

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

**BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1516/Del/2022
(ASSESSMENT YEAR 2019-20)**

Sudarshan Arora 38, Balcakie Close Edgbaston Birmingham United Kingdom PAN-BVEPA 1049K (Appellant)	Vs.	DCIT International Taxation Gurgaon (Respondent)
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Assessee by	None
Department by	Shri Sanjay Kumar, Sr. DR

Date of Hearing	14/11/2023
Date of Pronouncement	08/02/2024

ORDER

PER M. BALAGANESH AM:

The present appeal has been preferred by the Assessee against the final assessment order dated 29/04/2022 passed U/s 143(3) r.w.s.144C (13) of the Income Tax Act, 1961 (hereinafter called 'the Act') subsequent to the direction of the Ld. Dispute Resolution Panel (DRP) vide direction dated 24/02/2022 for AY 2019-20.

2. None appeared on behalf of the assessee despite sending several notices in physical mode as well as in electronic mode. This goes to prove that assessee is not interested in persecuting this appeal. Hence we proceed to dispose of this appeal on hearing the Ld. DR and based on materials available on record.

3. The assessee has raised the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case, the order passed by the Ld. DCIT/ACIT is bad both in the eye of law and on the facts.

2. That on the facts and circumstances of the case, the Ld. A.O. has erred both on facts and in law in disallowing the expenses of cost of construction and constructed are of the property.

3. That the Ld. A.O. has wrongly and illegally not considered the valuation report by the Govt. approved value furnished on support of claim on cost of construction and constructed are of the property.

4. That the Ld. A.O. has wrongly and illegally disallowed the claim on cost of construction and constructed area of the property on the basis of valuations report has having discrepancies/ short comings.

5. That the Ld. A.O has wrongly and illegally rejects the valuation report of an expert and then selectively quotes from it to suit its purpose of reducing value of construction. If the document was found unworthy of reliance then it could not have been selectively accepted partly only, as a support to reduce value of construction. The Ld. A.O finds valuation of expert valuer unworthy of taking cognizance as any evidence, but in the same breath goes on to rely upon the same extensively to quote about the state of material used or plumbing etc. to justify his own cost. This is not in accordance with the settled principles of appreciation of evidence which require a document either to be rejected in entirety or worthy of acceptance and not of part acceptance out of context ignoring the overall purpose of submission of document as well as final conclusions drawn in it. The order therefore, suffers from fatal error which vitiates it in entirety and make is unsustainable.

6. That the Ld A.O is bad in law and erred while passing the order of assessment that the Valuer was income tax department approved valuer

engaged by an Appellant (NRI lady) of U.K. sitting there . Any procedural deficiency in his certificate could not have been a ground of denying substantive benefit to the assessee, unless the authenticity and existence itself was doubted as fake by the department.

7. *That the Ld. A.O. has wrongly and illegally not relied the valuation report and made an addition of 81,36,226/- under the head of capital gain.*

8. *That the appellant craves leave to add, owned or taller any of the grounds stated herein above either before as at the time of hearing of appeal.*

RELIEF CLAIMED/PRAYED

It is therefore, respectfully prayed that this Hon'ble Court may kindly be please to deleted the additions made by the Ld. A.O. and set aside the order of assessment.

Any other order/relief which this Hon'ble Court deem fit and appropriate in the circumstances of the case may also be passed in favour of the Appellant.”

4. We have heard the Ld. DR and perused the materials available on record. The assessee is a Non-Resident Indian and had filed her return of income for the Asst Year 2019-20 on 16.9.2019 declaring total income of Rs 49,83,400/-. The ld.AO observed that the assessee had sold residential property bearing House No. 34, Sec-14, Gurugram measuring 250 sq. yards at a total sale consideration of Rs 1,80,00,000/- during the financial year 2018-19. The assessee claimed cost of acquisition of Rs 13,28,250/- being the fair market value as on 1.4.2001 and arrived at the indexed cost of acquisition at Rs 37,19,200/-. The assessee also claimed cost of

construction of Rs 32,95,000/- and indexed the same and arrived the figure at Rs 91,39,333/-. The assessee also claimed certain expenses on transfer of property at Rs 1,70,000/-. The assessee declared long term capital gain (LTCG) of Rs 49,71,567/- in the return of income. The ld. AO framed the draft assessment order disallowing the indexed cost of construction of Rs 81,36,226/- (original cost of Rs 29,33,350/-) for want of documentary evidences. The assessee filed objections before the Hon'ble Dispute Resolution Panel (DRP) which directed the ld. AO to verify the factual claim of the assessee including verification of valuation report filed by the assessee in support of the cost of construction claimed by the assessee. The ld. AO in the final assessment order disallowed the claim of cost of construction on the ground that the valuation report submitted by the assessee consisted of various discrepancies and shortcomings.

5. The assessee in the statement of facts filed along with the grounds of appeal before us had stated that the cost of construction claimed by the assessee is supported by a valuation report issued by a Government approved valuer which had been ignored by the

ld. AO on selective basis and that the very same valuation report had been relied by the ld. AO to justify his conclusions on certain aspects regarding the material used for plumbing etc. In our considered opinion, if the ld. AO had found some deficiency in the valuation report furnished by the assessee, then it should be rejected outright and he could have referred the matter to the file of ld. Departmental Valuation Officer (DVO) for determining the fair market value of the property including the cost of construction. This has not been done admittedly by the ld. AO in the instant case. Considering the fact that the assessee is stationed in United Kingdom and also considering that the ld. AO had not brought on record the alternative valuation report issued by the ld. DVO, we deem it fit and appropriate to restore this issue to the file of ld. AO for denovo adjudication in accordance with law. The ld. AO is directed to refer the matter to ld. DVO for ascertaining the fair market value of the cost of construction of the property as on 1.4.2001 and the ld. AO accordingly should give the benefit of indexation on that value. The assessee is also at liberty to furnish fresh evidences, if any, in support of her contentions. Accordingly,

the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 8th February, 2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 08/02/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI