

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 5476/Mum/2024  
Assessment Year :2012-13

Smt. Sulekha Krishan Mehra, Flat No. B-14, Ganga Jamuna CHS Ltd., Main Avenue, 17 <sup>th</sup> Road, Santacruz (West), Mumbai. PAN : AEMPM3471M	vs.	Income Tax Officer-22(3)(4), Piramal Chambers, Lalbaugh, Parel, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Gajendra Golchha
For Revenue :	Ms. Monica Pande, Sr.DR

Date of Hearing :	20-01-2025
Date of Pronouncement :	20-01-2025

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dt.25-09-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'] and it relates to AY.2012-13. The issue contested in this appeal of the assessee is related to determination of Fair Market Value (FMV) of the property as on 01-04-1981 for the purpose of computing capital gains.

2. The assessee had inherited a residential property from his father along with his mother and sisters. The assessee had 1/4<sup>th</sup> share in the said property. It was sold for a consideration of Rs.16 crores, of which the assessee received his share of Rs.4.00crores. The assessee invested

the same in purchase of another property and accordingly claimed exemption u/s. 54 of the Income Tax Act, 1961 ('the Act'). Since the residential house property had been purchased by his father prior to 1.4.1981, the assessee had the option to adopt the Fair Market Value (FMV) of the house property as on 1.4.1981 as the cost of acquisition while computing the Capital gains. Accordingly, the assessee adopted the FMV of the property as on 01-04-1981 as cost of acquisition for the purpose of computing capital gain. The assessee ascertained the value of the property as on 1.4.1981 on the basis of a Registered Valuer's report named M/s.Kanade & Associates, who valued the entire property at Rs.65,99,550/- as on 1.4.1981. Hence the value of 1/4<sup>th</sup> share amounting to Rs.16,50,000/- was adopted by the assessee as the cost of acquisition.

3. During the course of assessment proceedings, the AO referred the matter of valuation of FMV as on 01-04-1981 to the DVO. However, the valuation report was not received by the AO by the time of completion of the assessment. Hence, the AO completed the assessment adopting the value as on 01-04-1981 as declared by the assessee on protective basis with the rider that the same will be subjected to change as per the report of the DVO.

4. The assessee challenged the assessment order by filing the appeal before the Ld.CIT(A). When the Ld.CIT(A) heard the appeal, the report of the DVO was available on record. The Ld CIT(A) noticed that the DVO had determined the value of the property as on 01-04-1981 at Rs.18,67,000/- as against the value of Rs.65,99,550/- determined by the registered valuer. The Ld.CIT(A) re-computed the taxable capital gain by adopting the FMV as on 01-04-1981 as determined by the DVO. Aggrieved, the assessee has filed this appeal.

5. The Ld.AR submitted that neither the AO nor the Ld.CIT(A) considered the valuation report furnished by the assessee to support the value of the FMV as on 01-04-1981 adopted by the assessee. He contended that the AO did not reject the Registered valuer's report also. Further, referring to section 55A of the Act, the Ld.AR submitted that the AO can refer the matter of valuation to the DVO only if the value determined by the registered valuer is less than the FMV. In the instant case, FMV adopted by the assessee is more than the value determined by value determined by the DVO. Accordingly, he contended that the AO has not demonstrated that the value as on 01-04-1981 determined by the registered valuer was less than the FMV. He further submitted that the assessee was not given opportunity to controvert the DVO's report.

6. The Ld.DR, on the contrary, submitted that the report of the DVO was received after completion of the assessment and hence, the AO also did not get opportunity to examine the same. With regard to the provisions of section 55A of the Act, the Ld.DR submitted that the said provision will not apply for determining the value as on 01-04-1981, since the assessee is claiming deduction of the value while computing capital gain.

7. We heard the parties and perused the record. We notice that the DVO's report was not confronted both with the AO and also with the assessee. The admitted fact is that the assessee has furnished a report obtained from registered valuer in support of the FMV as on 1.4.1981 adopted by him. We notice that the AO has referred the matter of valuation to the DVO without finding fault with the valuation report furnished by the assessee. Further, no opportunity was given to the assessee to contradict the report of the DVO. Under these set of facts, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by the Ld.CIT(A)

and restore all the issues to the file of the AO for examining them afresh. Before us, the assessee has also raised a legal issue with regard to applicability of sec.55A of the Act. But, according to Ld D.R, the said section shall not be applicable to a case where deduction is claimed by the assessee against sale consideration for the purpose of computing capital gains. Since we restore all the issues to the file of the AO, we give liberty to the assessee to raise all legal contentions before the AO.

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

Order pronounced in the open court on 20-01-2025

Sd/-  
(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, Date: 20-01-2025

*TNMM*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai