

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.872/Kol/2023  
Assessment Year: 2014-15**

Utpal Dutta 17/4, Canal West Road, Kolkata- 700009. (PAN: ADRPD9348N)	Vs.	Assistant Commissioner of Income Tax, Circle-40, Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Indranil Banerjee, FCA  
Respondent by : Shri Abhijit Kundu, CIT, DR

Date of Hearing : 18.10.2023  
Date of Pronouncement : 29.11.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2023-24/1053960425(1) dated 26.06.2023 passed against assessment order by Ld. ACIT, Circle-40, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 27.04.2016 for AY 2014-15.

2. The dispute in the present appeal is in respect of amount of Fair Market Value (FMV) determined by the Departmental Valuation Officer (Ld. DVO) as against valuation determined by the government approved registered valuer and that assessed by the Additional District Sub-Registrar for the purpose of stamp duty. The difference between the FMV determined by the Ld. DVO and that assessed by the

Sub-Registrar for the purpose of stamp duty has been added as deemed income u/s. 56(2)(vii)(b)(ii) of the Act, amounting to Rs.9,04,44,319/- for the share of the assessee in the property purchased jointly with his wife. Assessee has also challenged for the adoption of correct principle of valuation by the Ld. DVO to arrive at the FMV which according to him, should be Rent Multiplier Method (RMM) and not the Land & Building Method (LBM) of valuation.

2.1. Assessee and his wife jointly purchased a property, located at 17/4, Canal West Road, Kolkata-700009, for a total consideration of Rs.20,00,000/- vide the registered deed of conveyance for which the corresponding Stamp Duty Value was Rs18,28,66,637/-. The assessee being 50% undivided owner thereof, the Deed Value of Rs.10,00,000/- and Stamp Value of Rs. 9,14,33,318/-, are attributable to the assessee.

2.2. In the assessment, Ld. AO added a sum of Rs.9,04,44,319/- being the excess of share of Stamp Value over the Deed Value by invoking Sec. 56(2)(vii)(b)(ii). The following tabulation elucidates the amount of addition, so made.

Name of the purchasers	Price Paid – 50% (Rs.)	Stamp Valuation (Rs.)	Excess of Stamp Valuation over price paid – Rs.
Utpal Dutta – (Appellant)	10,00,000/-	9,14,44,319/-	9,04,44,319/-

2.3. However, the said stamp duty valuation was disputed by the assessee and accordingly, an application for a fresh valuation by the Departmental Valuation Cell as per third proviso to Sec. 56(2)(vii), read with Sec. 50C(2) was made. Accordingly, a reference to the Departmental Valuation Cell was made for a fresh valuation of the entire property.

2.4. By virtue of such a reference, Ld. DVO arrived at a sum of Rs.3,61,45,350/-, as the FMV of the entire property. In arriving at such FMV of property, Ld. DVO had ignored the FMV of the concerned property, arrived at by the Registered Valuer engaged by the assessee, vide the Valuation Report at Rs.1,25,84,000/-. Thus, three countervailing valuation exists as enlisted in the present case: -

- |    |  |   |                    |
|----|--|---|--------------------|
| a) | Stamp duty Value                           | - | Rs. 18,28,66,637/- |
| b) | Valuation by DVO                           | - | Rs. 3,61,45,350/-  |
| c) | Valuation by Registered valuer (assessee)- |   | Rs. 1,25,84,000/-  |

2.5. In the light of the fresh valuation, worked out by the Ld. DVO, the value differential stood at the following amount.

Departmental Valuation (DVO)	Deed Value	Difference	Utpal Dutta (50%)	Debangana Dutta (50%)
3,61,45,350/-	20,00,000/-	3,41,45,350/-	1,70,72,675/-	1,70,72,675/-

2.6. Before the Ld. CIT(A), by means of Valuation Report, furnished by the Registered Valuer as well as two successive submissions, assessee challenged the valuation of Rs.3,61,45,350/- so made by the DVO, being unrealistic, fictional, prejudiced and flawed. In substance, it was reiterated that the valuation method, applied by the Ld. DVO and for that matter the valuation of Rs.3,61,45,350/- determined calls for total rejection and in its place, the valuation of Rs.1,25,84,000/- determined by the Registered Valuer be upheld on merit. The Ld. CIT(A) had, accordingly, forwarded a copy of the DVO's Report to the Ld. AO. In the remand Report, Ld. AO had simply conveyed his acceptance of the DVO's Report and the value of Rs.3,61,45,350/-, reflected therein without presenting any comment on the assessee's contention.

2.7. In the remand report, assessee furnished his rejoinder by claiming as under:

(a) Ld. CIT(A) has never cared to take any cognizance of the Immovable Property Valuation Guideline, issued by the Ministry of Finance, Government of India 2009 /CPWD Valuation Rules. It was reiterated that the concerned Property had been fully tenanted. This had been corroborated by the Registered Deed of Conveyance itself. As a result, the Property, encumbered by the occupation of the Tenants, had been purchased. So, it had not been a vacant property. Even the DVO in his report had reiterated the same and also noted the presence of other limiting and adverse factors ( including it being adjacent to a slum area) associated therewith.

(b) This apart , the Valuation Report by Registered Valuer had highlighted the following special features of adverse nature and thus, having a diminishing impact on the valuation thereof :

Para No. of Valuation Report, furnished by Registered Valuer	Observation
1.4	The Appellant had been in occupation of the Property in the capacity of Lessee, since 1992 and the Property had been in occupation of several tenants.
2.4	The property in view of absence of any access way, had constituted a land-locked one. As a result, for entering the same, the property of another person would have to be made use of.
3.1	Do
3.5	The property had been almost occupied by the pre-existing tenants , and the Annual Rent had been Rs. 7.2 Lacs . All the cost and maintenance of the property was to be borne by the Appellant, as the owner.

4.2	Given the situation of the property, it had hardly any potentiality for future development
4.3	Given the said constraining factors and also the rental income, it would be rational, reasonable and legitimate to evaluate the Market Value thereof, by applying Rent Multiplier Method
Annexure to Valuation Report	List of Tenants, Total Area - 34500 Sq. Ft. Tenants occupying total area - almost the entire portion - Annual Rent Rs. 7.2 Lacs ( @ Rs. 61000/-pm)

(c) Registered Valuer, by means of rent capitalization at 8% arrived at the FMV of Rs.1,25,84,000/-. The assessee had accepted the same that the addition be restricted to Rs.52,92,000/- only for his share, computed as under: -

Particulars	Rs.	Appellant's share - 50% Rs.
Valuation arrived at by Registered Valuer	1,25,84,000/-	62,92,000/-
Deed Value	20,00,000/-	10,00,000/-
Addition to be restricted to	.....	52,92,000/-

2.8. In support of the Registered Valuer's Valuation Report determining the Value of Rs.1,25,84,000/-, the following points were reiterated.

a) On a perusal of the DVO's Valuation Report, it could be noticed that Land and Building Method of valuation had been followed by him and accordingly, he had arrived at a figure of Rs.3,61,45,350/- being the aggregate of prevailing market value of Land and construction thereon. Significantly, he had applied this "Land and Building" method of valuation, despite having observed in his annexure that the Property had been fully

tenanted and also impacted by various other limiting and adverse factors. He had not discussed the reason for adoption of this Land and Building Method of Valuation, despite having observed the existence of Tenancy and allied constraining factors.

b) On the other hand and to the contrary, the Registered Valuer in his Report had discussed the status of the Property thereafter, decided, vide Para 4.1 that given the status and condition of the property, it would be most appropriate to determine the market value, on the basis of Rent Multiplier Method, and accordingly, arrived at a valuation of Rs.1,25,84,000/.

3. Before us, Ld. Counsel for the assessee reiterated the above narrated facts and placed his arguments in support of adoption of Rent Multiplier Method of valuation as against the Land & Building Method adopted by the Ld. DVO. He submitted that Ld. DVO should have appreciated that the Property being fully occupied/under the control of the various Tenants and their occupancy rights being ongoing, their presence had left a substantial diminution in its capability to fetch the market value. He had arbitrarily, by ignoring such adverse factors, equated this encumbered property with a vacant property having the full potentiality to fetch the market value. Astonishingly, he had done so, even after noticing the status of the property.

3.1. Ld. Counsel thus claimed that the Registered Valuer had conducted a detailed survey of the property, discussed the status thereof in detail and on the totality of the facts, rightly concluded that Rent Multiplier Method would be fair, logical and just, for evaluation the Fair Market Value of the concerned Property. He had accordingly, arrived at figure of Rs. 1,25,84,800/- instead. According to Ld. Counsel, Ld. CIT(A) , without ever taking cognizance of the

submissions, evidence and court judgments, continued to observe that as the Valuation Report of the DVO determining the value of Rs.3,61,45,350/- had been in substitution of the Stamp Duty Value of Rs.9,14,33,318/-, initially adopted in assessment, and the AO had given effect to such modified valuation under sec. 154, the assessee could not be said to have any further grievance and as such, the appeal is without any merit and substance, and therefore, had become infructuous . Accordingly, the appeal had been dismissed leading the assessee to come up before the Tribunal.

3.2. Ld. Counsel asserted that Ld. CIT(A) should not have dismissed the appeal as infructuous, as the DVO's Valuation Report itself had been challenged and such challenge had been evidently kept alive before him till the end, through successive submissions and pleadings. He thus claimed that the DVO's Method of Valuation and the corresponding valuation being flawed, excessive and irrational, be replaced and substituted by the Method of Valuation and the corresponding valuation, so arrived at by the Registered Valuer, for it is founded on scientific, legitimate, appropriate assumptions and reasoning.

3.4. To buttress his contention, Ld. Counsel placed reliance on the following decisions :

(i) Jagannath Sailaja Chitta Vs. ITO- 308 CTR 713 - Madras High Court wherein it was held that if the Assessee disputes the DVO's Report the points of contention so raised must be adequately addressed by the Appellate Authority. Relevant extract is as under:

*"16. A bare reading of Scheme of s. 50C of the Act would show that assessee can object to presumptive value as per s.50C(1) and, therefore, it is only after hearing the objections of the assessee, the fair*

*market value of the capital asset as per 'guidance value' can be determined by the authorities. The assessee cannot be denied an opportunity to raise his objections even against the presumptive fair market value under s. 50C(1) of the Act or report of DVO under s. 50C(2) of the Act and the assessing authority or the appellate authorities, whose powers are co-extensive with those of the assessing authority, cannot refuse to meet those objections point by point ".*

(ii) Smt. Vimla Devi Samariaya Vs. ITO-ITA No. 348/JP/2018 Jaipur Tribunal wherein the Tribunal has observed as under:

*"21. Further, we find that once the assessee has raised the objections against the valuation so determined by the DVO, the Id. CIT(A) should have considered those objections and should have given his findings on merits. The DVO report is no doubt binding on the Assessing Officer but once the matter is before the ld. CIT(A) and the assessee is aggrieved with the report of the DVO so adopted by the Assessing Officer, the Ld. CIT(A) being the first appellate authority should have considered the assessee's objections and should not have been guided solely by the report of the DVO. In other words, the report of the DVO is binding on the Assessing Officer, however, the same is not binding and can be challenged before the appellate authorities. The law is very clear on this aspect as can be seen from the provisions of section 23A of the Wealth Tax Act which have been incorporated with necessary modification in section 50C of the Act".*

(iii) Arindam Mukherjee Vs. ITO, ITA No. 507/Kol/2015 dated 01.12.2017 wherein the Tribunal has held as under:

"7. We have heard the rival submissions. The Ld. AR reiterated the submission made herein above before the lower authorities. In response, the Ld. DR argued that AVO has determined the fair market value of the property based on commercial potentiality of the subject mentioned property and accordingly is justified in determining the value fixed thereon. The Ld. AR also placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Prafulla Kr. Bhowe vs. ITO in I.T.A. No. 316/Kol/2015 for assessment year 2007-08 dated 18.11.2015 wherein it was held that fair market value of the let out portion of the property is to be determined by taking into account rent actually received/receivable by the assessee. The Ld. DR defended this Tribunal's decision by arguing that in that case, the subject mentioned property was a residential property and not a commercial property. Hence, the same ratio cannot be made applicable to the facts of the instant case.

7.1. We find that the Ld. AVO had arrived at the value of Rs. 3602 per sq. ft which is worked out as under:

Rate as on 08.12.2011	Rs. 3091.00/Sq. Ft
Less @ 8% per year	(-) <u>Rs. 247.00/Sq. Ft</u>
Rate as on 07.12.2010	Rs.2844.00/Sq. Ft.
Less @ 8% per year	(-) Rs. 228.00/Sq. Ft
Rate as on 06.12.2009	Rs. 2616.00/Sq. Ft
Less @ 1.65% (From 06.12.09 to <a href="#">23.09.09=2.47months@.67%</a> per month)	Rs. 43.00/Sq. Ft
Rate as on 23.09.2009	Rs. 2573.00/Sq. Ft.

In fact, the Ld. AVO had back worked the value as on the date of sale on 23.09.2009 by taking into account the 50C value on 08.12.2011. We find that the Ld. AVO to this value of Rs. 2573 per sq. ft. had added 40% for commercial potentiality and accordingly added Rs. 1029 per sq. ft. Accordingly, he arrived with the fair market value of the property as on 23.09.2009 at Rs. 3602 per sq. ft. But we find that the said 50C value had been objected by the assessee in assessment year 2012-13 proceedings and reference to the ld. AVO was requested to the Ld. AO in assessment year 2012-13. The Ld. AVO had valued the subject mentioned property at Rs. 3,47,83,000/- which works out to Rs 1832 per sq. ft. In this scenario, it is pertinent to note that the value of this property on 08.12.2011 as per AVO's report was only Rs. 1832 per sq. ft. whereas the AVO had determined the value as on 23.09.2009 of the very same property at Rs. 3602 per sq. ft. This proves the fallacy and mistake committed by the ld. AVO beyond doubt. Hence, we hold that the Ld. AO ought not to have resorted to adoption of the said AVO's value ignoring the practical considerations connected with the subject mentioned property. Having said so, we are now left with fair market value based on registered valuer's report. At the same time, it cannot be ignored that reference to AVO was done at the instance of the assessee in terms of section 50C(2) of the Act. But we find that the fair market value could also be determined by an alternative method i.e. based on rental methods. In this regard, we find that the reliance has been rightly placed by this Tribunal wherein the ratio laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs. Asha Devi Agarwal was relied upon. We find that this Tribunal in the case of Prafulla Kr. Bhoose vs. ITO in I.T.A. No. 316/Kol/2015 for assessment year 2007-08 dated 18.11.2015 had held as under:

6. *We have heard the arguments of both the sides and also perused the material available on record. At the time of hearing before us, ld. Counsel for the assessee has raised a limited issue that while determining the fair market value of the assessee's property, the valuation of the portion occupied by tenant should be determined by applying the rent capitalization method taking the rent actually received by the assessee and not the fair market rent as done by the DVO. It is observed that this claim of the assessee is duly supported by the decision of the Hon'ble jurisdictional High Court in the case of Asha Devi Agarwal (supra), wherein it was held by Their Lordships that while estimating the value of a property on rental basis, only the rent, which is actually payable by the tenants to the owners of the*

*property, as the landlords should be taken into account. It was held that when the property is a tenanted property, the owner is entitled to collect only the rent payable by the tenants and a purchaser of such tenanted property would be in the same position as the vendor, i.e. original owner. It was held that a purchaser, therefore, would be restricted to collection of rent only from the tenants and the value of such property in the hands of the owner or transferee, if calculated on the rental basis, would have to be determined by the rent, which is available to them for collection. At the time of hearing before us, no authority has cited on behalf of the Department taking a contrary view on this issue. We, therefore, respectfully follow the ratio of the decision of the Hon'ble jurisdictional High Court in the case of Asha Devi Agarwal and direct the Assessing Officer/Departmental Valuation Officer to compute the fair market value of the let out portion of the assessee's property by taking into consideration the rent actually receivable by the assessee from the tenants. Ld. Counsel for the assessee has also contended that if the valuation of the let out portion of the assessee's property is done by taking into consideration, the actual rent receivable by the assessee from the tenants, the total fair market value of the property of the assessee as per such revised estimation would be less than the sale consideration of Rs.1,30,00,000/- shown by the assessee and there would be no case of making addition on account of capital gain. We direct the Assessing Officer to verify this contention of the ld. Counsel for the assessee and if it is found after recomputation of the valuation of the assessee's property that the fair market value is less than the sale consideration shown by the assessee, no addition shall be required to be made on this issue".*

Respectfully following the decision of this Tribunal, we hold that the fair market value of the property should be determined based on rental value only. If the value determined thereon is higher than the actual sale consideration reported by the assessee, then the value that was determined based on rental method should be considered as full value of consideration for the purpose of computing capital gains. If the value based on rental method is found to be less than the actual consideration reported by the assessee, then the actual consideration reported by the assessee should be considered as full value of consideration for the purpose of computing capital gains. With these directions we direct the Ld. AO to re-compute the capital gains and decide accordingly. Accordingly, grounds raised by the assessee are allowed for statistical purposes."

iv) He also placed reliance on the decisions of Coordinate Bench of ITAT, Kolkata in the case of Prafulla Kr. Ghose Vs. ITO in ITA No. 316.Kol/2015 dated 18.11.2015 and in the case of Surojit Ghose Vs. ITO in ITA No 1644/Kol/2018 dated 29.05.2019 wherein similar view has been taken in favour of the assessee for adopting Rent Multiplier

Method for the purpose of valuation of property which is occupied by tenants.

4. Per contra, Ld. CIT, DR placed reliance on the orders of the authorities below and submitted that substantial relief has already been given by Ld. CIT(A) by noting the fact of order passer u/s. 154 read with section 143(3) dated 17.03.2020 by the Ld. AO who has modified the assessment of total income by taking into account valuation report of the DVO. On the basis of valuation report by the Ld. DVO, income taxable u/s. 56(2) was modified to Rs.1,70,72,675/- as against addition made in the assessment order u/s. 143(3) at Rs.9,04,44,319/-. According to Ld. CIT, DR, since the assessment has been modified u/s. 154, Ld. CIT(A) has taken the right view that grievance of assessee no longer exists.

5. We have heard the rival contentions and perused the material available on record. We have gone through the various submissions made by both the parties. A direction was given to furnish the order passed u/s. 154 read with section 143(3) which is placed on record. We note that there are three countervailing valuation of the property, jointly purchased by the assessee along with his wife – (i) being value adopted for the purpose of stamp duty, (ii) being valuation arrived at by Ld. DVO based on land and building method and the (iii) being valuation by registered valuer appointed by the assessee which is based on Rent Multiplied Method.

5.1. The moot point before the Tribunal is in respect of which value to be adopted for the purpose of making an assessment against the addition made by invoking the provisions of Sec. 56(2) of the Act. Admittedly, the valuation arrived at by the Ld. DVO based on reference made by the assessee is ought to be taken. However, on its valuation by the Ld. DVO, assessee has lodged his grievance on the adoption of method for arriving at the valuation which according to

him, ought to be have been Rent Multiplier Method and not the Land & Building Method, since the property is fully tenanted and occupied by old tenants. This fact of tenancy is undisputed which has been noted and recognized by the Ld. DVO also in his valuation report in annexure – III “property description”. The property description made by the Ld. DVO is extracted below for ease of reference:

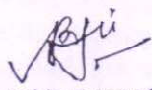
The immovable property known as Land of area 3 Bigha 2 cottah 11 chittack and 24 sqft. (out of which 52 cottah 11 chittack and 24 sqft. of land is semi commercial and 10 cottah of land is residential) together with tile and tin sheded 100 years old brick built residential building known as “Kanchari Bari” and other old tin and C.I.shed structures, C.I.sheds, Machine rooms, etc. standing thereon having total covered area 34,564 sqft. (out of which 7200 sqft. is residential) and having open area 10,595 sqft., is situated at Premises No.17/4, Canal West Road, P.S.- Narkeldanga, under KMC Ward No.28, Kolkata-700009,


During inspection it is observed that the subject property has entry problem due to absence of approach road. At present the subject property is being accessed through the property of other owner.

The subject property is fully tenanted and occupied by old tenants. The surrounding area of the subject property is not a good habitable area. A big slum area is beside the subject property.

The structures are old but some renovation is made by the present owner. The residential building (Kanchari Bari) is 100 years old dilapidated building.

All these factors have been considered during the estimation of the cost of the subject property.

  
ASSISTANT VALUATION OFFICER-V  
VALUATION CELL-INCOME TAX DEPARTMENT  
2<sup>ND</sup> FLOOR, 54/1, RAFI AHMED KIDWAI ROAD  
K

  
District Valuation Officer,  
Valuation Cell, I.T. Department,  
54/1, Rafi Ahmed Kidwai Road,  
Kolkata-700016.

5.2. From the above description, it is undisputed that property has entry problem due to absence of approach road and is not of good habitable area with big slum area beside the impugned property. It is fully tenanted and occupied by old tenants and residential building is 100 years old in dilapidated condition. Considering these factual

observations taken by the Ld. DVO on record, and in view of the judicial precedents referred and relied upon by the Ld. Counsel extracted above, we find it proper that the Fair Market Value of the property should be determined based on rental value only by considering Rent Multiplier Method. If the value determined thereon is higher than actual sale consideration reported by the assessee, then the value that was determined based on rental method should be considered as full value for consideration for the purpose of computing capital gains. If the valuation based on rental method is found to be lower than the actual consideration reported by the assessee, then the actual consideration reported by the assessee should be considered as full value of consideration for the purpose of computing capital gains. With these directions, we remit the matter back to the file of Ld. AO to obtain valuation report from the Ld. DVO by applying the Rent Multiplier Method and thereby recompute the capital gains and decide accordingly. Thus, grounds taken by the assessee in this respect are allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 29th November, 2023

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 29th November, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A), NFAC, Delhi. 4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata