

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C': NEW DELHI**

**BEFORE,  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.8758/Del/2019  
(ASSESSMENT YEAR 2015-16)**

**ITA No.8759/Del/2019  
(ASSESSMENT YEAR 2016-17)**

**ITA No.8760/Del/2019  
(ASSESSMENT YEAR 2017-18)**

Kanchan Aastha 152, 3 <sup>rd</sup> Floor Chitra Vihar Delhi PAN-AHIPK 4747K <b>(Appellant)</b>	Vs.	ACIT Central Circle-19 New Delhi <b>(Respondent)</b>
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Appellant by	None
Respondent by	Mr. Waseem Arshad, CIT-DR

Date of Hearing	14/09/2023
Date of Pronouncement	20/09/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

All these three appeals filed by Assessee are against the common order of Learned Commissioner of Income Tax (Appeals)-27, New Delhi ["Ld. CIT(A)", for short], dated 13/09/2019 for Assessment Years 2015-16, 2016-17 & 2017-18 respectively.

2. The grounds taken in all these appeals are as under:

**ITA No.8758/Del/2019 for AY 2015-16**

*"1) That Learned CIT (Appeals) has erred in law and on facts while upholding an addition of Rs.21,17,578 made by Assessing Officer (i.e. difference between estimated value of construction of Rs.46,17,578 adopted by D.V.O. and of Rs.25,00,000/- being declared by the assessee) under section 69 of the Act is arbitrary, unjust and bad in law.*

*2) That the Learned CIT (Appeals) has erred in law and on facts while taking into consideration the valuation report of D.V.O. which is erroneous and arbitrary as the rate of construction adopted by the D.V.O. is on higher side and based on estimate and assumption.*

*3) That the Learned CIT (Appeals) has erred in law and on facts while relying on the estimated cost of construction adopted by the DVO and has ignored the minimum unit rate of construction as per the notification dt. 22.09.2014 issued in pursuance of Rule-4 of the Delhi Stamp "Prevention of under valuation of instrument" rules 2018.*

*4) That the Ld. CIT (Appeals) has erred in law and on facts while ignoring that the assessee had sold the unfurnished three floors to different vendees vide three different registered sale deed much before the D.V.O. visited the premises for preparation of his valuation report. The D.V.O. for preparation of his valuation report had ignored the fact that the above said vendees of three different floors furnished their respective floors out of their own funds and hence the valuation report made by D.V.O. is erroneous and arbitrary and does not support ground reality.*

*5) That the Ld. CIT (Appeals) has erred in law and on facts while ignoring the fact that the D.V.O. in his valuation report while segregating the total cost of construction estimated by him has not indicated the nature of construction activities taken by assessee during the financial year 2014-15.*

*6) That the Ld. CIT (Appeals), has erred in law and on facts while ignoring that the D.V.O. valued the property on the basis of one Annexure A-1, which was seized at the time of search from the residence of the assessee indicating details regarding the materials and fitting to be used in the construction and interiors decoration of the said property. This annexure was entered into between*

*Assessee and Builder. Basically, this Annexure-A is specification for re-development construction and furnishing work. However, due to dispute between the assessee and Builder, the Annexure-A was never executed and hence to rely on this specification by the D.V.O. for computing estimated cost of construction is improper and unjustified.*

*7) That the Learned CIT (Appeals) has erred in law and on facts while ignoring the comments of DVO on page no. 3 of his valuation report in which it has also been mentioned that while preparing the valuation report information was gathered by surveying the area opposite column "Reference to sale, instances / land rate date relied on and their relevance". However no such information was provided to assessee even weighted cost index and yearwise construction calculation in the valuation report of DVO is not backed and supported by any evidences and legitimate material regarding the nature of construction activities under taken during the FY 2015-16 to 2017-18 as the same may fluctuate according to the nature of construction activities taken in different financial years.*

*8) That the Learned CIT (Appeals) has erred in law and on facts while ignoring that the DVO also while valuing the cost of construction has not given any option of method of valuation to assessee for choosing one of the methods.*

*9) That the Appellant craves leaves to add, alter, amend or withdraw any of the grounds of appeal before during the course of the hearing of the appeal.*

**PRAYER:**

*In view of the above, it is to state that the estimated cost of construction of Rs.46,17,578 by D.V.O. is not justified and far excess them Rs. 25,00,000 as declared by the assessee and hence the estimated cost of construction computed by the D.V.O. should not be accepted as correct because the method adopted by D.V.O. Is not proper and based on assumptions and therefore it is prayed that such valuation should be declined and fresh valuation report should be obtained in order to provide justice to the assessee.”*

**ITA No.8759/Del/2019 for AY 2016-17**

*“1) That Learned CIT (Appeals) has erred in law and on facts while upholding an addition of Rs. 19,68,404 (i.e. difference between estimated value of construction of Rs. 24,93,404 adopted by D.V.O.*

and of Rs. 5,25,000 out Rs. 13,50,000 actually incurred by the assessee) u/s 69 of the Act is arbitrary, unjust and bad in law.

2) That the Learned CIT (Appeals) has erred in law and on facts while taking into consideration the valuation report of D.V.O. which is erroneous and arbitrary as the rate of construction adopted by the D.V.O. is on higher side and based on estimate and assumption.

3) That the Learned CIT (Appeals) has erred in law and on facts while relying on the estimated cost of construction adopted by the DVO and has ignored the minimum unit rate of construction as per the notification dt. 22.09.2014 issued in pursuance of Rule-4 of the Delhi Stamp "Prevention of under valuation of instrument" rules 2018.

4) That the Ld. CIT (Appeals) has erred in law and on facts while ignoring that the assessee had sold the unfurnished three floors to different vendees vide three different registered sale deed much before the D.V.O. visited the premises for preparation of his valuation report. The D.V.O. for preparation of his valuation report had ignored the fact that the above said vendees of three different floors furnished their respective floors out of their own funds and hence the valuation report made by D.V.O. is erroneous and arbitrary and does not support ground reality.

5) That the Ld. CIT (Appeals) has erred in law and on facts while ignoring the fact that the D.V.O. in his valuation report while segregating the total cost of construction estimated by him has not indicated the nature of construction activities taken by assessee during the financial year 2014-15.

6) That the Ld. CIT (Appeals), has erred in law and on facts while ignoring that the D.V.O. valued the property on the basis of one Annexure A-1, which was seized at the time of search from the residence of the assessee indicating details regarding the materials and fitting to be used in the construction and interiors decoration of the said property. This annexure was entered into between Assessee and Builder. Basically, this Annexure-A is specification for re-development construction and furnishing work. However, due to dispute between the assessee and Builder, the Annexure-A was never executed and hence to rely on this specification by the D.V.O. for computing estimated cost of construction is improper and unjustified.

7) That the Learned CIT (Appeals) has erred in law and on facts while ignoring the comments of DVO on page no. 3 of his valuation

report in which it has also been mentioned that while preparing the valuation report information was gathered by surveying the area opposite column "Reference to sale, instances / land rate date relied on and their relevance". However no such information was provided to assessee even weighted cost index and yearwise construction calculation in the valuation report of DVO is not backed and supported by any evidences and legitimate material regarding the nature of construction activities under taken during the FY 2015-16 to 2017-18 as the same may fluctuate according to the nature of construction activities taken in different financial years.

8) That the Learned CIT (Appeals) has erred in law and on facts while ignoring that the DVO also while valuing the cost of construction has not given any option of method of valuation to assessee for choosing one of the methods.

9) That the Learned CIT (Appeals) had erred in law and on facts while not allowing the cost of construction of Rs. 8,25,000 out of Rs. 13,50,000 with the contention that this money was received from her husband inspite of the fact that all the sources of Rs. 8,25,000 in the hand of spouse of the assessee alongwith documentary evidences were properly disclosed.

**PRAYER:**

In view of the above, it is to state that the estimated cost of construction of Rs.24,93,404 by D.V.O. is not justified and far excess them Rs. 13,50,000 as declared by the assessee and hence the estimated cost of construction computed by the D.V.O. should not be accepted as correct because the method adopted by D.V.O. Is not proper and based on assumptions and therefore it is prayed that such valuation should be declined and fresh valuation report should be obtained in order to provide justice to the assessee.”

