

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.614/KOL/2024  
Assessment Year: 2014-15**

Manick Chandra Paul Block CF-220, Sector-1, Bidhannagar, Salt lake City, Kolkata-700064. (PAN: AKGPP9583P)	Vs	DCIT, Circle-8(1), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri S. K. Tulsian, Advocate  
Respondent by : Shri Chandan Das, Addl. CIT, Sr. DR

Date of Hearing : 18.06.2024  
Date of Pronouncement : 02.07.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2014-15 dated 12.02.2024 passed against the assessment order u/s. 143(3) of the Act by the DCIT, Circle-8(1), Kolkata (hereinafter referred to as the "AO") dated 24.10.2016.

2. The assessee has raised the following grounds of appeal:

*"1. That, on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC, Delhi without properly appreciating the reasons behind filing of the revised computation of income during the assessment proceeding has arbitrarily and unjustifiably upheld the computation of income as made by the Ld. A.O. in the assessment order u/s 143(3) of the Act without accepting and considering the revised computation.*

2. That, the Ld. CIT(A) further erred on facts and in law in upholding the action of the Ld. A.O. in not having accepted and denied to have taken any cognizance of the valuer's report submitted by the assessee from a Govt. Regd. Approved Valuer for the purpose of indexed cost of acquisition and FMV of the property sold simply on the suspicion of guess work and to provide undue tax advantage to the assessee.

3. That, the Ld. A.O. while not accepting the valuation report from a Govt. regd. valuer allegedly made on an estimate basis erred in law in not having referred the valuation of the said property to the DVO as required u/s 55A r.w.s. 142A of the Act before finally computing the capital gains/loss in the hands of the assessee and the Ld. CIT(A) has illogically upheld such unlawful action of the AO on the sole allegation that the valuer visited the property after the assessee sold the same.

4. That, without any prejudice to the above, the Ld. CIT(A) erred in having upheld the LTCG worked out by the Ld. AO on estimate basis at Rs.36,18,119/- as against loss of Rs.9,238/- claimed in the revised computation on the basis of the valuation report of the Govt. regd. valuer in respect the property at Jhalda (Purulia) on the sole satisfaction that the A.O. has rightly not accepted the valuer's report submitted by the assessee and this action of the Ld. CIT(A) is unsustainable in law and liable to be quashed.

5. That, the Ld. CIT(A) erred in not having allowed set off of LTCL of Rs.2,07,054/- on sale of Dag Nos. 206 & 207 of Aurangabad Rs.42,652 property on the sole ground that the loss arose in F.Y. 2011-12 (Gr. Nos. 5 & 6) though not claimed in that year cannot be claimed in F.Y. 2013-14 in view of provisions of sec. 80 of the Act when as per CBDT Circular No.14 (XL-35) dated 11.04.1955, even a concession by a tax-payer does not give authority to the tax collector to recover more than what is actually due from the tax-payer under the law.

6. That, the Ld. CIT(A) was also not justified in not entertaining the LTCL Rs.2,07,054/- claimed in F.Y. 2013-14 when the transaction entered into during F.Y. 2011-12 was completed in F.Y. 2013-14 and as per settled position in law, date of registration of an immovable property is not a conclusive test of transfer because the date of acquisition/transfer has to be understood in the context of extended definition of "transfer" u/s 2(47) of the Act.

7. That, the Ld. CIT(A) erred in having upheld the LTCG on sale of property at Aurangabad (Dag No. 211) estimated by the A.O. at Rs.32,31,633/- as against Rs.93,495/- claimed in the revised computation of income based on valuation report from a Govt. regd. approved valuer in spite of the fact that despite objections raised by the Ld. A.O. against the said valuation report, he did not refer the matter to the DVO to meet the ends of justice.

8. That, therefore, as the order of Ld. CIT(A), NFAC, Delhi on the above issues suffers from illegality and is devoid of any merit the same should be quashed and your appellant be given such relief(s) as prayed for.

9. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. Briefly stated the facts noted from Form No.35 and the record are that the assessee filed the return of income showing total income of

Rs.16,64,720/- and had inherited properties at Jhalda (Purulia) and Aurangabad bearing Dag Nos. 206, 207 & 211 from his father, who acquired the same before 01.04.1981. For the property at Jhalda, in the original computation of income, the assessee computed the capital loss on the basis of actual consideration of Rs.35,00,000/- received by him which was less than the value adopted by the stamp duty authority. He had shown the stamp duty value of the property at Rs.35,00,000/- and the Fair Market Value (FMV) as on 01.04.1981 at Rs.2,47,500/- on estimated basis without obtaining any report from the registered valuer. He, accordingly, showed long term capital loss of Rs.4,20,418/- in the original computation on the sale of the impugned property on 09.12.2013. Thereafter, the assessee obtained valuation report dated 03.10.2016 of the property from a registered chartered valuer and during the scrutiny assessment proceedings, he accordingly rectified the FMV as on 01.04.1981, which was taken earlier at Rs.2,47,500/- on estimated basis, to Rs.6,33,800/- as per the registered valuer's report. In the revised computation, the assessee had shown capital loss of Rs.9,238/- on account of sale of the said property by showing value of the property at Rs.59,42,144/- as considered by the stamp duty authority and indexed cost of acquisition of the property at Rs.59,51,382/- on the basis of the FMV determined by the registered valuer, resulting in decrease of capital loss from Rs.4,20,418/- to Rs.9,238/-. The Ld. A.O. did not accept the revised computation of capital loss as well as registered valuer's report submitted by the assessee on the plea that the valuation report is a guess work and an afterthought, which was made without any basis. On the above premise, the Ld. AO took the indexed cost of acquisition as shown by the assessee in his original computation at Rs.23,24,025/- and stamp duty value of Rs.59,42,144/- and, accordingly, recomputed the LTCG at Rs.36,18,119/- in respect of the said property, which was added to the total income. For the property at Aurangabad (Dag Nos.206 & 207), the

property was sold on 19.03.2012 relevant to F.Y. 2011-12 vide registered sale deed at a total consideration of Rs.18,00,000/-. The registering authority adopted the value at Rs.28,14,411/-. As per the valuation report of the registered valuer, the FMV was taken at Rs.3,84,900/- as on 01.04.1981 and the indexed cost of acquisition was arrived at Rs.30,21,465/-. Based on the valuation report, the assessee claimed capital loss on account of the sale of the said property at Rs.2,07,054/-. As the transaction was finally completed in the F.Y. 2013-14, the assessee has claimed the said capital loss of Rs.2,07,054/- during the F.Y. 2013-14, which he did not claim during the F.Y. 2011-12. The Ld. A.O. did not entertain such claim and disallowed the capital loss on the ground that the assessee had not claimed such loss during FY. 2011-12, when the sale deed was registered. The assessee claimed the loss in the A.Y. 2014-15. Even as per contention of the A.O., the assessee was entitled to claim the said loss in the A.Y. 2012-13, which has been carried forward and adjusted in the current A.Y. 2014-15. Therefore, even though the assessee may have claimed the loss in the wrong year, he shall still be entitled to set off of the said genuine loss and the A.O. should not take advantage of the bona fide mistake of the assessee as per CBDT vide circular No.14(XL-35) dated 11.04.1995, it is so stated. That not being done, the action of the A.O. in not entertaining the genuine capital loss for computing income of the year under appeal suffers from illegality. For the property at Aurangabad (Dag No. 211), in the original computation of income, the assessee computed the capital gains on account of sale of the property on 06.12.2013 on the basis of actual consideration received by him as stamp duty value of Rs.27,00,000/- and FMV as on 01.04.1981 at Rs.6,42,700/- on estimated basis without obtaining any report from the registered valuer, which was less than the value adopted by the stamp duty authority at Rs.56,52,375/-. Thereafter, the assessee obtained valuation report dated 03.10.2016 of the property from a registered chartered valuer and

during the scrutiny assessment proceedings, he accordingly rectified the FMV as on 01.04.1981 taken earlier at Rs.6,42,700/- on estimated basis to Rs.5,92,000/- as per the registered valuer's report. In the revised computation, the assessee had shown capital gains on account of sale of the said property by showing value of the property at Rs.56,52,375/- as considered by the stamp duty authority and indexed cost of acquisition of the property at Rs.55,58,880/- on the basis of the FMV determined by the registered valuer and thus offered capital gains of Rs.93,495/-. The Ld. A.O. has not accepted the revised computation of capital gains as well as the registered valuer's report submitted by the assessee on the plea that the valuation report is a guess work and an afterthought which was made without any basis. On the above premise, the Ld. A.O took the FMV of the said property at Rs.2,57,800/- and indexed cost of acquisition at Rs.24,20,742/- and recomputed the capital gains at Rs.32,31,633/- for the purpose of computation of income as against that declared by the assessee at Rs.93,495/-. The Ld. A.O. did not consider the valuation report of the registered valuer submitted during the assessment proceedings valuing the FMV of the aforesaid properties as on 01.04.1981 and the indexed cost of acquisition of the said properties. Despite the objections raised, the Ld. A.O. did not refer the matter to the DVO as was statutorily required. Hence, the computation of capital gains made by the Ld. A.O. on the sale of the aforesaid properties has no legal sanctity and is liable to be quashed, it was so submitted before the Ld. CIT(A).

4. Being aggrieved, the assessee preferred appeal before the Ld. CIT(A). In the appeal, the Ld. CIT(A) while dismissing the grounds no. 2 and 3 of the appeal of the assessee in respect of denial of the valuation report submitted by the assessee from the registered valuer, observed that the Ld. AO had rightly rejected to admit the valuation report submitted by the assessee. The valuer visited the house on 03.10.2016 whereas the assessee sold the property on 09.12.2013. According to Ld.

AO, it meant that valuation was done after a lapse of three years from the transfer of property. Therefore, according to the Ld. CIT(A), the estimation of the cost of the property is not correct as it is a guess work, based on surmises and conjectures. In view of the same, there is no strength in the argument of the assessee and hence, the addition made by the AO was upheld by the Ld. CIT(A). The Ld. CIT(A) also dismissed the grounds of appeal of the assessee on account of computation of LTCG at Rs.36,18,119/- as against the loss claimed by the assessee at Rs.9,238/- because the valuation report submitted by the assessee was not considerable as the said report was prepared without any basis after a lapse of three years after its sale. The report was prepared by the valuer only on the basis of the verbal information provided by the owner without any documentary evidence. It is claimed that while filing the return of income, the assessee valued the properties as per the SRO rates and these are the authenticated values and the assessee has claimed indexed cost of the acquisition based on the SRO values. In view of the above, the Ld. CIT(A) was of the view that he has no reason to interfere with the observations of the AO and the working of the LTCG made by the AO was upheld. On account of disallowance of capital loss of Rs.2,07,054/- of earlier year, the Ld. CIT(A) dismissed the ground of appeal of the assessee by observing that the assessee has not made the long term capital loss in the return of income filed for the A.Y 2012-13 however, he incurred the loss on the transaction. As per the provisions of Sec. 80, no loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139, shall be carried forward and set off under Sec. 72 or sub-section (2) of section 73 or sub-section (2) of section 73A or sub-section (1) or sub-section (3) of section 74 or sub-section (3) of section 74A. In view of the above, the Ld. CIT(A) had no reasons to interfere with the observations of the Ld. AO and he dismissed the grounds of appeal of the assessee in this regard. The Ld. CIT(A) also dismissed the ground of

appeal of the assessee with regard to computing the LTCG of Rs.32,31,633/- as against Rs.93,495/- claimed by the assessee in the revised computation in respect of Dag No. 211 of Aurangabad Property ignoring the valuation report of the registered valuer. The Ld. CIT(A) while dismissing the ground of appeal of the assessee has observed that the AO has rightly pointed out that the assessee had changed the calculation of capital gains as per his requirement. In the original computation of income, the assessee adopted the FMV at Rs.6,42,700/- against the value mentioned in the sale deed at Rs.27,00,000/-. Once the provisions of sec. 50C were adopted, the assessee immediately enhanced the FMV placing a valuation report to suit his requirement. In view of the above, he had no reason to interfere with the decision of the Ld. AO and accordingly, dismissed this ground of appeal of the assessee. Aggrieved, the assessee is in appeal before this Tribunal.

5. We have heard the Ld. AR as well as the Ld. DR. It was argued by the Ld. AR that the Ld. AO refused to accept the registered valuer's report for the cost of acquisition and he has relied upon section 55A to emphasize that in case the AO was not in agreement with the valuation made by the registered valuer, he ought to have referred the property for valuation by the departmental valuer. In this respect the provisions of section 55A are reproduced as under:

*"[55A. Reference to Valuation Officer.—*

*With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the 7 [Assessing Officer] may refer the valuation of capital asset to a Valuation Officer—*

*(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the [Assessing Officer] is of opinion that the value so claimed [is at variance with its fair market value];*

*(b) in any other case, if the [Assessing Officer] is of opinion—*

*(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or*

*(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,*

*and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the [Assessing Officer] under sub-section (1) of section 16A of that Act.*

*Explanation.—In this section, “Valuation Officer” has the same meaning, as in clause (r) of section 2 of the Wealth Tax Act, 1957 (27 of 1957).”*

6. The Ld. AR stated that if the Ld. AO does not refer to the DVO as he is duty bound to refer, he should have accepted the registered valuer's report or fair market value as on 01.04.1981 which was earlier filed on estimated basis and on being apprised with the legal rights, the assessee got the valuation done for the properties and filed the same but the reports were rejected by the AO which is not permissible as per the provisions of the Act. The Ld. AR relied on the decision in CIT Vs. Umedbhai International P. Ltd. [2011] 330 ITR 506 (Cal) and para 12 of the order of the Hon'ble Gujarat High Court in Hiaben Jayantilal Shah Vs. ITO [2009] 310 ITR 31 (Guj) and emphasized that the AO ought to have accepted the registered valuer's report and he was not competent to make any observation about the valuation officer's report and as no reference was made to the DVO, therefore, the addition made by the AO deserves to be deleted.

7. We have examined the matter and gone through the provisions of section 55A of the Act as cited above. The Ld. AO should have referred the property to the DVO if he was not satisfied with the registered valuer's report. The property is an old one, was received as a gift by the assessee from his mother and, therefore, the value was unascertainable and the cost of acquisition was required to be taken as the fair market value as per clause (3) of Explanation to section 48. It is also submitted in the written submission filed that the Ld. CIT(A) failed to appreciate the fact that the assessee obtained a valuation report from a Registered

valuer who after spot verification of the premises, past history and character of the land and property thereon, period and stage of construction and other documents in relation to the said property fairly assessed the FMV of the impugned property as on 01.04.1981 at Rs.6,33,800/- and Rs.5,92,000/- vide valuation report dated 03.10.2016. The said valuation is not based on a guess work as alleged by the Ld. CIT(A). The Ld. AO as well as the Ld. CIT(A) have not brought any material on record to prove that the value determined by the valuer is a guess work and based on any estimate. Both the Ld. AO and the Ld. CIT(A) therefore, acted in complete defiance of law and therefore, their actions are not as per law. He, therefore, requested to consider the submission of the assessee and grant necessary relief as is mentioned above as per sub-section (3) of Sec. 55 of the Act, for the purpose of Sections 48 and 49 relating to the cost of acquisition, where the cost for the previous owner who acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner and as per Section 48 read with clause (iii) of the Explanation thereof "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1<sup>st</sup> day of April, 1981, whichever is later. Thus, since the assessee had filed a valuation report and if the Ld. AO was of the opinion that the value so claimed is at variance with its Fair Market Value, as per clause (a) of Section 55A, the Ld. AO should have referred the valuation of capital asset to the Valuation Officer instead of outrightly rejecting the valuation reports and without pointing out any error in the rate or the area adopted for the valuation. Thus, the order of the Ld. CIT(A) is set aside and the AO is directed to adopt the FMV of the properties as per the rates adopted

by the registered valuer and which reports were filed during the course of the assessment proceeding as he did not form any opinion that the value so claimed was at variance with the FMV but outrightly rejected the report of the registered valuer which he was not legally authorised to do as the valuer is a technical expert in respect of valuation and unless there was any error or discrepancies in the reports the valuation as shown by him ought to have been adopted. Hence, grounds No. 1, 2, 3,4 and 7 are allowed.

9. Grounds No. 8 and 9 are general in nature do not require any separate adjudication.

10. As regards grounds no. 5 and 6, relating to capital loss of Rs.2,07,054/- for FY 2011-12 claimed in AY 2014-15 the assessee through his Ld. AR has submitted vide written submission that these grounds are not being pressed, hence, these two grounds are dismissed as not pressed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 2<sup>nd</sup> July, 2024.

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rakesh Mishra)  
Accountant Member

***Dated: 2<sup>nd</sup> July, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A), NFAC, Delhi
  4. The CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata