

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH: 'F': NEW DELHI)**  
**(Through Video Conference)**  
**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1173/Del/2018**  
**(Assessment Year: 2012-13)**

Mrs. Rita Rana, Saharanpur.	Vs.	ITO, Ward-3(3), Saharanpur.
<b>PAN No:</b> ADMPR6627F		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No:- 1175/Del/2018**  
**(Assessment Year: 2012-13)**

Mr. Shashi Kant Rana, Saharanpur.	Vs.	ITO, Ward-3(4), Saharanpur.
<b>PAN No:</b> AEVPR3222G		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee By** : Shri Anil Kumar Jain, Adv.  
**Revenue By** : Shri Jagdish Singh, Sr. DR

**Per Anadee Nath Misshra, AM**

**(A)** The aforementioned appeals by different Assesseees are hereby disposed off through this Consolidated Order for the sake of convenience and brevity. Grounds taken in both these Appeals are as under:

**ITA No.- 1173/Del/2018**

- "1. *The Ld. CIT(A) has erred in confirming the addition of Rs. 58,60,371/- on account of short Term Capital gain on sale of joint property by treating the same as commercial property as against being a residential property on the basis of DVO report.*
2. *The Ld. CIT(A) has erred in not accepting the source of investment of the appellant.*
3. *The order of the Ld. CIT(A) is against law and facts of the case.*
4. *The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing."*

**ITA No.- 1175/Del/2018**

- "1 *The Ld. CIT(A) has erred in confirming the addition of Rs. 24,26,015/- on account of short Term Capital gain on sale of joint property by treating the same as commercial property as against being a residential property on the basis of DVO report.*
2. *The Ld. CIT(A) has erred in not accepting the source of investment of the appellant.*
3. *The order of the Ld. CIT(A) is against law and facts of the case.*
4. *The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing."*

**(B)** The appellants have sold a joint property and have shown income under the head 'Capital Gains' while treating the property sold by them as a residential property. However, the Assessing Officer assessed income under the head 'Capital Gains' by treating the property as commercial property on the basis of report of learned District Valuation Officer ("Ld. DVO", for short). This resulted in addition of Rs. 24,26,015/- and Rs. 59,60,371/- made by the Assessing Officer to the income of Mr. Shashi Kant Rana and Ms. Rita Rana, the appellants, respectively. In making these additions, the Assessing Officer relied on the report of the Ld. DVO and treated the Joint Property as Commercial Property, as against residential property as claimed by the appellants. Vide respective impugned appellate orders dated 22.11.2017 and 21.11.2017 in the cases of

appellants Mr. Shashi Kant Rana and Ms. Rita Rana, respectively, the Ld. CIT(A) upheld the orders of the Assessing Officer on this issue.

**(C)** Aggrieved, the appellants have filed these present appeals in Income Tax Appellate Tribunal ("ITAT", for short). In the course of appellate proceedings in ITAT, the following documents were filed by the appellants:

- *Purchase deed- I dated 4.6.2010 by Shashi Kant Rana*
- *Purchase deed-2 dated 4.06.2010 by Shashi Kant Rana*
- *Purchase deed dated 13.5.2010 by Mrs. Reeta Rana*
- *Sale deed combined / jointed for the three properties purchased above dated 7.4.2011 by Shashi Kant Rana and Reeta Rana*
- *Asst. Order u/s 143(30 / 147 dated 31.3.2014*
- *Order u/s 263 date 19.2.2016*
- *Submission filed before AO*
- *Objection filed before the DVO*
- *Comparative sale deeds of adjoining lands on the same road sold @ 502 sq. yard on 30-7-2010 and 3.7.10*
- *DVO valuation report dated 29.11.2016*
- *Registered Valuer Report*
- *Submission before the CIT(A) dated*

**(D)** At the time of hearing before us, the Ld. Counsel for the appellants took us through the sequence of events in the two cases and also through valuation report of

the Ld. DVO, as well as the orders of the Assessing Officer and the Ld. CIT(A). The Ld. Counsel for the appellants also took us through the documents filed in the course of appellate proceedings in ITAT. With the help of these orders and documents, the Ld. Counsel for the appellants drew our particular attention to the fact that the appellants had filed objections before the Assessing Officer against the report of the Ld. DVO. The Ld. Counsel further drew our attention to the fact that neither the Assessing Officer nor the Ld. CIT(A) has rebutted the objections filed by the appellants against the valuation report of Ld. DVO; through speaking order. The Ld. Counsel for the appellants therefore submitted that the issues in dispute in these two appeals should be set aside to the file of the Assessing Officer for fresh order on merits with the direction to pass a speaking order on the objections filed by the appellants against the report of Ld. DVO. The learned Senior Departmental Representative ("Ld. Sr. DR", for short) conceded that the Assessing Officer as well as the Ld. CIT(A) have failed to rebut the objections of the appellants in respect of the report of the Ld. DVO, through speaking orders. However, he did not agree with the request of the Ld. Counsel for the assessee to set aside the issue in dispute to the Assessing Officer for fresh order; holding that the Ld. DVO is a Senior Government Officer and his opinion should be respected.

**(E)** We have heard Ld. AR of the Appellants as well as Ld. Sr. DR of the Revenue. We have perused the materials available on record. There is no dispute that the appellants had filed objections before the Assessing Officer against the report of the Ld. DVO. There is also no dispute with the fact that the Assessing Officer as well as the Ld. CIT(A) have failed to rebut the objections of the appellants through speaking orders.

The issue whether the joint property sold by the appellants was a residential property or a commercial property or a partly residential and partly commercial property is a question of fact. In the absence of speaking orders by the Assessing officer and the Ld. CIT(A) on the objections raised by the appellants regarding the report of the Ld. DVO; we find that all the relevant facts necessary for deciding this factual issue have not been dealt with properly and adequately by the lower authorities. Therefore, we restore issues in dispute in these appeals before us to the file of the Assessing Officer(s) with the direction to pass fresh orders on these specific issues, incorporating speaking orders on the objections raised by the appellants against report of Ld. DVO. The Assessing Officer(s) is / are further directed to provide reasonable opportunity to the appellants before passing fresh order as directed as above. These two appeals are disposed off in accordance with the aforesaid directions. In the result, for statistical purposes, both these appeals are partly allowed.

Our order was orally pronounced in Open Court on 02-09-2021, after conclusion of the hearings, in the presence of representatives of both parties. Now this order in writing is signed today on 07/09/2021.

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 07/09/2021  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	