IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "D" : DELHI]

BEFORE SHRI G. S. PANNU, HON'BLE VICE-PRESIDENT
A N D
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A No.1690/Del/2022
निर्धारणवर्ष/Assessment Years: 2018-19

Vishwa Mittel Bahl, **A-9, Vikas Marg,** **Nirman Vihar,** **New Delhi – 110 009.**	**बनाम** **Vs.**	ACIT, Circle Int. Tax: 1(1)(2) New Delhi.
PAN No. ADOPB1694C		
अपीलार्थी / Appellant		**प्रत्यर्थी/ Respondent**

निर्धारितीकीओरसे **/Assessee by :**	Shri G. S. Kohli, C. A.;
राजस्वकीओरसे **/ Department by :**	Shri Vizay B. Vasanta, [CIT] - D. R.

सुनवाईकीतारीख/ Date of hearing :	11/09/2023
उद्घोषणाकीतारीख/Pronouncement on :	08/12/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the final assessment order passed by the Assessing Officer under section

143(3) read with section 144C(13) dated 22.06.2022 read with directions of the DRP under section 144C(5) dated 10.05.2022 for the assessment year 2018-19.

2. The assessee in its appeal has raised the following substantive grounds:-

> "(1) (1) The learned DRP was not justified in rejecting the claim of Fair Market Value of property of Rs. 1,43,09,013/. as determined by Govt. Approved Registered Valuer. That an application of circle rate to determine market value of the property is contrary & unlawful in the relevant asstt. Year under appeal.
>
> (ii) That without prejudice to above the learned DRP & Assessing officer have failed to discharge their liability by not summoning the approved valuer in cross examination of certified value.
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> (iii) The assesse was never asked to furnish proof of Market Operating Rates of property if the same could not be accessed by the Learned DRP/assessing officer.
>
> (iv) That learned DRP failed to locate the weblink of valuation report & directed to apply circle rate is not valid in the eyes of law on account of:
>
> (a) Such link is quite readily available where the market rate is Rs. 20,000/- per square yard.
>
> (b) That an amendment so Section 55 held in Finance Act 2017 applicable to Asstt. Years 2018-19 that cost of acquisition of property acquired before 01/04/2001 shall be taken as FMV as on 01/04/2001.
>
> (2) (i) That an addition of Rs.50,00,000/ as unexplained investment u/s 69A is not justified where the bank statement on record proves that the total investment in NHAI bonds & fixed deposits made by the assesse during the year is Rs.1,00,000,00 & not Rs.,150,000,00/- as mentioned in the assessment order & appearing in Form 26AS.

> (ii) The Banker's certificate was also placed on record where the banker admitted that the total investment in time deposit was of Rs. 50,00,000/-only.
>
> (iii) It is astonishable how an addition of Rs. 1,00,000,00/- is held.
>
> (3) (i) That no remarks were given by the Id A.O. as well the Id. DRP in not allowing TDS of Rs 1,29,80000/-.
>
> (ii) That the credit has not been given of TDS challans of Rs.62,15,079/- provided by TDS Commissioner which were placed on record during the course of Assessment Proceedings.
>
> (4) The appellant could not file a rejoinder submission to the remand report as the same was neither available on the portal nor provided to the appellant by post."

3. Coming to ground No. 1 of grounds of appeal the assessee challenged the directions of the DRP in rejecting the claim of fair market value of the property as on 1.04.2001 at Rs.1,43,09,013/- as valued by the Govt. approved valuer and thereby denying the long term capital gain to the assessee and making an addition of Rs.1,15,18,983/- and also in denying the indexation while computing the capital gains.

4. Brief facts are that the assessee, an Individual filed his return of income on 30.03.2019 declaring income of Rs.3,89,561/-. A draft assessment order was passed under section 144C of the Act on 28.09.2021 proposing to deny the benefit of exemption of long term capital gain and making an addition of Rs.2,04,00,000/-. In the course of assessment proceedings the Assessing Officer noticed that the assessee has shown long term capital gain of Rs.1,60,79,485/- on sale of property for Rs.5,50,00,000/- and claimed exemption under

section 54 of the Act. In order to verify the long term capital gain, indexation, cost of acquisition and investments under section 54EC of the Act, the assessee was required to furnish documentary evidences substantiating the claim. However, as there was no compliance by the assessee and since the assessee did not furnish the required documents and evidences and in the absence of copy of purchase deed of the property the Assessing Officer denied the cost of acquisition claimed by the assessee while computing the long term capital gain and accordingly a draft assessment order was passed proposing to make an addition of Rs.2,04,00,000/-.

5. The assessee approached the DRP and before the DRP the assessee furnished copy of sale deed, purchase deed and copy of registered valuer's report etc. by way of additional evidence. The DRP admitted the additional evidence and called for a remand report from the Assessing Officer. The Assessing Officer submitted the remand report. Considering the remand report of the Assessing Officer and also the registered valuer's report of the assessee the DRP directed the Assessing Officer to adopt the fair market value of the property as on 1.04.2001 taking the circle rate as against the market operating rate adopted by the registered valuer for the purpose of computing long term capital gain. Accordingly the Assessing Officer passed final assessment order adopting the circle rate as fair market value of the property as on 1.04.2001 and computed the long term capital gains. The Assessing Officer also denied the cost of construction of the property observing that assessee has not provided any documents/invoices proving the construction of infrastructure on the land.

6. Before us the ld. Counsel for the assessee submitted that the claim for indexation and cost of acquisition was denied by the lower authorities on the ground that the assessee did not provide copy of purchase deed. The ld. Counsel referring to page Nos. 15 and 17 of the paper book submits that in fact a copy of purchase deed was furnished before the Assessing Officer in the course of draft assessment proceedings. The ld. Counsel also submits that even before the DRP a copy of the purchase deed was furnished by way of additional evidence. The ld. Counsel submits that the assessee has taken the fair market value as on 1.04.2001 at Rs.1.43 crores as valued by the Govt. approved valuer, however, the Assessing Officer adopted the circle rate on the directions of the DRP which is not at all correct. The ld. Counsel for the assessee also submitted that if the difference in valuation is more than 15% Assessing Officer should refer the valuation of property to DVO but since the Assessing Officer did not do so the registered valuer's report is to be accepted.

7. On the other hand, the ld. DR strongly supported the orders of the authorities below.

8. Heard rival submissions. We observe that in the remand report which was submitted by the Assessing Officer before the DRP the Assessing Officer was of the opinion that the valuation of the fair market value adopted by the registered valuer prima facie the value has been inflated. The Assessing Officer was also of the view that there is no logical explanation/basis such as price in a particular year which was taken as base by the valuer to arrive at the value of Rs.1,43,09,013/- as on 1.04.2001. The Assessing Officer also

observed that the purchase consideration of the property as on the date of purchase i.e. 20.09.1996 by late Smt. Amar Kaur, who is the mother of the assessee was for Rs.2,16,048/- which was valued at Rs.1,43,09,013/- as on 1.04.2001 within a span of 5 years and there is huge jump in the value of the property.

9. We noticed that the DRP observed that the increase in the land rate at 20% per sq. yd. which was adopted by the valuer has been taken on the basis of rates for residential plots for DLF Qutab Enclave and the valuation claimed that he has taken market operating rate based on the web-link. The DRP observed that the web-link for the data down-loaded are not given in the report and, therefore, there is no authentication for the rate of land taken by the valuer. Thus the DRP directed the Assessing Officer to take the circle rate of the property as fair market value as on 1.04.2001 for the purpose of computing capital gains.

10. On perusal of the report of the valuer we observe that the valuer has indeed given the link where the valuation adopted by him which is based on report contained in Chapter 4 titled 'Stamp Duty Evasion in Gurgaon Tehsil' for arriving at the valuation. The valuer also provided the link from where the report was down-loaded which report was said to have been prepared by Transparency International India in association with Sahyog Research Pvt. Ltd. Therefore, the observations of the DRP that there is no authentication of the rate of land adopted by the valuer appears to be not correct without down-loading the report and verifying the contents of such report. Even in the remand report the Assessing Officer is only suspecting that the valuer has inflated the value of the property without going into the

merits of the valuation adopted by the Govt. registered valuer. The observations of the Assessing Officer that there is no logical explanation/basis for taking the price in a particular year as base for arriving at the value of the property at Rs.1,43,09,013/- as on 1.04.2001 is misplaced as the registered valuer has given the basis for arriving at the fair market value of the property in his report.

11. We are of the view that if the Assessing Officer is not accepting the registered valuer's report, he should have referred the matter to the Departmental Valuation Officer to arrive at the fair market value as on 1.04.2001. Therefore, taking the totality of facts and circumstances into consideration we restore this issue to the file of the Assessing Officer with a direction to refer the valuation to the DVO to ascertain the fair market value of the property as on 1.04.2001 and compute the long term capital gain taking into the objections of the assessee by providing adequate opportunity of being heard. Ground No. 1 of grounds of appeal of the assessee is allowed for statistical purpose>

12. Ground No. 2 of grounds of appeal of the assessee is with respect to addition of Rs.50,00,000/- made under section 69A of the Act.

13. The ld. Counsel submits that the Assessing Officer has adopted the figure of Rs.1.5 crores as the investment of the assessee as per AS26. The ld. Counsel referring to page No. 78 of the paper book submits that the Bank of Maharashtra had issued a certificate confirming that term deposit of Rs.50,00,000/- was only made by Vishwa Mittel Bahl the assessee during the financial year 2017-18 to

SIT as per CBS records. Thus the ld. Counsel submits that the addition made by the Assessing Officer of Rs.50,00,000/- as unexplained investment under section 69A of the Act is not justified since the bank statement proves that the total investment in NHAI bonds and fixed deposits made by the assessee during the year is only Rs.1 crore and not Rs.1,50,00,000/- as appearing in Form 26AS. The ld. Counsel submits that this may be verified by the Assessing Officer.

14. The ld. DR has no objection.

15. On hearing both the sides and perusing the letter issued by Bank of Maharashtra dated 6.12.2022 which is placed as additional evidence before us clearly shows that term deposit of Rs.50,00,000./- only was made by the assessee during 2017 as per CBS records. Since this is an additional evidence, the same is admitted and we hereby restore this issue to the file of the Assessing Officer, who shall examine the documents and the contentions of the assessee for deciding the issue afresh. Needless to say an opportunity of being heard to the assessee be given. This ground is allowed for statistical purpose.

16. Coming to ground No. 3 of grounds of appeal the ld. Counsel submits that the Assessing Officer failed to give credit for TDS though the assessee furnished copies of TDS certificates.

17. On hearing both the sides, this ground is restore to the file of the Assessing Officer who shall consider the claim of the assessee in accordance with law after providing adequate opportunity of being heard. This ground is allowed for statistical purpose.

18. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on : **08/12/2023.**

Sd/-	Sd/-
(G. S. PANNU)	**(C. N. PRASAD)**
VICE-PRESIDENT	**JUDICIAL MEMBER**

Dated : 08/12/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI / DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	05.12.2023
Date on which the typed draft is placed before the dictating Member	06.12.2023
Date on which the typed draft is placed before the Other Member	08.12.2023

Date on which the approved draft comes to the Sr. PS/PS	08.12.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	08.12.2023
Date on which the fair order comes back to the Sr. PS/PS	08.12.2023
Date on which the final order is uploaded on the website of ITAT	08.12.2023
Date on which the file goes to the Bench Clerk	08.12.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	