

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: C : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.2349/Del/2023
Assessment Year: 2020-21

Jaswin Kaur Sethi,
218, Regency Park,
DLF Phase
Gurgaon,
Haryana – 122 009.

Vs DCIT,
International Taxation,
Gurgaon.

PAN: ENMPS7327R

(Appellant)

(Respondent)

Assessee by : Ms Meenal Goyal CA
Revenue by : Shri Om Prakash, Sr. DR
Date of Hearing : 23.07.2025
Date of Pronouncement : 30.07.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the final assessment order dated 16.06.2023 of the Asstt. Commissioner of Income-tax (Appeals), International Taxation, Gurgaon (hereinafter referred as ‘the Ld. AO’) for Assessment Year 2020-21 passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred as ‘the Act’).

2. The assessee is a non-resident individual and during the year under consideration had sold a residential property which is a residential-cum-commercial property jointly held by her along with her mother. This property, bearing No.16/48, Diplomatic Enclave, Malcha Marg, New Delhi, was sold for a total sale consideration of Rs.25,91,00,000/- vide sale deed dated 25.06.2018 and assessee's share in the sale consideration being 50% was Rs.19,26,60,000/-. The assessee had taken this value on the basis of stamp duty valuation of the said property in accordance with the provisions of section 50C of the Act. As the assessee had taken the cost of acquisition of the said property at FMV of 01.04.2001 at Rs.5,98,73,000/- being 50% of her share and this value was arrived on the basis of a valuation report dated 02.08.2018 given by a government approved valuer for the purpose of section 55(2)(b) of the Act. On the basis of this, the resultant capital gain of Rs.19,62,703/- was offered to tax in the return of income. However, the AO had rejected the valuation report provided by the assessee and determined the cost of acquisition of the said property as on 01.04.2001 by relying the circle rate for Delhi notified for the financial year 2007-08 and proposed an upward adjustment of Rs.16,87,71,759/- on account of differential capital gain which was challenged by the assessee before the DRP and giving relief to the assessee, the DRP had directed the AO to recompute the said property on the basis of residential land conversion rates of Delhi Development Authority (DDA) as notified by the Ministry of Urban Development, Government of India. Accordingly, the final assessment order

dated 16.06.2023 was passed giving effect to the directions of DRP and making an upward adjustment of Rs.92,47,70,400/- which has been challenged in the present appeal by raising the following grounds:-

“1. That on the facts and circumstances of the case and in law, the impugned order passed by the Assessing Officer (“AO”) u/s 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (“the Act”) determining the assessed income at Rs 11,34,40,970/- is arbitrary, bad in law and liable to be quashed.

2. That on the facts and circumstances of the case and in law, the AO/Dispute Resolution Panel (“DRP”) failed to follow settled law that by not accepting the valuation report of a registered valuer regarding Fair Market Value (“FMV”) of the property for computation of cost of acquisition as well as indexed cost of acquisition of the property, it ought to have referred the matter to the Departmental Valuation Officer. Instead, they made a suo-moto computation which is legally invalid as it was bound to accept the registered valuer report in the absence of any reference to DVO, and renders consequential impugned addition of Rs. 9,24,77,040/- bad in law and liable to be quashed.

3. That on the facts and circumstances of the case and in law, the AO/DRP failed to appreciate that the valuation report of an independent government approved income tax registered valuer would certainly take precedence over any suo-moto computation of the AO/DRP.

4. That on the facts and circumstances of the case and in law, the AO/DRP exceeded their powers by suo-moto computing the FMV on the basis of L&DO rates of Delhi bereft of any technical analysis as not being supported by the expert knowledge of the DVO even though it chose to not accept the rate adopted by the independent registered valuer.

5. That on the facts and circumstances of the case and in law, the AO erred by dismissing the independent valuation report based on sound factual reasoning and refusing to refer matter to DVO without providing any proper reasoning.

6. That on the facts and circumstances of the case and in law, the AO failed to take into consideration the supplementary comparable sale deed submitted by the Appellant during the course of assessment proceedings to substantiate the determination of FMV for cost of acquisition purpose as on 01.04.2001.

7. *That on the facts and circumstances of the case and in law, the AO failed to specify the Section under which the impugned addition of Rs. 9,24,77,040/- was made, making the addition legally unsustainable.*
8. *The learned AO/DRP grossly erred by substituting the cost of acquisition value by L&DO rates as circle rate, as there were no circle rates existing in Delhi as on 01.04.2001.*
9. *The learned AO/DRP erred by ignoring the fact that upto A.Y. 2020-21, the FMV was to be adopted for determining the cost of acquisition as on 01.04.2001 and not the circle rate, if the same was not existing in 01.04.2001.*
10. *The teamed AO/DRP erred by treating the L&DO land rates as FMV of the property of the assessee as on 01.04.2001, ignoring the fact that L&DO land rates are neither the circle rates nor the FMV of the property, but are rates to determine the unearned increase in case the L&DO property is transferred by the transferor and are basically the rates to determine the transfer charges payable to L&DO on transfer of L&DO property.*
11. *That on the facts and circumstances of the case and in law, the AO has erred in initiating penalty proceedings u/s 270A of the Act despite non-satisfaction of mandatory statutory ingredients and the legal unsustainability of the impugned addition.*
12. *The Appellant craves leave to add, delete, modify or vary any of the grounds of appeal at any time during the pendency of the appeal or at the time of hearing.”*
3. The contentions of ld. representatives of both the sides are heard. The ld. AR primarily relied the case of the assessee as set up before the ld. tax authorities below while the ld. DR has relied the orders of the ld. tax authorities below.
4. After taking into consideration the rival contentions and the material on record, we find that in the valuation report the fair market value of the property have been taken at Rs.2,70,000/- per sq. yards and which the ld. AO had alleged

was 'without any rationale and documentary evidences' and accordingly, the circle rate was considered to be reflecting the fair market value of the property. The ld. DRP observed that ideally, if the AO does not accept the valuation report of a registered valuer provided by the assessee, he should have referred it to a Departmental Valuation Officer u/s 55A of the Act. However, as the AO has not done the same and has resorted to valuation on the basis of stamp value of the impugned property, but, the rates for 01.04.2001 were not notified and by exercise of interpolation and extrapolation to the stamp valuation of the locality in which the property is situated for AY 2007-08, the valuation was done, the same was not appreciated by the DRP, but, the DRP directed the AO to accept the conversion land rates as notified by the Ministry of Urban Development.

5. On considering the impugned orders of the ld. AO and also the DRP, we find that they have not relied any provision of the Act under which these authorities could have resorted to relying any other rates of property for valuation than the one which the Act provides either in the form of valuation report submitted by the assessee and prepared by the registered valuer u/s 55(2) of the Act or of a report of DVO. We are of considered view that when the Act prescribes specific modes for accepting the valuation of a property, then, without establishing that the two modes are not rationally applicable or have any hardship to comply with, the valuation cannot be on the basis of independent parameters. These independent parameter like circle rates or

conversion rates notified by the Ministry of Urban Development may be used to corroborate the valuation reports prepared by expert or the DVO but resorting to these independent parameters without getting DVO report is not what the Act expects. The evidentiary value of the valuation report given by expert needs to be disturbed by the AO on the basis of factual findings in the valuation report, rather on a general assumption or applying the rules of prudence, like done in present case. The valuation report of the registered valuer has been prepared by qualified expert in the field after inspection of the premises and carrying out technical analysis. The same cannot be brushed aside on bald allegations that valuation done has been on higher side. As a matter of fact, supplementary comparable sale deeds were provided by the assessee during assessment proceedings to corroborate the FMV determined by the registered valuer in the valuation report, however, the same have also not been considered by the AO. The AO having sufficient powers of inquiry on his own has also not done any exercise of his own to inquire into the value of the surrounding property to disturb the FMV given by the qualified expert.

6. Then, without mentioning reasons for not making reference to Departmental Valuation Officer, assumption of jurisdiction to determine the value on his own, on the basis of circle rates and that too by interpolation and extrapolation of the rates was certainly not sustainable and, therefore, the DRP had rightly intervened to hold that AO was supposed to refer to DVO.

However, we find that DRP also committed an error in giving direction to compute the cost of acquisition of the impugned property by applying Land & Development Office conversion rates.

7. We find justification in the contention of the ld. AR that conversion rates cannot be taken as a benchmark for comparability with the fair market value of an independent property, which is both a residential and commercial. The ld. counsel has drawn our attention to Chandigarh Bench decision in the case of *Sanjeev Kumar Kathuria vs. ITO in ITA No.329/Chd/2024, order dated 27.02.2025* where the L&DO land conversion rates were not approved for the purpose of determining fair market value/cost of acquisition of the property.

8. Thus, we are of the considered view that the AO, without rebutting and contradicting the valuation report of expert, which has a rebuttable evidentiary value under the Act, could not have resorted to any other mode but to make a reference to DVO only for the purpose of valuation of the impugned property. Reliance in this regard is placed on the decision of the Hon'ble Allahabad High Court in the case of *PCIT vs. Smt. Vidhi Agarwal (2017) 88 taxmann.com 306 (All)* and the decisions of the coordinate Benches in the cases *DCIT vs. Ajanta Tubes Ltd., ITA No.4432/Del/2014; Smt. Ved Kumari Subhash Chander vs. ITO, ITA No.2041/Del/2016; ITO vs. Smt. Gayatri Maitra, ITA Nos.2381 & 4836/Del/2015; and Shri Pyaare Mohan Mathur, HUF vs. ITO, (2011) 12*

taxmann.com 170 (Agra Trib). The DRP also erred in directing AO to apply Land & Development Office conversion rates.

9. The Hon'ble Allahabad High Court in the case of *Vidhi Agarwal (supra)* has approved the finding of the Tribunal noting that when there is nothing on record to doubt the correctness of the report or its contents, the Valuer's Report should have been accepted by the Department. The coordinate bench at Delhi in *Ved Kumari Subhash Chander vs. ITO (supra)* has, in similar facts and circumstances, set aside the order directing the AO to recompute the fair market value of the land by taking into account the rate as adopted by the valuer. As for completeness, the findings of the coordinate Bench in para 5.1 to 5.5 are reproduced below:-

“5.1 Similarly, in the case of Pyare Mohan Mathur HUF Vs ITO (in ITA No. 471/Agra/2009 vide order dated 21/04/2011) the Agra Bench of the ITAT has held that in view of the provision of section 55A once the assessee has submitted the necessary evidence by way of the valuation report made by the registered valuer, the onus gets shifted on the AO to contradict the report of the registered valuer. The registered valuation officer is a technical expert and the opinion of an expert cannot be thrown out without bringing any material to the contrary on record. In case the AO was not agreeable with the report of the registered valuer, he was duty bound to refer the matter to the DVO for determining the fair market value of the land as on which he failed to do so. The tribunal held that the revenue has not discharged the onus but merely rejected the fair market value taken by the assessee. It set aside the order of the CIT (A) and directed the AO to recompute the capital gain after taking the fair market value of the land as on 1/4/1981, as claimed by the assessee. Fair market value of the land as on 1/4/1981 estimated by the registered valuer being based on sound factual basis and the phenomenal development in that area could not be rejected by the AO without assigning any specific reasons.

5.2 In the case of CWT Vs Raghunath Singh Thakur (304 ITR 268 HP) the Hon'ble High Court of Himachal Pradesh held that if the Assessing Officer does not agree with the report regarding the valuer relied upon by the

assessee, rejection of such valuer's report without making reference to the valuation, order is invalid and the report of the registered valuer shall be accepted.

5.4 The Hon'ble Bombay High Court in the case of C.I.T. vs. Raman Kumar Suri reported in (2013) 255 CTR 107 had held that the valuation done by the registered valuer is with regard to a specific property and the same takes into account its various advantages and disadvantages, all of which would influence the valuation of property. The Hon'ble Bombay High Court went on to hold that the valuation done by an empanelled registered valuer of the Income Tax Department would certainly take precedence over other indicators.

5.5 Therefore, respectfully following the aforesaid juridical precedents, we have no option but to accept the assessee's contention that the Assessing Officer was not right in discarding the report of the registered valuer without having made a reference to the DVO and, therefore, the rate adopted by the Assessing Officer for the purpose of computation of fair market value cannot be upheld. Accordingly, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to re-compute the fair market value of the land as on 1.4.1981 by taking into account the rate as adopted by the registered valuer.”

10. In the light of the aforesaid, we are inclined to sustain the grounds. The appeal of the assessee is allowed. Consequently, the AO is directed to recompute the fair market value by taking into account the valuation report provided by the assessee.

Order pronounced in the open court on 30.07.2025.

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 30th July, 2025.

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi