

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

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

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 311/Del/2023 : Asstt. Year: 2014-15**

Yogesh Dutt Sharma & Sons, Vista Villa 70, Ansal Town, PH-4, Modipuram Bypass, Meerut, Uttar Pradesh-250110	Vs	Income Tax Officer, Ward-2(4), Meerut-250001
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAHY1119A</b>		

**Assessee by : Sh. Manu K. Giri, Adv. &  
Sh. Bhanu Dutt, Adv.  
Revenue by : Ms. Sapna Bhatia, CIT-DR**

**Date of Hearing: 01.11.2023**

**Date of Pronouncement: 17.11.2023**

**ORDER**

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

The present appeal has been filed by assessee against the order of National Faceless Appeal Centre (NFAC) dated 10.01.2023.

2. Following grounds have been raised by the assessee:

*"1. That the impugned order passed by Id. CIT(A) dated 10.01.2023 is arbitrary, unreasonable, bad in law hence void ab-initio.*

*2. That the CIT(A) erred in not following the binding report of District Valuation Officer dated 24.01.2018, when it was obtained by the Assessing Officer at the specific directions of CIT(A) itself.*

*3. Whether report of District Valuation Officer dated 24.01.2018 is binding on the AO as well as on CIT(A)?*

*4. That the CIT(A) on receipt of the report from the District Valuation Officer, has not provided the appellant an opportunity of being heard, while rejecting such report as mischievous and perverse hence dismissed the appeal.*

*5. That the CIT(A) erred in upholding the addition of Rs.90,44,594/- on account of Long Term Capital Gain without any cogent justification and dehors the relevant evidence, Valuation report prepared by M/s Mohan & Associates & submissions filed.*

*6. That the Id. CIT(A) erred in dismissing the appeal without giving proper opportunity to the assessee and also ignoring the settled law."*

3. The assessee filed return of income on 21.03.2015 declaring an income of Rs.3,28,010/- and long term capital loss of Rs.9,99,701/-. The case was selected for scrutiny under CASS. Notice u/s 143(2) dated 18.09.2015 was issued posting the case for hearing on 24.09.2015.

4. The assessee has inherited property by way of partition on 05.08.2000. The property was acquired prior to 01.04.1981. Out of the property inherited by it, the assessee had sold 9 plots during the A.Y. 2014-15 and against the proceeds of sale declared a long term capital loss of Rs.9,99,701/-. During the course of assessment proceedings, the Assessing Officer asked the assessee to produce evidence in support of the cost of acquisition adopted by the assessee in its computation of income. In response, the assessee furnished a rate list issued by the Tehsildar Bhagpat, valuing the land at Rs.875/- per Sq. yard as on 18.11.1978. The A.O has held that the circle rate is

fixed by ADM (F&R)/DM and not by the Tehsildar. Accordingly, the AO issued notice u/s 133(6) to ADM (F&R), Baghpat on 22.07.2016 and 04.08.2016 calling for circle rate as on 01.04.1981 in respect of all 9 plots sold by the appellant. The ADM (F&R) vide letter dated 14.10.2016 informed the AO that the circle rate of the said plots would be Rs.7.90 per square meter. The AO confronted the said information received from the ADM (F&R) to the appellant. The assessee in response submitted government registered valuer's report on 04.11.2016 determining value of the plots at Rs.915.86 per square meter as on 01.04.1981. The AO issued summon u/s 131 to the government registered valuer and recorded statement under oath. Based on the replies as given by the government registered valuer in the sworn statement the AO rejected the report since the same is not,

- based on the circle rates obtained from any government office;
- the valuation is not based on any documents of sale or purchase of similar property confirming the value;
- No proof of the existing market value as on 01.04.1981 has been taken into consideration by the valuer.

5. Accordingly, the AO has adopted the circle rate as intimated by the ADM (F&R), Baghpat and passed an assessment order u/s 143(3) dated 07.12.2016 determining the long term capital gain at Rs. 90,44,594/-. Accordingly, the said order the assessee had instituted an appeal before the Ld. CIT (Appeal), Meerut. The Ld. CIT(Appeal), Meerut had directed the ITO to refer the matter to the District Valuation Officer for

obtaining a report determining the value of the said plots as on 01.04.1981. As per the valuation report the property was inspected on 12.01.2018 in the presence of the assessee. A sale deed for 86.61 sq. mtr. land which was sold to Sh. Deepak Saroha S/o Sh. Devichand Saroha & Sh. Pankaj Sharma S/o Sh. Rameshwer Dayal Sharma by the appellant during 2013-14. In this sale deed, the circle rate adopted at Rs. 8600/- per sq. mtr. as per circle rate list of that area for residential land. The land was acquired before 01.04.1981. Hence the fair market value of this land as on 01.04.1981 is to be worked out. As on 01.04.1981, this land was agriculture land but during the sale it was sold as residential land. Hence the District Valuation Officer inquired about the circle rate/fair market rate from Tehsil Office situated at Baraut. However, this area was the part of Distt- Meerut but during 2013-14 it was in Distt- Baghpat. Hence the rate for 01.04.1981 is not available in the Tehsil. More over the land originally was agriculture but sold as residential. The rate of the agriculture land is not applicable in this matter. The valuation report prepared by M/s Mohan & Associates the circle rate of land calculated by backward indexation method is Rs. 915.86 per sq. mtr. but the fair market rate as on 01.04.1981 is to be worked out as per the backward indexation method based on the CBDT circular no. 636 dt. 31.08.1992. As per the report of the District Valuation Officer the fair market rate of the land as on 01.04.1981 is Rs. 859/- per sq. mtr.

6. The District Valuation Officer, as can be seen from the above, makes a statement that the rate of agricultural land is not applicable in the instant case. **The Id. CIT(A) held that "this statement of the District Valuation Officer is**

**mischievous and perverse”**. The Id. CIT(A) held that as per the facts in the present case the land was acquired as agricultural land.

7. The Id. CIT(A) held that if the cost of acquisition is to be worked out as per the backward indexation method based on the CBDT circular no. 636 dt. 31.08.1992 then the fair market value of agricultural land on the date of transaction has to be taken for computing the same. The Id. CIT(A) erred in holding that the FMV of the agriculture land has to be taken while the land sold was residential land. The DVO who is departmental consultant has rightly resorted to backward indexation method as per the CBDT guidelines. In the instant case, both the District Valuation Officer and the Government Registered Valuer have taken the current market value of the residential land. Consequently, the cost of acquisition arrived at by using the backward indexation method was inherently acceptable due to the adoption of the fair market value of land for residential purpose. We do not find any infarction of procedure or law adopted by the DVO. Hence, we decline to interfere with the valuation of the DVO.

8. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 17/11/2023.

Sd/-

**(Yogesh Kumar U.S)**  
**Judicial Member**

**Dated: 17/11/2023**

\*Subodh Kumar, Sr. PS\*

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

Copy forwarded to:

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

**ASSISTANT REGISTRAR**