**ITA No.8760/Del/2019 for AY 2017-18**

“1) That Learned CIT (Appeals) has erred in law and on facts while upholding an addition of Rs.42,36,751 (i.e. difference between estimated value of construction of Rs. 77,93,310 adopted by D.V.O. and of Rs. 35,56,559 out Rs.42,19,483/- actually incurred by the assessee) u/s 69 of the Act is arbitrary, unjust and bad in law.

2) That the Learned CIT (Appeals) has erred in law and on facts while taking into consideration the valuation report of D.V.O. which

*is erroneous and arbitrary as the rate of construction adopted by the D.V.O. is on higher side and based on estimate and assumption.*

*3) That the Learned CIT (Appeals) has erred in law and on facts while relying on the estimated cost of construction adopted by the DVO and has ignored the minimum unit rate of construction as per the notification dt. 22.09.2014 issued in pursuance of Rule-4 of the Delhi Stamp "Prevention of under valuation of instrument" rules 2018.*

*4) That the Ld. CIT (Appeals) has erred in law and on facts while ignoring that the assessee had sold the unfurnished three floors to different vendees vide three different registered sale deed much before the D.V.O. visited the premises for preparation of his valuation report. The D.V.O. for preparation of his valuation report had ignored the fact that the above said vendees of three different floors furnished their respective floors out of their own funds and hence the valuation report made by D.V.O. is erroneous and arbitrary and does not support ground reality.*

*5) That the Ld. CIT (Appeals) has erred in law and on facts while ignoring the fact that the D.V.O. in his valuation report while segregating the total cost of construction estimated by him has not indicated the nature of construction activities taken by assessee during the financial year 2014-15.*

*6) That the Ld. CIT (Appeals), has erred in law and on facts while ignoring that the D.V.O. valued the property on the basis of one Annexure A-1, which was seized at the time of search from the residence of the assessee indicating details regarding the materials and fitting to be used in the construction and interiors decoration of the said property. This annexure was entered into between Assessee and Builder. Basically, this Annexure-A is specification for re-development construction and furnishing work. However, due to dispute between the assessee and Builder, the Annexure-A was never executed and hence to rely on this specification by the D.V.O. for computing estimated cost of construction is improper and unjustified.*

*7) That the Learned CIT (Appeals) has erred in law and on facts while ignoring the comments of DVO on page no. 3 of his valuation report in which it has also been mentioned that while preparing the valuation report information was gathered by surveying the area opposite column "Reference to sale, instances / land rate date relied on and their relevance". However no such information was provided*

to assessee even weighted cost index and yearwise construction calculation in the valuation report of DVO is not backed and supported by any evidences and legitimate material regarding the nature of construction activities under taken during the FY 2015-16 to 2017-18 as the same may fluctuate according to the nature of construction activities taken in different financial years.

8) That the Learned CIT (Appeals) has erred in law and on facts while ignoring that the DVO also while valuing the cost of construction has not given any option of method of valuation to assessee for choosing one of the methods.

9) That the Learned CIT (Appeals) had erred in law and on facts while not allowing the cost of construction of Rs. 6,50,000 out of Rs.42,19,483 with the contention that this money was received from her husband inspite of the fact that all the sources of Rs.6,50,000 in the hand of spouse of the assessee alongwith documentary evidences were properly disclosed.

**PRAYER:**

In view of the above, it is to state that the estimated cost of construction of Rs.77,93,310 by D.V.O. is not justified and far excess them Rs.42,19,483 as declared by the assessee and hence the estimated cost of construction computed by the D.V.O. should not be accepted as correct because the method adopted by D.V.O. is not proper and based on assumptions and therefore it is prayed that such valuation should be declined and fresh valuation report should be obtained in order to provide justice to the assessee.”

3. Brief facts of the case as mentioned in the order of the CIT(A) for the Assessment Years 2014-15, 2015-16 and 2016-17 are as under:-

“Search, seizure and survey operations under section 132/133A of the Income Tax Act, 1961 were conducted on 06.05.2016 and subsequent dates in the case of assessee along with the other cases of "Sh. Ramesh Chander Aastha & Others" Group of cases at various residential & business premises. During the course of search, certain documents reflecting the specification for the construction of the property belonging to the appellant were found. In the absence of any documentary evidence filed by the appellant regarding the

construction of the property, the matter was referred to DVO to ascertain the cost of construction of this property. The AO was not satisfied with the source of cost of construction explained by the appellant, as well as the cost claimed by the appellant vis-a-vis the report of the DVO. Accordingly, the additions were made by the AO as per following chart for A.YS. 2015-16 to 2017-18:

S. No.	Financial Year	Cost of Construction			
		Declared by the Assessee (1)	Investment accepted by AO out of 1 (2)	Estimated by the DVO (3)	Addition made by AO [(4)=3-2]
(i)	2014-15	25,00,000/-	25,00,000/-	46,17,578/-	21,17,578/-
(ii)	2015-16	13,50,000/-	0	24,93,404/-	24,93,404/-
(iii)	2016-17	42,19,483/-	0	77,93,310/-	77,93,310/-

4. Aggrieved by the assessment order dated 15/05/2019 for Assessment Years 2014-15, 2015-16 and 2016-17, the assessee preferred the Appeal before the CIT(A). The Ld. CIT(A) vide common order dated 13/09/2019 dismissed the appeal filed by the assessee. As against the common order of the CIT(A) dated 13/09/2019, the assessee preferred the present appeals on the grounds mentioned above.

5. None appeared for the assessee, a written submission has been filed by the assessee in support of the Grounds of Appeals which reads as under:-

*“a) That my above said submission and paper books should be accepted for the purpose of hearing.*

*b) That in my case estimated cost of construction computed by D.V.O is very high as compared to valuation made by registered*

government valuer and report was submitted to Assessing Officer during the course of assessment proceedings. It is also not in accordance with the minimum rate of construction as adopted and published by the Govt. of NCT of Delhi through Special Inspector General (Registration) vide notification dated 22.09.2014 in which and as per above said notification issued by Hon'ble Lt. Governor of Delhi, the minimum rate of construction was stipulated at Rs. 11,160/- per sq. meter and Rs. 1,036/- per sq. meters for construction of residential unit falls under 'D' category of Delhi. **In view of the above DVO Valuation should not be accepted and it is my humble prayer to Hon'ble Bench to order for a fresh valuation report in order to provide me justice.**

**I am financially finished, my husband's business is also declined miserably after search by Income Tax Department and at present we have no house of our own to live as everything is sold to clear the trade liabilities to maximum extent.”**

6. Since the assessee not appeared and showed her inability to engage the Counsel due to financial constraint, we have requested the Ld. Departmental Representative to assist the Bench and the Ld. Departmental Representative assisted the Bench and also filed a written synopsis which reads as under:-

*“The valuation being a technical matter has to be addressed by the DVO only except when there are glaring mistakes in calculation, which are prima facie visible.*

*This is not a correct enunciation of law. The AOS report can be challenged on its correctness which the CIT(A) has refrained from.*

*The CIT(A) is not quite correct in applying the Test Of reason that only a glaring mistake can be corrected instead of weighing and evaluating the evidence after a consideration duly cognizant of the assessee's objections.*

*Further, the assessee vide para 7.4.4 represents to the CIT(A) that as per procedure DVO should have called for the assessee's objections and which neither the DVO nor the CIT(A) seem to have entertained.*

*Neither the AO nor the CIT(A) allude to any material against the adoption of minimum prescribed cost of construction as per stamp duty rules- being vide notification Dated 22.09.2014-@11,160 Rs. per sq mtrs Except to state the obvious that his being the minimum the rate could be in excess.*

*The amount could have been in excess, but there is no material that the construction cost was in fact in excess of the prescribed minimum. The DVO could have been summoned and subjected to a cross examination to ascertain the basis of the rates or to contradict the rates as adopted vide the stamp duty rules. This not having been done, it is not possible to accomplish the said feat at this stage.”*

7. We have heard the Ld. Departmental Representative and perused the material available on record. A search and survey operation u/s 132/133A of the Income Tax Act were conducting on 06/05/2016 and subsequent dates in the case of the assessee along with other cases of Sh. Ramesh Chander Aastha and other Group Companies of cases at various residential and business

premises. A notice u/s 153A of the Act was issued to the assessee and the assessee filed return of income declaring Rs. 3,17,840/- as income. At the time of the search and survey operation conducted on 06/05/2016, a Four storied residential complex was under construction on the Plot at A-111 Swasthya Vihar, New Delhi, since the plot purchased in the name of the assessee vide sale deed dated 24/02/2014, the assessee was asked to provide details of investment made in the construction of the said property. In response, the assessee replied as under:-

*"The construction of the house was done by the assessee along with her husband Shri. Ramesh Chander Aastha. Kunal Verma invested a sum of Rs. 25,00,000/- for the construction and he was paid the said amount by way of cheques. The assessee invested a sum of Rs. 8,50,000/- by way of cash in the A.Y. 2016-17. Shri. Ramesh Aastha invested Rs. 5,00,000/- by way of cash in A.Y. 2016-17. The assessee further invested a sum of Rs. 33,50,000/- by way of cash as withdrawn from her saving bank. She further invested Rs. 2,19,483/- by way of cheque in the A. Y. 2017-18. Shri. Ramesh Aastha further invested rs. 6,50,000/- by way of cash in the Assessment year 2017-18. Thus the total amount invested by the assessee, her husband, Kunal Verma is Rs. 80,69,483/- "*

8. During the search proceedings a document has been seized mentioning the details regarding the material and fitting used in the construction and interior decoration of the said property. The Ld. A.O. referred the case to District Valuation Officer ('DVO' for short) for determine the year wise investments made by the assessee in the construction of property at A-111,

Swasthya Vihar, New Delhi and the DVO submitted the valuation report on 10/01/2019 by valuating the total cost in following manners:-

*Assessment Year 2015-16- Rs. 46,17,578/-*

*Assessment Year 2016-17-Rs. 24,93,404/- and for*

*Assessment Year 2017-18-Rs. 77,93,310/-.*

9. The assessee had also produced the valuation report by Government Approved Valuer stating that the value of the property at Rs. 89,94,960/- at Rs.11,160 per square feet. The Ld. A.O held that the valuation report submitted by the assessee is incorrect and unacceptable as the valuation report submitted by the assessee does not satisfy any basis for valuation. Accordingly, the A.O. made addition based on the cost of construction as determine by the DVO held to be fair market value of construction done in the respective Assessment Years.

10. It is the specific case of the assessee before the Lower Authorities that the estimated cost of construction computed by D.V.O is very high as compared to valuation made by registered government valuer which was submitted by the assessee to Assessing Officer during the course of assessment proceedings. Further the Report of the DVO is also not in accordance with the minimum rate of construction as adopted and published by the Govt. of NCT of Delhi through Special Inspector General (Registration) vide notification dated 22.09.2014 in the said notification issued by the Governor of Delhi, the minimum rate of construction was stipulated at Rs. 11,160/- per sq. meter and

Rs. 1,036/- per sq. meters for construction of residential unit falls under 'D' category of Delhi.

11. Considering the fact that the A.O. has not assigned any reason to reject the valuation report submitted by the assessee and apart from the same the A.O. has not even provided opportunity to the assessee to cross examine the DVO and not considered the objection filed by the assessee on the Report of the DVO, further considering the fact that as on 22/09/2014, the cost of construction as per Stamp Duty Rules being Rs. 11,160/- per square meter which has been considered by the Government Valuer while giving the Valuation Report which was supported by the Notification published by the Government of NCT Delhi, in our opinion, the authorities have committed error in accepting the Report of the DVO and rejecting the Valuation Report of Government Approved Valuer submitted by the assessee. The A.O. should have summoned the DVO for cross examination to ascertain the basis of the rates or to ascertain the contradictions in the rate adopted by the DVO and the Stamp Duty Rules in the absence of the same, the A.O. committed error in relying on the said report of the DVO and making addition which not only erroneous but also the same is against natural justice.

12. In view of the above discussions, we find merit in the Grounds of appeal of the assessee, accordingly, Grounds of Appeals of the assessee are allowed and the additions made against the Assessee in the Assessment Years 2015-16, 2016-17 and 2017-18 are here by deleted.

13. In the result, Appeal filed by the assessee in ITA No. ITA No.8758/Del/2019 (A.Y 2015-16), ITA No.8759/Del/2019(A.Y 2016-17) and ITA No.8760/Del/2019 (A Y 2017-18) are allowed.

Order pronounced in open Court on 20<sup>th</sup> September, 2023

Sd/-

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated: 20/09/2023

*Pk/R.N, Sr ps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI