del/13 whereas being aggrieved by the addition sustained to

the extent of Rs.8 lacs in each case, assesses preferred ITA Nos.4113 & 4114/Del/2013.

10. It is the submission of the learned DR that the learned CIT(A) erred in deleting the addition made by the AO based on the valuation report prepared by M/s M.L. Aggarwal/Arun Aggarwal, which was well supported by the valuation of a similar property found during the search and, therefore, the analogy drawn by the AO is not an isolated inference but it is well supported by the facts found during the search. He, therefore, prayed to sustain the assessment order.

11. Per contra, it is submitted by the learned AR that the assessee properly explained the reason for the excess amount being mentioned in the valuation report of M.L. Aggarwal/Arun Aggarwal and, therefore, the same cannot be taken as the correct valuation. Further, the adjoining property fetched only Rs.20,460/- per sq.mt and, therefore, valuation done for bank purpose is proved to be a incorrect one. It is further submitted by the learned AR that nothing incriminatory was found during the search in respect of the property purchased by the assesses and, therefore, by drawing an inference the AO cannot make any addition. Further, the property purchased by assesses and the property in respect of which the document was seized during the search are totally different properties and, therefore, no analogy could be drawn between them. Lastly, they submitted that the assessee produced the sale

deed of the adjoining property only to say that the rate in that area is not as much as presumed by the AO but it is not the case of the assessee that the property purchased by them was not Rs.18,000/- per sq. Mt. But it was Rs.20,000/- per sq.mt. For these reasons, the learned AR submitted that the Id. CIT(A) rightly rejected the valuation certificate prepared for the bank loan as the yardstick to determine the correct market value of the property but at the same time, he erred in taking the market value of the plot at Rs.20,000/- per sq. Mt as against Rs.18,000/- per sq. Mt. Shown by the assessee.

12. We have gone through the record in the light of the submissions made on either side. It could be seen from the impugned order that it is an established fact that nothing incriminatory was found in respect of the property purchased by the assessee during the search. Further, there is no evidence on record to show that the property at A-25/9, Kachnar Marg is similar in all respect of the property purchased by assessee. There is nothing wrong in the Id. CIT(A) believing the confirmation issued by the Axis Bank that the property was provided as a collateral security and for such purpose, the valuation was done by M/s M.L.Aggarwal/Arun Aggarwal at higher price. N Revenue failed to bring on record any material assailing the correctness of the findings of the Id. CIT(A) on this aspect. We, therefore, are of the considered opinion that in so far as the valuation report of M/s M.L.Aggarwal/Arun Aggarwal cannot be a yardstick for the purpose of determination of the

proper value is concerned, findings of the learned CIT(A) are legal and do not invite any interference. On this premise, we dismiss the grounds of appeal of the revenue.

13. Now coming to the grievance of assesses that the purpose of submitting copy of sale deed of the adjoining plot at 3, Round No. G-4, DLF-1 at the rate of Rs.20,460/- per sq. was only to demolish the contention of the AO as to the higher valuation but not to establish the valuation of the property purchased by the assesseees at Rs.20,000/- per sq. Mt. We find some force in this submission made by the assesses because the property purchased by them is altogether different from the property covered by such sale deed which shows the value of the property at plot No.3 at Rs.20,460/- per sq. Mt. Further, the valuation report of the property dated 1.12.2011 shows the same at Rs.18,200/- per sq. Mt. Out of these two documents learned CIT(A) had taken the one which shows higher price. There is no reason for the learned CIT(A) to choose that particular document when the other one is also available. Having regard to the facts and circumstances of the case and also in view of the smallness of difference in the value of the property purchased by assesses and the adjoining one, we are inclined to accept the contention of the assesseees. We, therefore, direct the AO to delete the addition of Rs.8 lacs each also. As such appeals of ground of assesses appeals are allowed.

14. In the result, whereas appeals of the revenue are dismissed, both the appeals of assesses are allowed.

**Pronounced in open court on**

**October, 2019.**

**(G.S. PANNU)  
VICE PRESIDENT**

**(K. NARASIMHA CHARY)  
JUDICIAL MEMBER**

Dated: **October, 2019**

**VJ**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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