

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1537/Ahd/2019
Assessment Year 2011-12**

Kailash Jagdish Sachdev, Ahmedabad PAN: ADAPS7370J (Appellant)	Vs	ITO, International Taxation-1, Ahmedabad (Respondent)
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**Assessee by: Shri Ketan H. Shah, A.R. &
Shri Aman Shah, A.R.
Revenue by: Shri Atul Pandey, Sr. D.R.**

Date of hearing : 03-10-2022
Date of pronouncement : 09-12-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-13, Ahmedabad in Appeal no. CIT(A)-13/Intl. Taxn/Ahd/48/2018-19, in proceeding u/s. 147 r.w.s. 143(3) vide order dated 14/08/2019 passed for the assessment year 2011-12.

2. The assessee has taken the following grounds of appeal:-

“The following grounds are without prejudice to each other.

In view of the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred –

1. The learned CIT(A) has erred in not appreciating the fact that the rate adopted by registered valuer officer at Rs.5800/- per Sq. Mtr. Is supported by speaking report submitted by him and since the AO has not referred matter to the DVO, the rejection of valuer report is bad in law and void ab initio, therefore, the cost mentioned as on 01.04.1981 is required to be adopted and addition made is to be deleted.

2. That the order passed by CIT Appeal is dated 14.08.2019, however, the reopening has been made based on the order of one co-owner viz. Ved Kumari Chander and recently ITAT order dated 26.08.2019 has decided the issue in favour of the assessee and, therefore, there is no justification for making any addition to the cost valued by the valuer, and same may please be deleted.

3. The learned CIT(A) has also erred in giving direction to recalculate the capital gain at cost of acquisition Rs.18,18,112/- as per his appeal order para 6.4 and it is submitted that the addition made in this regards may please be deleted.

The appellant craves leave to add/delete/alter and/or amend any of grounds as aforesaid as and when necessary.”

3. The brief facts of the case are that the assessee sold immovable property which was jointly held with other co-owners for an aggregate consideration of ₹ 9 crores. The assessee's share of sale price in the immovable property was ₹ 1.8 crores. Against the sale consideration of ₹ 1.8 crores, the assessee claimed expenses on transfer of ₹ 90,000/- and cost of acquisition at ₹ 77,48,905/-. During the course of assessment, the AO referred to the assessment order passed in the case of one of the co-sellers of the aforesaid property (Smt. Ved Kumari) by ITO, Ward 2(1), Gurgaon. The AO of the co-seller observed that in the valuation report on which reliance

was placed by the co-seller, a highly inflated value of land @₹ 5800/- per square feet was taken as on 1st April, 1981, which was almost 5 times the cost of acquisition of FMV of property in comparable cases, as per the own valuation report of the co-seller. Accordingly, cost of acquisition and construction was substantially reduced by the AO of the co-seller. The valuation report obtained in the case of the co-seller was also given to the assessee. During the course of assessment, the AO of the assessee observed that in the valuation report, the valuer has given added weightage of five times to the cost of acquisition on the ground that the property has commercial potential. The AO held that the valuation is made for determining the cost as on the 1st April 1981 and whether it has commercial potential or not is not a determinative factor. He accordingly, reduced the cost of acquisition to ₹ 14,40,031/-.

4. In proceedings before Ld. CIT(Appeals), he partly allowed assessee's appeal by placing reliance upon the order passed by Ld. CIT(Appeals), Gurgaon vide order dated 05-02-2016 in the case of the co-seller and determined the indexed cost of acquisition at ₹ 18,18,112/- as against ₹ 14,40,031/- computed in the assessment order. While passing the order, Ld. CIT(Appeals) made the following observations:

“6.2 It is observed that in the case of co-owner, the AO has considered FMV of land at Rs 1 160 per sq meter and computed cost at Rs 10,12,680. Similarly cost of construction as per rate fixed by Ahmedabad Urban Development Authority was considered at Rs 1,000 per Sq meter and total construction cost was determined at Rs 2,65,880. It is observed that such observation of AO was upheld by CIT(A). 2 Gurgaon vide his order dated 05/02/2016 as under:

"In this regard the appeal has placed his reliance on the valuation report order given by registered valuer. As pointed out by the A.O. in the assessment order, valuation report itself refers to number of actual sale deed wherein the sale price of the land in the area is shown to be around 1160 per sq meter. The appellant's contention based on the valuers report that the property sold by her was better placed is a mere self serving statement without any evidence. There is no justification whatsoever for valuing the fair market value as on 04.1981 in the appellant's case at 5 times the value on which a number of other sale deeds in that area were registered As mentioned above, the AO was directed to refer the matter to DVO for the valuation as on 01.04.1981 but the DVO's report on the matter could not be obtained. The issue is therefore being decided on the basis of documents on record. The AO has given cogent reasons based on specific instances for valuing the property as on 01/01/1981 at Rs 1150 Per sq meter. The appellant has not denied the /actual accuracy of the AO's observation. In fact the AO's observation are based on the facts recorded in the valuation report submitted by the appellant himself. In these circumstances, the AO's estimation of the fair market value is based on hard facts and actual instances of sale whereas the appellant's claim is based on mere conjectures and surmises. The AO was therefore fully justified in estimating fair market value as on 01.04.1981 of the property sold at Rs 1160 per Sq meter. Similarly, the AO's estimation of cost of construction is also based on figures provided by government authorities and is therefore upheld."

It is observed that CIT(A) in the case of co-owner has already upheld that method adopted by AO for considering cost of acquisition as on 01.04.1981 and matter is pending before Hon'ble Delhi ITAT. The appellant has not rebutted any observations made by AO or appellate authority in present appellate proceedings. It is found that valuation report submitted by appellant contain specific sale instances of nearby located property and valuation as on 1st April 1981 and rate of such sale instances are nearer to value considered by AO in appellant's case as well as in the case of co-owner hence there was no reason on part of appellant or his valuer to adopt land cost more than five times to actual cost arrived based upon comparable evidences on the ground that property of appellant has commercial potential. It is observed that valuation report is obtained from registered valuer for determining cost of acquisition as on 01.04.1981 when property is acquired prior to such date and there is nothing in act to adjust such cost with other aspect as to whether property is capable for commercial purpose or not. The appellant and other co-owners were using the property for residential purpose only hence even on that ground valuation adopted by appellant is incorrect. The appellant has not brought any other comparable evidences which can justify value adopted by registered valuer.

6.3 During the course of appellate proceedings, appellant has contend that JANTRI value of the property was Rs 20000 per sq meter and average rate of other properties sold during the period in which appellant as sold the property was around Rs 26000 per sq meter but appellant has sold the property for more than Rs 1,00,000 per sq meter. The appellant is giving comparable instances at the time of sale of property which cannot decide the cost of acquisition as on 1st April 1981. When property is valued in 1981, comparable instances during such period need to be seems. The other factors like locality, nearby development etc must have changed after lapse of 20 years hence situation of property at the time of sale is not decisive factor for determining cost of acquisition as on 01/04/1981. Thus, contention of appellant cannot be accepted.

*6.4 It is found that AO in present case has considered indexed cost of acquisition at Rs 14,40,031 after adopting rate at Rs 1212 per Sq meter. It is found that this issue is already adjudicated in the case of co-owner wherein AO after considering all the factors as discussed herein above has worked out indexed cost of acquisition after including land cost and construction cost at Rs.18,18,112/- which is evident from appellate order in case of co-owner referred supra and as appellant is also holding 1/5 Share in the property like other co-owner, **AO is directed to recompute long term capital gain in the case of appellant after considering indexed cost of acquisition at Rs 18,18,112 as against Rs 14,40,031 considered in assessment order. The related ground of appeal is thus partly allowed.***

*7. In the result, the appeal of the appellant, is **Partly Allowed.**”*

5. Before us, the counsel for the assessee submitted that the issue under consideration is squarely covered in favour of the assessee by order of ITAT Delhi in the case of **Ved Kumari v ITO in ITA number 2041/Del/2016 vide order dated 26-08-2019**, i.e. in the case of the co-seller of the aforesaid property. The counsel for the assessee submitted that in the case of the assessee, the assessment order and also the order passed by Ld. CIT(Appeals) was based on the order passed in the case of assessee's co-seller Smt. Ved Kumari, and since the ITAT Delhi has allowed the appeal of the co-seller (Smt. Ved Kumari), in respect of the very same issue and the same property which is in consideration before us, the additions are liable to

be deleted. Further, the counsel for the assessee submitted that the assessing Officer, if wanted to form a view regarding cost of acquisition / cost of construction, which was different from that of the valuation report on which reliance was placed upon by the assessee, should have referred the matter to the DVO, which was not done in the instant set of facts. He submitted that the case was opened on the basis of information received in respect of co-seller of the assessee, Smt. Ved Kumari and now since ITAT Delhi in the co-seller's own case has decided the issue in favour of the co-seller, the issue should now stand decided in favour of the assessee as well.

5.1 In response, DR placed reliance upon the observations made by the AO and Ld. CIT(Appeals) in their respective orders.

6. We have heard the rival contentions and perused the material on record. We observe that the issue under consideration involves sale of property in which the assessee and Smt. Ved Kumari were co-sellers (along with other co-sellers) and the assessment order in case of the assessee as well as the order passed by Ld. CIT(Appeals) were primarily based upon the observations made by the Department in the assessment/appellate order in the case of the co-seller of the assessee Smt. Ved Kumari, based out of Gurgaon. Since, the issue now stands decided in favour of the co-seller of the assessee by the ITAT Delhi, respectfully following the same, we are of the view that the appeal of the assessee deserved to be upheld. The relevant extracts of the order of ITAT Delhi on which reliance has been placed by the counsel for the assessee is reproduced hereinbelow for reference:

“5. We have heard the rival submissions and have also perused the material available on record. It is the contention of the assessee that the lower authorities have erred in overriding the report of the registered valuer without supporting evidence and, therefore, the same is bad in law. It is also the contention of the assessee that the Assessing Officer should have referred the matter to the DVO if he was not in agreement with the valuation as computed by the registered valuer and that in absence of any evidence on record, the report of the registered valuer should have been accepted with regard to fair market value as on 1.4.1981 for the purpose of computing the capital gains. It is seen that the Assessing Officer while rejecting the registered valuer's estimate at Rs. 5800/- per sq mtr has noted that the average rate at which the sales deeds were being executed was Rs. 1160/- per sq mtr. However, it is our considered opinion that valuation done by the empanelled registered valuer of the Income Tax Department would certainly take precedence over a value which the Assessing Officer might adopt on his own without making a reference to the DVO. The fact of the matter remains that the Assessing Officer, during the course of assessment proceedings, did not make any reference to the DVO even though he chose not to accept the rate adopted by the registered valuer. Therefore, in our considered opinion, the Assessing Officer exceeded the powers entrusted to him in this regard by undertaking to compute the fair market value on his own without being supported by the expert knowledge of the DVO. The law is fairly settled in this regard and coordinate benches of the Tribunal have time and again held that where the assessee had submitted valuation report of a registered valuer and the matter was not referred by the Assessing Officer to the DVO, the Assessing Officer is bound to accept the report of the registered valuer regarding the market value of the land as claimed by the assessee. We take support from the order of ITAT Chandigarh Bench in the case of Barjinder Singh Bhatti vs. ITO in ITA No. 1101/CHD/2014 wherein vide order dated 15.7.2015, the Bench had ruled in favour of the assessee by holding that if the Assessing Officer was not satisfied with the report of the registered valuer, he should have made a reference to the DVO and in absence of such a reference, the Assessing Officer should not have made his own calculation for the purpose of computation of capital gains. Reliance is also placed on the order of the ITAT, Lucknow Bench in the case of Adarsh Kumar Agrawal vs. ACIT in ITA No. 66/LKW/2014 wherein vide order dated 23.03.2014, it was held that where the assessee had submitted the valuation report of the registered valuer and the matter was not referred by the Assessing Officer to the DVO, the Assessing Officer has to accept the report of the registered valuer regarding the fair market value of the land as claimed by the assessee. ITAT Cochin Bench in the case of Mrs. Susamma Paulose Vs JCIT reported in 79 TTJ 573 (Coch.) on identical facts held as under:

".....A registered valuer is competent to value properties as per the provisions of the IT Act and Rules made there under. The AO is not justified in brushing aside the report of the registered valuer without pointing out any specific reason for that. The AD did not have any

materials with him to rebut the valuation worked out by the registered valuer. The AD was rejecting the report of the registered valuer with a stroke of pen as if the law does not recognise the valuation made by a registered valuer. The method followed by the AO is quite unlawful and arbitrary. The report of a registered valuer is a valid piece of evidence in deciding matters of valuation. Such report can be modified or questioned or rebutted by the AO only in the light of reliable materials available with him. In the present case, the AO himself has not referred the matter to valuation. In the facts and circumstances of the case, the AO as well as the CIT(A) have erred in coming to their conclusions regarding the valuation of the property as on 1st April, 1981. Fair market value of the land as on 1st April, 1981, estimated by a registered valuer being based on sound factual basis and the phenomenal development in that area could not be rejected by the AO without assigning any specific reasons."

5.1 Similarly, in the case of Pyare Mohan Mathur HUF Vs ITO (in ITA No. 471/Agra/2009 vide order dated 21/04/2011) the Agra Bench of the ITAT has held that in view of the provision of section 55A once the assessee has submitted the necessary evidence by way of the valuation report made by the registered valuer, the onus gets shifted on the AO to contradict the report of the registered valuer. The registered valuation officer is a technical expert and the opinion of an expert cannot be thrown out without bringing any material to the contrary on record. In case the AO was not agreeable with the report of the registered valuer, he was duty bound to refer the matter to the DVO for determining the fair market value of the land as on which he failed to do so. The tribunal held that the revenue has not discharged the onus but merely rejected the fair market value taken by the assessee. It set aside the order of the CIT (A) and directed the AO to recompute the capital gain after taking the fair market value of the land as on 1/4/1981, as claimed by the assessee. Fair market value of the land as on 1/4/1981 estimated by the registered valuer being based on sound factual basis and the phenomenal development in that area could not be rejected by the AO without assigning any specific reasons.

5.2 In the case of CWT Vs Raghunath Singh Thakur (304 ITR 268 HP) the Hon'ble High Court of Himachal Pradesh held that if the Assessing Officer does not agree with the report regarding the valuer relied upon by the assessee, rejection of such valuer's report without making reference to the valuation, order is invalid and the report of the registered valuer shall be accepted.

5.4 The Hon'ble Bombay High Court in the case of C.I.T. vs. Raman Kumar Suri reported in (2013) 255 CTR 107 had held that the valuation done by the registered valuer is with regard to a specific property and the same takes into account its various advantages and disadvantages, all of which would influence the valuation of property. The Hon'ble Bombay High Court went on to hold that

the valuation done by an empanelled registered valuer of the Income Tax Department would certainly take precedence over other indicators.

5.5 Therefore, respectfully following the aforesaid juridical precedents, we have no option but to accept the assessee's contention that the Assessing Officer was not right in discarding the report of the registered valuer without having made a reference to the DVO and, therefore, the rate adopted by the Assessing Officer for the purpose of computation of fair market value cannot be upheld. Accordingly, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to re-compute the fair market value of the land as on 1.4.1981 by taking into account the rate as adopted by the registered valuer.

4. In the result, the appeal of the assessee stands allowed.”

7. In the result, all grounds of the assessee's appeal are allowed.

Order pronounced in the open court on 09-12-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 09/12/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद