

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

**BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**ITA No.180/Del/2020
(ASSESSMENT YEAR 2015-16)**

Baba Export House E-508, Greater Kailash New Delhi-110 048 PAN-AAAFB 0196J (Appellant)	Vs.	Asst. CIT Circle-30(1) New Delhi (Respondent)
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Appellant By	Sh. Mayank Patwari, CA & Sh. Anmol Jagga, CA
Respondent by	Sh. Kanv Bali, Sr. DR
Date of Hearing	21.12.2023
Date of Pronouncement	02.01.2024

ORDER

PER SAKTIJIT DEY, VP:

This appeal has been filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), New Delhi ["Ld. CIT(A)", for short], dated 25/10/2019 for Assessment Year 2015-16.

2. The Concise Grounds taken in this appeal are as under:

" That the present grounds are being filed as per the direction of the bench on hearing dated 19.12.2023. The grounds are as under:

1. *That the Ld. CIT(A) has erred in law and on facts in adopting the value of the property at B-6, Sector-8, Noida at Rs.6,38,58,500/- as per section 50C of the Act by taking into account the date of registration of sale instead of adopting the value of the said property at Rs.5,50,00,000/-, as it existed at the time of finalization of deal for sale.*
2. *That the Ld. CIT(A) has erred in law and on facts in adopting the revised circle rates which came into effect from 01.08.2014 to a sale deal agreed upon before such date.*
3. *That the appellant craves leave to add, alter, amend and delete any of the grounds of appeal.”*

3. The dispute in the present appeal is confined to taxability of long term capital gain on sale of immovable property.

4. Briefly the facts are, the assessee is a partnership firm and a resident. In the assessment year under dispute, assessee had sold two immovable properties, one of the properties was located at B-6, Sector-8, Noida and other one situated at B-39, Sector-8, Noida. The property at B-6, Sector-8, Noida was sold for total consideration of Rs.5,50,00,000/- through registered sale deed dt.12/01/2015. Whereas, the property at B-39, Sector-8, Noida was sold for Rs.1,10,00,000/- through registered sale deed executed on 07/05/2014. In the return of income filed for the assessment year under dispute the assessee offered income of Rs.5,55,93,560/- on

account of long term capital gain. In course of assessment proceeding, the Assessing Officer called upon the assessee to furnish the details/documents relating to the properties sold. While examining the sale deeds, the Assessing Officer noticed that though the property at B-6, Sector-8, Noida was sold for a consideration of Rs.5,50,00,000/-, however, in the registered sale deed the Stamp Valuation Authority (SVA) has valued the property at Rs.8,38,38,000/- for stamp duty purpose. Based on such information, the Assessing Officer called upon the assessee to explain why the value determined by the SVA should not be taken as deemed sale consideration in terms of section 50C(1) of the Act.

5. In response to the query raised by the Assessing Officer, the assessee submitted that though negotiations for both the properties were finalized keeping in view the circle rate of Rs.34,000/- per sq. mtr., which was prevailing at relevant point of time, however, by the time registration of property at B-6, Sector-8, Noida could take place, the circle rate was revised to Rs.40,000/- per. sqr. mtr. w.e.f. 1st August, 2014. It was submitted, since one of the partners of the assessee firm was suffering from terminal illness due to the cancer,

sale deed for the property at B-6, Sector-8, Noida could not be executed prior to 1st August, 2014, whereas, the property at B-39, Sector-8, Noida was sold prior to 1st August, 2014. It was submitted, the property at B-6, Sector-8, Noida was also surrounded by slums thereby affecting its price. It was further submitted, due to illness of the ex-partner funds were required, therefore, the properties were disposed off as distress sale. The Assessing Officer, however, was not convinced with the submissions of the assessee. Adopting the stamp duty value of Rs.8,38,38,000/-, the Assessing Officer added an amount of Rs.2,98,38,000/-, being the difference between the sale consideration shown by the assessee and the stamp duty value. The assessee contested the aforesaid addition before Ld. First Appellate Authority. By this time, the report of the Departmental Valuation Officer (DVO) has come to the record, as per which, the value of the property was determined at Rs.6,38,00,000/-. In course of proceedings before Ld. First Appellate Authority, the assessee also furnished a valuation report from a Government registered valuer, wherein, the value of the property was determined at Rs.5,36,00,000/-. After examining both

the valuation reports, Ld. First Appellate Authority adopted the value determined by the DVO at Rs.6,38,58,500/- Accordingly, he directed the Assessing Officer to compute the capital gain by adopting the value of the DVO.

6. Before us, learned counsel appearing for the assessee reiterated the stand taken before the Departmental Authorities. Whereas, Ld. Departmental Representative strongly relied upon the observations of the Ld. First Appellate Authority.

7. We have considered rival submissions and perused the materials on record. The crux of the issue arising for consideration before us is, what should be the fair market value (FMV) of the disputed property on the date of execution of sale deed on 12/01/2015. Facts on record reveal that the assessee had two properties at sector-8, Noida. One was at B-6 and other one at B-39. The property at B-6 was admeasuring 1218 sq. mtr. whereas the property at B-39 was admeasuring 341.54 sq. mtr.. The property at B-6 being larger in size was sold for consideration of Rs.5,50,00,000/- at Rs.45,156/- per sq. mtr.. Whereas, the

property at B-39, being relatively smaller one, was sold for consideration of Rs.1,10,00,000/- at Rs.32,258/- per sq. mtr. While Assessing Officer has accepted the sale consideration received qua the property at B-39, in respect of property at B-6, the Assessing Officer has computed capital gain by adopting the value determined by SVA at Rs.8,38,38,000/-. It is a fact on record that in course of assessment proceedings, the Assessing Officer had made a reference to the DVO for determining the FMV of the property. Since, the report of the DVO was not received in time, the Assessing Officer had proceeded to complete the assessment by adopting value determined by the SVA as deemed sale consideration. However, before the first Appellate Authority DVO report was available. Additionally, the assessee had also furnished a valuation report of the Govt. Registered Valuer. Thus, before us there are four valuations available for the disputed property, which are as under:

- (i) Value of the property as per assessee Rs. 5,50,00,000/-
- (ii) Value of the property as per SVA Rs.8,38,38,000/-
- (iii) Value of property as per DVO Rs.6,38,00,000/-
- (iv) Value of property as per Registered Valuer Rs.5,36,00,000/-

8. As could be seen from the various valuations available on record in respect of the very same property, the value determined by the SVA under no circumstances reflects the FMV as there is wide variation of more than Rs.2,00,00,000/- between the value determined by SVA and the DVO. It is further observed that the Govt. Registered Valuer has determined the value of the property at Rs.5,36,00,000/-. The difference between the sale consideration received by the assessee and the FMV determined by the DVO works out to only Rs.88,58,500/-, which is much less compared to the difference in valuation between SVA and DVO. It is fairly well known that the valuation of property involves some kind of guess work and estimation and there cannot be any consensus in the opinion of two valuers. This fact is very much evident from three different FMVs determined by three valuers.

9. Keeping in perspective the aforesaid factual position, if we examine the relevant facts, it is to be seen that the assessee has brought on record the mitigating circumstances resulting in sale of the property for the actual sale consideration of Rs.5,50,00,000/-. We have further noted that in the same locality the assessee had

two properties, one was sold at Rs.32,258/- per sq. mtr. and disputed property at Rs.45,156/- per sqm. The aforesaid facts show that the rate of property even in the same locality differs depending upon locational advantage and other factors. It is also revealed that though the Assessing Officer has brought to the notice of DVO certain sale instances in the same locality at higher price, however, DVO has not accepted them. These facts clearly establish that there can be difference in valuation of property at the same locality. Thus, considering the fact that difference in FMV as per actual sale consideration received by the assessee and DVO is much lesser in comparison to the difference in value as per SVA and DVO, in our view, deeming provisions of section 50C cannot be pressed into action. More so, when the registered valuer has valued the same property at Rs.5,36,00,000/-. Thus, considering the overall facts and circumstances of the case, we hold that the addition sustained by Ld. First Appellate Authority deserves to be deleted. Accordingly, we do so.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 02.01.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Dated: 02.01.2014

PK/sps

Copy forwarded to:

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

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

ASSISTANT REGISTRAR
ITAT NEW DELHI