

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

BEFORE

**SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3063/Del/2022
Asstt. Year: 2019-20

Madhurittu Puri United Kingdom C/o Sanjiv Sapra & Associates LLP, C-763, New Friends Colony, New Delhi -110 025. PAN APCPP9852L (Appellant)	Vs.	DCIT. Circle International Taxation 2(2)(2) New Delhi. (Respondent)
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Assessee by:	Shri Sanjiv Sapra, FCA
Department by:	Shri Vizay Vasanta, CIT- DR
Date of Hearing:	26.04.2023
Date of pronouncement:	18.07.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 20.12.2022 of the Ld. Dy. Commissioner of Income Tax, Circle International Taxation-2(2)(2) New Delhi (**"AO"**) passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year (**"AY"**) 2019-20.

2. The assessee has raised the following grounds of appeal:

- "1. That the final assessment order dated 20/12/2022 passed by Deputy Commissioner of Income Tax, Circle, International Taxation 2(2)(2) (Assessing Officer or AO) under section 143(3)

r.w.s. 144C(13) of the income Tax Act 1961 ('Act') in pursuance to directions of Dispute Resolution Panel ('DRP') is arbitrary, unjust and illegal on various factual and legal grounds including but not limited to the following:

- a) *Reference as made by the AO under section 142A of the Act to Department's Valuation Officer (DVO) for determining fair market value ('FMV') of house property as on 01/04/2001 was unlawful and invalid.*
 - b) *Both the independent registered valuer's reports as relied upon and furnished by the Appellant ought to have been accepted and made the basis for estimating/determining FMV of house property.*
 - c) *DVO's report as issued for estimation of FMV of house property suffers from various legal and factual infirmities.*
 - d) *Various objections as raised by the Appellant for challenging acceptance of DVO's report have not been fully considered or dealt with by the AO/DKP.*
 - e) *Even directions of DRP vide their order under section 1440(5) of the Act for considering the specific objections raised against DVO's report have not been fully appreciated or dealt with by the AO in the final assessment order.*
 - f) *Addition under the head 'long term capital gain cannot be made solely on the basis of estimate o DVO.*
 - g) *Principles of natural justice have been violated by AO/DRP.*
2. *That on the facts and circumstances of the case and in law the AO/DRP has erred in making addition of Rs 2,23,23,116 under the head long term capital gain on sale of Appellant's 1/3rd share in the residential house property.*
 3. *That on the facts and circumstances of the case and in law the AO/DRP has erred in not accepting the fair market value as on 01/04/2001 of the inherited house property as declared at Rs.3,50,00,000 (1/3rd share of Appellant at Rs.1,16,66,667) as on 01/04/2001, which was duly supported by two independent registered valuer's reports.*
 4. *That the FMV of 1/3rd share of house property as on 01/04/2001 declared by the Appellant cannot be restricted/reduced by the AO/DRP in the case of the Appellant since the same value as declared by the other two joint co-owners of such house property for their respective 1/3rd share each stand accepted in their respective assessments.*
 5. *That without prejudice to above grounds, the indexed cost of acquisition of the house property as adopted by the AO/DRP at*

Rs.1,03,43,551 for Appellant's 1/3rd share s inadequate and the addition of Rs.2,23,23,116 as made towards long term capital gain is very excessive.

6. *That the levy of interest under section 234D of Rs.9,00,769 is illegal and at any rate, very excessive.*
7. *That the total income as assessed at Rs.2,43,86,326 and the income tax demand of Rs.67,12,119 as created thereon is very excessive.*
8. *That the penalty under section 270A(2) as initiated for alleged under-reporting of income is not applicable on the facts and under the law in Appellant's case."*

3. Ground Nos. 1 to 5 relate to addition of Rs. 2,23,23,116/- towards long term capital gains on sale of residential property. The facts in brief are that the assessee a non resident individual filed her return for AY 2019-20 electronically on 07.08.2019 declaring income of Rs. 20,63,210/-. Her case was selected for scrutiny under CASS. During assessment proceedings, the Ld. AO found that the assessee had sold a residential property and had shown a sale consideration of Rs. 18 crore. On perusal of the assessee's submission, the Ld. AO noticed that property was inherited and its valuation was carried out on 09.11.2018 to determine its Fair Market Value (FMV) as on 01.04.2001. As per valuation report submitted the FMV of the property as on 01.04.2001 was determined at Rs. 3,50,16,612/-. On perusal of the sale deed executed on 19.12.2018 the Ld. AO found that the assessee's share in the property is 1/3rd.

3.1 The Ld. AO was of the view that the above FMV of the property as on 01.04.2001 was taken at a higher rate. He, therefore, made a reference to the District Valuation Officer ("**DVO**") for determining the FMV of the property as on 01.04.2001. The DVO determined the FMV at Rs. 1,10,82,377/- as against Rs. 3,50,16,612/- as per the assessee. Relying on the report of the DVO, the Ld. AO computed the capital gain at Rs. 4,96,56,449/- as against Rs. 2,73,33,333/- declared by the assessee resulting in addition of Rs. 2,23,23,116/- to the income of the assessee.

3.2 Accordingly, the Ld. AO passed a draft assessment order under section 144(C)(1) r.w.s 143(3) of the Act on 23.02.2022.

3.3 On receipt of the said draft assessment order, the assessee filed objections before the Ld. Dispute Resolution Panel ("**DRP**"). The Ld. DRP vide order dated 09.11.2022 directed the Ld. AO to dispose of the specific objections on the valuation report of the DVO by passing a speaking order.

3.4 It is apparent from page 5 of the Ld. AO's order that he maintained the addition proposed in draft assessment order and completed the assessment on 20.12.2022 under section 143(3) r.w.s. 144C (13) of the Act on total income of Rs. 2,43,86,326/- including therein addition of Rs. 2,23,23,116/- under the head "Long Term Capital Gain".

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. It is a stay granted matter.

6. The Ld. AR made lengthy submissions and filed a synopsis of his arguments which has been taken on record. While supporting the FMV of the property as on 01.04.2001 determined by the registered valuer, the Ld. AR pointed out that the DVO has mechanically taken average rates of two other sale instances situated in the same area without applying his mind with respect to location and other favourable factors of the land valued by him. Moreover, copies of registered sale deed of both the sale instances relied upon by DVO have not been provided to the assessee thereby denying her the right to examine and distinguish. This resulted in violation of principles of natural justice. Reliance is placed on precedents holding that violation of natural justice renders the assessment void. The Ld. AR cited the decision of the Hon'ble Delhi High Court in CIT vs. Lasha Construction Pvt. Ltd. 357 ITR 671 (Delhi) wherein it is held that addition cannot be made solely on the basis of the report of the DVO. It is pointed out by the Ld. AR that the property in question is jointly co-owned by her brother Mr. Janardhan Kapoor and sister Ms. Poonam Sachdev in whose cases assessments have been completed under section 143(3) of the Act. In both

the cases the FMV of the property as on 01.04.2001 has been accepted as determined by the registered valuer and therefore it is improper to take a different view in the case of the assessee.

7. The Ld. CIT(DR) defended the order of the Ld. AO who, according to him, is empowered to make reference to the DVO for determining the FMV of a property. Since the impugned addition is based on the report of the DVO, the same is sustainable. The Ld. CIT(DR) argued that each assessee is separate. Therefore finding in the case of other co-owners cannot have any adverse impact on the case of the assessee.

8. We have given our careful thought to the rival submissions and perused the records. It is an admitted fact that the impugned property is inherited property in which the assessee, her brother and her sister have equal 1/3rd share. The property was sold in the previous year relevant to AY 2019-20 for a total consideration of Rs. 18 crores. Since the property was purchased by her parents prior to 1st April, 2001, the co-owners opted to adopt FMV of the property as on 1st April, 2001 for the purpose of computation of long term capital gain. The assessee along with other co-owners got the property valued by the registered valuer as on 01.04.2001 who determined the FMV of the entire property at Rs. 3,50,16,612/- as on 01.04.2001. Copy of the valuation report appears at page 50-56 of the Paper Book. Accordingly, the assessee computed the long term capital gain of her 1/3rd share at Rs. 2,73,33,333/- (page 25 of the Paper Book) which she declared in her return of income filed electronically on 07.08.2019. It was not acceptable to the Ld. AO. In para 3 of the assessment order the Ld. AO observed that the value of the property as on 01.04.2001 which is Rs. 3,50,16,612/- is prima facie taken at a higher rate. No reasons have been assigned by him why did he consider so. Nonetheless this alone prompted him to make reference to the DVO. Even though the law empowers the Ld. AO to make reference to the DVO under section 142A of the Act but in our humble opinion the Ld. AO cannot invoke the provisions of section 142A of the Act without assigning tangible basis giving rise to doubt on FMV adopted by the assessee on the basis of the report of the registered valuer.

8.1 It is observed that the assessee offered her detailed comments on the DVO's valuation report vide letter dated 15.02.2022 to the Ld. AO (copy at pages 117-120 of the Paper Book) incorporating therein extracts of letter dated 13.10.2021 filed before DVO and asserting that no deficiency in the report of the registered valuer has been pointed out by the DVO. Moreover, the DVO failed to consider the specific features of the property commanding higher value. It was also stated therein that the DVO did not provide copies of sale deed of both the properties on the basis of which he worked out the average price to be the FMV as on 01.04.2001. Sale instances referred to by the DVO were also distinguished from the assessee's property which had special features e.g. three side open and preferentially located. It was explained therein that the assessee's property commanded a much higher rate as on 01.04.2001 than the value estimated by the DVO. It was also brought to the notice of the Ld. AO in this reply letter that the FMV as on 01.04.2001 as declared on the basis of assessee's valuation report has been accepted in the case of her two other joint co-owners vide assessment orders framed under section 143(3) of the Act. Therefore, there is no justification for adopting a lower FMV in the case of the assessee merely on the basis of estimation made by DVO.

8.2 In para 5 of the assessment order, the Ld. AO only says that the above reply of the assessee is considered. Nothing has been controverted by the Ld. AO by assigning any reason whatsoever and the report of the DVO is accepted. This supports the argument of the Ld. AR regarding denial of the principles of natural justice to the assessee.

8.3 The assessee has placed copy of assessment order dated 23.09.2021 in the case of Mr. Janardhan Kapoor, brother of the assessee at page 215-216 of the Paper Book for AY 2019-20. His case was also selected for complete scrutiny by CASS. Her brother is also a non-resident Indian and had earned income from capital gain on sale of the same residential house in which he had 1/3rd share. The Ld. AO noted that this property was inherited by the assessee from his parents who had purchased the property

in 1967/69. Since the property was purchased prior to 1st April, 2001, the assessee got it valued from a registered valuer and used the value for determining tax payable on long term capital gain arising from this transaction. The Ld. AO accepted the FMV as on 01.04.2001 as determined by the registered valuer of the assessee. Similarly, in the case of Ms. Poonam Sachdev, sister of the assessee, the assessment for AY 2019-20 was completed on 28.09.2021 after complete scrutiny under CASS (copy at page 221-222 of the Paper Book) without making any addition, though the assessee had declared 1/3rd share of capital gain arising from the sale of the same property. Therefore, we are of the view that the impugned addition in the case of the assessee is not warranted at all when the same FMV has been accepted in the cases of other co-owners.

9. For the reasons aforementioned and following the decision of the Hon'ble Delhi High Court in Lasha Construction Pvt. Ltd. (supra) we decide ground No. 1 to 5 in favour of the assessee.

10. Ground No. 6 relates to levy of interest under section 234D which is consequential.

11. Ground No. 7 and 9 are general in nature.

12. Ground No. 8 relates to initiation of penalty under section 270A(2) of the Act which is pre-mature not requiring adjudication at this stage.

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

Order pronounced in the open court on 18th July, 2023.

Sd/-

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

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 18/ 07/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
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	
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Date on which the file goes to the Head Clerk	
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