

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.21/Del/2022
Assessment Year: 2017-18

Rajveer Singh House No.4 Krishna Garden Ganga Nagar, Meerut, Uttar Pradesh -250001	Vs.	DCIT Central Circle Gzbd Meerut
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Aayushi Gupta, CA Ms. Airik Singh, Advocate
Respondent by	Sh.Prakash Nath Baranwal, CIT DR

Date of hearing:	10/01/2024
Date of Pronouncement:	10/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A), Kanpur-4 dated 14.12.2021 pertaining to A.Y. 2017-18.

2. The grievance of the assessee read as under :-

“1. That on the facts and circumstances of the case and under the law, the Commissioner of Income Tax (Appeal) -4, Kanpur erred in

confirming the action of the assessing officer to make addition of Rs. 7,97,500/- to the income of the appellant by referring to the alleged report from DVO in respect of all the four different properties purchased by the appellant at the market value under four different documents. The addition made is based on surmises, conjectures and on hypothetical observations, the same is bad in law.

2. That on the facts and in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred in confirming the action of the assessing officer to make addition on the plea that the DVO has worked out higher value, while the report is a mere estimate by the DVO. The report of the DVO used by the assessing officer to make addition is not only unjustified, unwarranted and bad in law.

3. That on the facts and in law and under the circumstances, the assessing officer erred in making addition by using the report of the DVO which was never confronted to the appellant. No specific notice was issued nor any opportunity was allowed to submit explanations. The addition is based on surmises, conjectures and on hypothetical reasonings.

4. That the penalty initiated under section 271 AAB (1A) and thus interest charged under section 234A/B/C is thus illegal and bad in law.

5. That the appellant craves, leave to modify / amend or add any one or more grounds of appeal.”

3. At the very outset the Counsel for the assessee stated that the issue raised by the assessee have been considered by this Tribunal in the case of the co-owners of the impugned property namely Vinit Kumar and Vijay Kumar in ITA No.24/Del/2022 and 26/Del/2022. The Counsel pleaded for following the order of the coordinate bench.

4. Per contra the DR could not bring any distinguishing decision in favour of the revenue.

5. We have carefully considered the orders of the authorities below. The relevant findings of the AO read as under :-

"4. During the year under consideration the assessee had purchased an immovable property along-with three other co-owner jointly for a consideration of Rs. 1,24,82,000/- in which assessee's contribution for purchase of property was at Rs. 31,20,500/- being 1/4 share, However, the property was referred to the Departmental Valuation Officer for valuation of the property. The DVO Meerut has evaluated the value of property and determined the value of property at Rs. 1,28,54,000/-, vide his report dated 27.03.2018. Thus there are difference of Rs. 3,72,000/- in the value of property as per value determined by the DVO and value as per stamp duty rate. Thus the difference of value of the property as per DVO report and as per value estimated by stamp duty rate, i.e Rs. 3,72,000/- is liable to be added to the income of the assessee u/s 69 the I.T. Act, Since the assessee ownership is 1/4 share, therefore, an amount of Rs. 93,000/- is hereby added to the income of the assessee u/s 69.(Tax is to be charged as per section 115BBE. Penalty proceedings U/s 271AAB(1A) of the I.T. Act, 1961 are being initiated separately.

(Addition :Rs. 93,000/-)"

6. This Tribunal in the case of the co-owners Vinit and Vijay Kumar in ITA Nos.24/D/222 and 26/D/2022 has considered an identical situation as under :-

“6. Brief facts of the case are that in this case the assessee has purchased four properties at circle rates with his brothers and has 1/4th share in all four properties. The Ld. AO has referred the valuation of the property purchased by the assessee to the Department Valuation Officer and assessed the difference between the purchase price i.e. circle rate/stamp duty value and the value determined by the DVO amounting to Rs.7,97,500/- treated as income of the assessee u/s 56(2)(vii) r.w.s. 69 of the Act.”

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8. It is amply clear that this section can be invoked only if the consideration at which the property is purchased is less than the stamp duty value of such property. Further, this section can be invoked only if the circle rate of the property was more than the price at which the property was purchased and the property can be referred to DVO only if the assessee disputes the stamp duty value of the property. Thus, it is the plea of the assessee that invocation of section 56(2)(vii) is itself wrong.

7. On finding parity of facts respectfully following the decision of the Coordinate Bench in the case of co-owners (supra). We direct the AO to delete the addition. The appeal of the assessee is allowed.

8. Decision announced in the open court on 10.01.2024.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

NEHA

Date:- 10.01.2024

Copy forwarded to:

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

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI