

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: D :NEW DELHI  
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2339/Del/2022  
Assessment Year: 2019-20

Meeta Bhagat,  
A-1/266, Safdarjung Enclave,  
New Delhi – 110 029.

Vs

ACIT,  
Circle, International Taxation,  
New Delhi.

PAN: AFCPB9411K

(Appellant)

(Respondent)

Assessee by : Ms Lalitha Krishnamurthy, CA  
Revenue by : Shri Vijay B. Vasanta, CIT-DR &  
Shri Sandeep Km. Mishra, Sr.DR

Date of Hearing : 23.02.2024  
Date of Pronouncement : 26.02.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the final assessment order dated 25.07.2022 of the Assistant Commissioner of Income Tax, Circle, International Taxation 1(1)(2) passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') for Assessment Year 2019-20.

2. The assessee is a non-resident Indian residing in Singapore. The assessee had filed her ITR declaring total income of Rs.56,83,560/- and the case of the assessee was selected under CASS. The AO had called for relevant information

by issuing certified notices, but, there were no response and, accordingly, on best judgement the AO examined the data available on ITBA system/Form 26AS and SFT submissions and examining the capital gain arising out of sale of two properties additions were made in the draft assessment order. The assessee had moved DRP filing objections and the DRP issued certain directions on the basis of which the final assessment order was passed. Aggrieved, the assessee is in appeal raising the following grounds:-

*“1. That the Ld. A.O. has erred in law in issuing notice under section 143(2) of the Act dated 31.03.2021 beyond the time limit as prescribed under proviso to section 143(2) of the Act for the purpose of making assessment under section 143(3) of the Act which renders the notice void ab initio and bad in law.*

*2. That the Ld. AO has erred in applying the provision of section 144C of the Act and thereby passing draft assessment order without even considering that the assessee cannot be held to be an "eligible assessee" as per section 144C(14)(b) of the Act which is highly arbitrary, unjustified, uncalled for and bad in law.*

*3. That the assessment order dated 25.07.2022 passed by the Ld. AO is barred by limitation and hence void-ab-initio.*

*4. That the Ld. AO and Hon'ble DRP have erred in law and facts of the case in rejecting the valuation report furnished by the assessee on mere whims and fancies without appreciating that circle rates have only been introduced in the year 2007 and hence adoption of circle rates is highly perverse and bad in law.*

*5. That the Ld. AO has erred in law and facts of the case in completely ignoring the cost of construction adopted under the valuation report dated 22.08.2019 which is completely arbitrary, unjustified and bad in law.*

*6. That without prejudice to above grounds, the Ld. AO has erred in law and facts of the case in adopting rate prescribed in schedule of market rates of land in Delhi/ New Delhi applicable for conversion at Rs.13,283/- instead of circle rates as directed by the Hon'ble DRP being completely unjustified and bad in law.*

7. *That the Ld. AO has erred in law and facts of the case in making addition of Rs.2,05,26,196 with respect to income from Long Term Capital Gain earned by the assessee during the year over and above the amount declared and offered for tax in the Income Tax Return, which is highly arbitrary, unjustified, uncalled for and bad in law.*

8. *That the Ld. AO/DRP has erred in not considering the documents filed by the assessee during the course of proceedings and making the addition in arbitrary manner, which is highly unjustified, uncalled for and bad in law.*

9. *The Ld. AO had erred in initiating penalty under section 270A of the Act which is highly unjustified and bad in law.*

10. *The appellant company craves the right to add, amend or modify any ground of appeal.”*

3. Heard and perused the record. At the outset, we observe that grounds No.1-3 are stated to be not pressed and the ld. AR has submitted that grounds No.8 and 9 are consequential in nature. As regards grounds No.4-7, the ld. AR has made submissions primarily questioning the rejection of valuation report furnished by the assessee and adopting circle rates in regard to indexation of the property. The ld. AR has also submitted that the directions of the DRP have not been followed by the AO at the time of passing final assessment order. Ld DR however relied the orders of Ld. Tax authorities below.

4. It comes up on the basis of the material before us and the submissions that the assessee had sold basement of D4/5, Vasant Vihar, New Delhi, for a sale consideration of Rs.5,84,00,000/- on 07.12.2018. The assessee had claimed

to have paid a brokerage of Rs.17,20,800/-. The copy of the invoice of the brokerage is made available at page 144 of the paper book.

4.1 Further, as per the valuation report of the Registered Valuer provided at page 59 of the paper book, the assessee had claimed indexed cost of the rear basement at Rs.1,83,84,394/- on the assertion that this rear basement was purchased by the assessee for Rs.7 lakhs vide agreement to sell dated 15.07.1994, the copy of which is placed at pages 39-53 of the paper book. The assessee submitted that the valuation report of the registered valuer should have been relied and the Id. AO has erred in taking purchase cost treating the property to be acquired after 01.04.2001.

4.2 As regards the front basement, the assessee has claimed cost of acquisition of asset at Rs.90,55,508/-. Thus, after taking the brokerage of Rs.17,22,800/- and indexed cost of the rear basement as per the valuation report at Rs.1,83,84,394/- and the front basement after indexation at Rs.90,55,508/-, a long-term capital gain on sale of basement of Rs.2,92,37,297/- is made out.

4.3 It comes up that the Id.AO has disallowed the brokerage expenses on the basis that the invoice is shown to be raised for ground floor of D4/5, Vasant Vihar, New Delhi and not for the basement. It was submitted that a clarification of the broker Satia Homes Pvt. Ltd, dated 31.03.2023 is made available at pages 145 of the paper book certifying that this invoice No.14 dated 04.12.2018 for

Rs.17,22,800/- was issued to the assessee on account of brokerage on sale of basement of D4/5, Vasant Vihar, New Delhi and there was a typographical error in mentioning it as ground floor. It is submitted that the assessee has no ownership interest in ground floor of D4/5, Vasant Vihar, New Delhi.

4.4. We are of the considered view that this question of fact needs to be inquired into and, accordingly, subject to verification, this issue is restored to the files of Id. AO.

5. Next regard to the issue of fair market value of the rear basement, we are of the considered view that before the DRP, the assessee had brought on record evidences indicating that the assessee had acquired interest in the rear basement by way of agreement to sell dated 15.04.1994. The fact that this property was rented out and Form 16A against the rent paid by Israel Aircraft Industries Ltd. for the period 01.04.1996 to 31.03.1997 was sufficient piece of evidence to show that the rear basement was acquired before 01.04.2001. Thus, there was no justification for the DRP to disregard the registered valuer's report and instead direct AO to accept the circle rates. Thus, the directions of the DRP to the AO to apply circle rate is also not sustainable and, to that extent, the DRP directions and the findings of the Id. AO in the final assessment order require to be reversed with the direction that the indexed cost of rear basement should be taken, on the basis of the valuation report as provided by the assessee, as per law.

6. Furthermore, the assessee has sold the second floor of D4/5, Vasant Vihar, New Delhi, in which she had 50% of the share by way of sale deed dated 07.12.2018 for a sale consideration coming to her share at Rs.6,87,50,000/-. The assessee has claimed that there was a brokerage of Rs.20,28,125/- and a copy of invoice is made available at page 143 of the paper book. It is submitted that brokerage is not allowed in full, but, only to the extent of Rs.10,14,062/- being 50%, according to the share in the consideration. The claim of the assessee is that the assessee has been charged brokerage of Rs.20,28,125/- in respect of her 50% share in the second floor and the AO ought to have allowed the same in full. A clarification of the broker Satia Homes Pvt. Ltd. dated 31.03.2023 is provided at page 145 certifying and confirming that the assessee was owner of 50% of second floor of D4/5, Vasant Vihar, New Delhi for which separate tax invoice No.18 dated 04.12.2018 for Rs.20,28,125/- was issued on account of brokerage to the assessee and the same was paid by her. This amount was inclusive of GST @ 18%. This brokerage amount pertains only to 50% share in the second floor of D4/5, Vasant Vihar, New Delhi.

6.1 We are of the considered view that the facts as brought before us require verification and, therefore, in regard to disallowance of brokerage, the issue is restored to the file of ld. AO for giving an opportunity to the assessee and allow the same in totality, if found verified.

7. Further, it is submitted on behalf of the assessee that the stamp duty paid by the assessee for purchase of second floor have not been considered by the AO in the cost of acquisition. In this context, it comes up that ld. DRP had given a direction in para 3.5 of its order that the AO shall verify and include stamp duty in the cost of acquisition. However, the ld. AO has not taken into consideration the stamp duty.

7.1 It is submitted on behalf of the assessee that stamp duty of Rs.10 lakhs was paid at the time of sale deed on 09.02.2009, in regard to front portion of the second floor on and a stamp duty of Rs.7 lakh was paid on the purchase of rear portion of the second floor by sale deed dated 07.02.2009 and, thus, for arriving at the cost of acquisition for second floor, this amount of Rs.17 lakhs should have been considered.

7.2 We are of the considered view that apparently, the ld. AO has failed to take note of the directions of the DRP in this regard and, accordingly, we direct the AO to give benefit of the stamp duty for arriving at the cost of acquisition in regard to second floor.

8. As a consequence of the aforesaid discussion, the grounds No.4-7 are cumulatively decided in favour of the assessee. The appeal of assessee is allowed with consequential effects to follow as per the directions above.

Order pronounced in the open court on 26.02.2024.

Sd/-

(G.S. PANNU)  
VICE PRESIDENT

Dated: 26<sup>th</sup> February, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi