

**IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI**  
**BEFORE MS. KAVITHA RAJAGOPAL, JM AND MS. PADMAVATHY S, AM**

ITA No.3799/Mum/2024  
(Assessment Year:2018-19)

Jagdish Namdev Hattangadi 2003, Rustomjee Oriana, MIG Colony, Gandhi Nagar, Bandra (E), Mumbai-400 051	Vs.	Income Tax Officer (Int Tax Ward 2(2)(1)) Mumbai
PAN/GIR No.AANPH 2346 F		
(Assessee)	:	(Respondent)
<b>Assesseeby</b>	:	ShriDharmesh Shah
<b>Respondent by</b>	:	ShriG. J. Ninawe
<b>Date of Hearing</b>	:	03.09.2024
<b>Date of Pronouncement</b>	:	20.09.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-56, Mumbai passed u/s.250 of the Income Tax Act, 1961 ('the Act'), arising out of the order passed u/s. 154 of the Act, relevant to the Assessment Year ('A.Y.' for short) 2018-19.

2. The solitary ground raised by the assessee is on the addition made on account of difference in the valuation of property by the approved valuer and the Departmental Valuation Officer (DVO for short), amounting to Rs.3,44,97,894/-.

3. The brief facts are that the assessee is an individual non resident and had filed his return of income for the year under consideration on 22.08.2018, declaring total income at Rs.2,94,80,250/-. The assessee's case was picked up for scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

4. During the assessment proceeding, the ld. learned Assessing Officer ('ld. A.O.' for short) observed that the assessee had declared long term capital gain (LTCG for short) of Rs.2,89,95,119/- out of the sale of house property for an immovable property in which the assessee was entitled to 8.33% share where the valuation of the said property was taken to be Rs.3,37,64,049/- as on 01.04.2001 by the assessee and had claimed benefit of indexation for F.Y. 2001, based on the valuation report obtained from M/s. Kanti Karamsey & Co. Advisors LLP dated 09.11.2017 where the property was valued at Rs.40,51,84,800/-. The ld. A.O. had referred the valuation to the DVO as per section 55A of the Act for determination of fair market value of the said property but had proceeded to pass the assessment order dated 22.09.2021, even without receiving the valuation report of the DVO as the assessment was getting time barred and had determined the total income same as the returned income. Subsequently, the ld. A.O. vide rectification order dated 25.07.2023 passed u/s. 154 r.w.s. 143(3) of the Act had determined the capital gain at Rs.6,34,93,013/- after the valuation report of DVO dated 30.11.2022 received by the ld. A.O. on 07.12.2022.

5. Aggrieved by the said order, the assessee was in appeal before the ld. CIT(A) who vide order dated 13.06.2024 upheld the addition made by the ld. A.O. towards a LTCG amounting to Rs.3,44,97,894/-, on the ground that the assessee has not objected to the fair market value adopted by the DVO.

6. Further aggrieved the assessee is in appeal before us challenging the impugned order of the ld. CIT(A).

7. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the Id. A.O. during the scrutiny assessment had accepted the valuation determined by the valuer engaged by the assessee, but subsequently had revised the same during the rectification proceeding where the assessee was not given an opportunity of hearing on the valuation determined by the DVO. Further, the Id. AR contended that the assessee was not given sufficient opportunity of hearing before passing the rectification order and neither during the preliminary DVO report, nor at the time of final DVO report the assessee was not confronted to file its objection for the same. Further, the Id. AR stated that the property which has been disposed off is an independent bungalow, whereas the DVO has assessed the same as a flat rather than an independent property. The Id. AR contended that the value of the flat and an independent bungalow in Mumbai would have a tremendous variation which would prejudice the interest of the assessee. The Id. AR relied on the assessment order where the Id. A.O. had accepted the valuation determined by the assessee.

8. The learned Departmental Representative ('Id. DR' for short), on the other hand, controverted the said fact and stated that the assessee was given sufficient opportunity to raise his objection during the rectification proceeding on the DVO's report but the assessee has failed to avail the same. The Id. DR relied on the rectification order and the order of the Id. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. It is observed that the immovable property disposed off jointly by the assessee and the other co-owners is a residential bungalow named "La Bonita" (now known as Mehta

House), admeasuring 19,650 sq. ft. built-up area, situated at Warden Road, Breach Candy, (now Bhulabhai Desai Road), Malabar and Cumballa Hill Division. The assessee submitted that the said property was originally purchased by Mr. Ranchhoddas Vijbhukhandas Mehta and Mrs. Kokila Ranchhoddas Mehta on 02.12.1929 where Mr. Ranchhoddas V. Mehta demised on 28.05.1937 bequeathing his property vide a Will and Testament dated 23.05.1937, probate of the same was granted by the Hon'ble Bombay High Court dated 28.04.1938 and rights of the property devolved upon his two sons Mr. Jayantilal R Mehta and Mr. Dhananjaya R. Mehta in equal shares along with a life interest to his wife Mrs. Kokila Ranchhoddas Mehta who expired on 06.06.1958. Mr. Jayantilel R. Mehta and Mr. Dhananjaya R. Mehta was entitled to said property, as absolute owners each having equal share vide indenture dated 22.10.1958. Subsequently, Mr. Jayantilal R.Mehta demised on 19.09.1990 bequeathing his share vide will and testament dated 18.09.1988 his 50% shares in property to his wife Mrs. Amru Jayantilal Mehta who expired on 31.07.2006, bequeathing her share vide will and testament dated 30.05.1997, in the following manner:-

- a. Mrs. Anjali Sachin Tendulkar-25%
- b. Mrs. Tulsi Bhakta Vatsal-8.333%
- c. Mrs. Janki Mohammad El Ariss- 8.333%
- d. Mrs. Mira Jagdish Hattiangadi-8.333%

10. The assessee further submits that his wife Mrs. Mira Jagdish Hattiangadi was the co-owner of the property who expired on 28.11.2014 leaving behind her last will and testament dated 09.09.2006, which was granted by the Hon'ble Bombay High Court on

23.12.2015, in Testamentary petition No. 409 of 2015 and her 8.333% shares in the property devolved upon the assessee.

11. The assessee has determined the value of his share @ 8.33% of the property to be Rs.3,37,64,049/- based on the valuation report of M/s. Kanti Karamsey & Co. Advisors LLP where the property was valued at 40.51 crores. Though the reference was made to the DVO by the ld. A.O. due to paucity of time, the ld. A.O. passed the assessment order and subsequently rectified the same after receiving the DVO's report. It is pertinent to point out that the ld. A.O. has specified in the rectification order that the assessee was given three days time to respond to the DVO's report, where the assessee vide letter dated 11.07.2023 has sought for further time and had also requested to furnish the copy of the valuation report. The ld. A.O. has stated that the DVO has already sent a copy of the valuation report to the assessee and had further granted 15 days time to submit his response. Subsequently, the ld. A.O. passed the rectification order soon after and had revised the LTCG and made an addition on the difference value.

12. From the above factual matrix of this case, it is evident that the assessee has not been given adequate opportunity to substantiate his claim and to file objection to the DVO's report. It is also alleged by the ld. AR that no intimation as to the reference to DVO was also given to the assessee. The ld. DR had nothing to controvert the same. Admittedly, the first appellate authority has also merely relied on the order of the ld. A.O. and has upheld the addition for the reason that since the assessee has not filed his objection for the DVO's report, the same has been considered as acceptance by the assessee on the determination of the value of the property ascertained by the DVO. We

are not in agreement with the same for the reason that any adjudication of a dispute has to be on the basis of *Audi alteram partem* where no person can be left unheard. Inadequacy of opportunity of hearing is no doubt violation of principles of natural justice enshrined in the constitution. On this note, we are of the considered opinion that this issue has to be remanded back to the file of the Id. A.O. for adjudicating afresh as to the actual valuation of the property for determination of the capital gain in the hands of the assessee. Needless it is to say that the assessee should be given sufficient opportunity of hearing by the Id.A.O. We have not dealt with the merits of the case and the same is to be decided by the Id. A.O. in accordance with the law.

13. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 20.09.2024*

Sd/-

(Padmavathy S)  
Accountant Member

Mumbai; Dated :20.09.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)  
Judicial Member

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai