

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

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

ITA No. 6951/Del/2018 : Asstt. Year : 2014-15

M/s B. Shahabuddin & Co., 2233, Bahadurgarh Road, Sadar Bazar, Delhi-110006 (APPELLANT)	Vs	ACIT, Circle-63(1), New Delhi (RESPONDENT)
PAN No. AAAFB6697G		

**Assessee by : Sh. K. Sampath, Adv. &
Sh. V. Rajkumar, Adv.
Revenue by : Sh. Kanv Bali, Sr. DR**

Date of Hearing: 27.04.2023

Date of Pronouncement: 19.05.2023

ORDER

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

The present appeal has been filed by the assessee against the order of Id. CIT(A)-20, New Delhi dated 28.09.2018.

2. Following grounds have been raised by the assessee:

"1. Determining Long Term Capital Gain on the sale of property by adopting fair market value as on 01.04.1981 at Rs.85,26,000/- as against the actual value of Rs.1,60,75,599/-.

2. Confirming the assessment of capital gains on the sale of factory building as short term capital gain as against long term capital gain claimed by the assessee.

3. Assessing the income arising out of capital gains on the realization of the assets of the former partnership firm which had got dissolved.

4. Not allowing appropriate expenses incurred during the period.

5. Not deleting interest levied u/s 234B of the Income Tax Act, 1961 wrongly charged by the Assessing Officer."

Determination of Fair Market Value as on 01.04.1981:

3. The Assessee acquired property on 21.08.1974 from MIDC at Rs. 5,69,100/- and sold the property on 25.03.2014. The assessee has got the property valued from registered valuer who fixed the purchase value of land as on 01.04.1981 at Rs.1,60,75,599/-. The matter was referred to the DVO who determined the value at Rs.85,26,000/- as on 01.04.1981.

4. The assessee submitted that the valuation of the DVO has an inbuilt error which are as under:

"(i) The property under reference is located in prime and fully developed industrial area having all the advantages of best piece of land from all points of view. The area is surrounded by well known national and multi-national entities. Further, it is located in close proximity of National High Way (i.e. hardly 100 Mtrs. inside the road from the main National High Way).

(ii) The potential of land has not been considered by the Valuation Cell while evaluating the value.

(iii) The report obtained by the assessee from M/s Anmol Sekhri Consultant Pvt. Ltd. has considered the locational advantages of the property. The Approved Valuer, therefore, has rightly adopted cut-back method in the absence of comparable instances of sale and purchase in that area.

(iv) While making comparison between the like properties the DVO has given totally irrelevant and inapplicable instances. The instances used in the valuation ref have abnormally high variation."

5. The Id. CIT(A) disregarded the contentions of the assessee and confirmed the order of the Assessing Officer and directed to determine the capital gains taking the value as on 01.04.1981 at Rs.85,26,000/- as per the DVO report.

6. The comparative sale instances taken by the DVO are as under:

SALE INSTANCES						
Annexure-11						
S. No	Date	Address	Seller/Purchaser	Land area	Consideration	Rate/sqm
1	580/ 27.11.1979	CTS No. 13 & 16, Tika No. 4, Dist-Thane	AC Thanewala/ K.K. Sagar & others	186.4	49000	263
2.	74/ 15.05.1978	CTS No. 20 & 18, Tika No. 4, Dist-Thane	G.N. Bhute/ S.B.C. Bachdev	95.30	20000	210
3.	440/ 25.03.1982	CTS No. 36 & 37, Tika No. 4, Dist-Thane	N.M. Deshmukh /A.S. Karmik	93.30	15000	Xxxx
4.	For residential purpose and industrial purpose as per MIDC letter No. MIDC/THN/250 dated 07.12.1981					150
After considering various pros and cons and various factors such as physical, social, legal and economical, size/shape. Which influences the Fair Market Value of the property, the locality of the property, the proposed rates for Fair Market Value rate of the subject property as per Annexure-I.						

7. We find that the DVO has compared the land at CTS No. 13 & 16, Tika district Thane which is a totally different area from the property of the assessee situated at TTC Industrial Area, Sanpara, Navi Mumbai. The comparative value of the properties taken by the DVO are situated more than 20 kms. from the property of the assessee.

8. Hence, there is an inbuilt incongruency in the valuation of the DVO which cannot be considered as a correct valuation of the property of the assessee. The addition made on account of re-computation of LTCG taking into consideration the DVO report cannot be sustained.

Short Term Capital Gains:

9. The relevant part of the order of the Id. CIT(A) is as under: (page no. 21 para 5.1)

"5.1 The appellant has also taken additional ground no. 1 where it is claimed that the Assessing Officer is not correct in taxing the Long Term Capital Gain in a sum of Rs.2,33,76,297/- on sale of building at Mumbai as Short Term Capital Gain. This ground of the appellant deserves to be rejected as in the computation of income filed by the appellant in the paper book, it is apparent that the appellant himself has shown Short Term Capital Gain of Rs.2,33,76,297/- on sale of building at Mumbai. In this light, the appellant is not correct in taking the plea that the Assessing Officer has taken this as Short Term Capital Gain. It is a settled law that there is no right to appeal if no grievance is caused to the appellant when he himself offered the Short Term Capital Gain for taxation in the return of income filed voluntarily. Reliance is placed on the decisions mentioned below in para 6.3. In the light of the above, additional ground no. 1 is rejected."

10. The assessee has declared Short Term Capital Gains from sale of building which the Assessing Officer has rightly accepted. As no *lis* arises between the revenue and the assessee, we decline to interfere with the order of the Id. CIT(A).

Disallowance of Expenses:

11. The AO disallowed an amount of Rs.19,33,124/- on account of various expenses incurred by the assessee on the grounds that the partnership firm has not been conducting the business

operations during the relevant Assessment Year. The assessee firm has debited to the following P&L account expenses:

S. No.	Head	Amount (Rs.)
1.	Diesel & Oil Expenses	2,35,344.00
2.	Generator maintenance	3,260.00
3.	Misc. Expenses	3,892.00
4.	Legal Expenses	46,236.00
5.	Conveyance	11,365.00
6.	Travelling Expenses	1,59,749.00
7.	Salary	3,71,185.00
8.	Postage & Stamps	1,521.00
9.	Factory Expenses	62,500.00
10.	Factory Building maint.	32,000.00
11.	Bank charges	294.00
12.	Telephone Expenses	6,009.00
13.	NMMC	2,36,157.00
14.	Security Arrangement	4,64,717.00
15.	Loss on sale of Vehicle	2,98,895.00
	Total	19,33,124.00

12. We find that these expenses have been incurred for maintenance of the assets and in the nature of administrative and maintenance expenditure. The assessee has declared income of Rs.19,72,39,500/- during the year and these expenses can be said to be incurred for the purpose of business.

13. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 19/05/2023.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 19/05/2023

Subodh Kumar, Sr. PS

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