

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.392/Nag./2024**  
(Assessment Year : 2009-10)

Avinash Dudhe  
Tilak Chowk, Rangari Ward  
Hinganghat 442 301 PAN – AZMPD2332H

..... Appellant

v/s

Income Tax Officer  
Ward-1, Wardha

..... Respondent

Assessee by : None  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 20/01/2025

Date of Order – 27/01/2025

**ORDER**

The aforesaid appeal by the assessee is against the impugned order dated 28/11/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2009-10.

2. When the case was called for hearing, none appeared on behalf of the assessee. Even there is no application for adjournment. Be that as it may.

3. The only issue raised by the assessee relates to the expenditure incurred by the assessee in connection with the transfer of capital asset and also the SRO (Sub Registrar's Office) of the property which was rejected by the Assessing Officer.

4. On appeal, the learned CIT(A) rejected the objection raised against the DVO's valuation for the following reasons:-

*"7.3 I have considered the matter. The assessee had two-pronged argument on the matter. They are being dealt with separately.*

*7.3.1 In course of appeal proceeding, assessee furnished copy of receipt for payment of Rs. 18,81,225/- to government towards obtaining no objection certificate for selling of property. He stated that the amount should be deducted from the sale consideration. In the remand report, the AO stated there was no mention of the receipt in assessee's submission dated 07.07.2017, nor was the same mentioned in the order sheet. Expenses incurred for transferring the asset is deductible from Long Term Capital Gain. Without getting the no objection certificate, assessee would not be able to validity transfer the property. Therefore, the expenditure amounting to Rs. 18,81,225/- should proportionately be deducted from capital gain receipt of assessee.*

*7.3.2 The second objection of assessee is that the AO totally depended on the valuation report of the DVO, which itself was based on wrong facts. The assessee stated that the DVO treated the property as free hold instead of leasehold. This objection of assessee is practically of no help to assessee. Had the DVO treated the property as leasehold, its value as on 01.04.1981 would in all probability be less than being valued as freehold. Therefore, the argument is actually of no assistance to assessee and hence rejected. Further, assessee also raised objection stating that comparable properties taken by the DVO were residential whereas, assessee's property was commercial. This objection also of no merit. The combined values of three properties taken by the DVO was Rs. 17,000/-. Their total land area was 108.83 sq. meters. The average sale value came to Rs.156.2 per sq. metre. In case of assessee, landed portion of property was valued at Rs. 185/- per sq. metre. This is much more than the value of other properties registered during the period. Over and above that, another sum of Rs.3.87,000/- was assigned to the building structure. Total land and building thereon was valued at Rs.8,92,000/-.*

*7.3.3 The Registered valuer's report supplied by appellant suffered from serious defects. Land area sold was measured at 30,000/- sq. ft. instead of actual, 29,400/- sq. ft. The valuer adopted land value at Rs. 1076/- without any basis at all. Further, the valuer completely ignored the value of cinema theatre building which was in existence till 2008.*

*Considering the above, the objection raised against DVO's valuation is rejected."*

5. Before me, the learned Departmental Representative vehemently relied upon the impugned order passed by the learned CIT(A).

6. I have heard the learned Departmental Representative and perused the orders of the authorities below. I find that the expenditure incurred by the assessee by way of transfer of property over all cannot be rejected keeping in view the above facts and circumstances of the case, the contents of which have been reproduced in the impugned order of the learned CIT(A) cited supra, what has been considered by the learned CIT(A), I am of the opinion that 50% relief should be granted to the assessee. I order accordingly. Thus, the assessee gets a relief of ₹ 9,40,613. The contentions regarding valuation are dismissed.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 27/01/2025

**NAGPUR, DATED: 27/01/2025**

**Sd/-  
V. DURGA RAO  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur