

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : SMC-I : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.2303/Del/2016  
Assessment Year : 2009-10

Kailash Chand Poddar &  
Sons,  
C/o Kapil Goel, Advocate,  
F-26/124, Sector-7, Rohini,  
New Delhi.

Vs. ITO,  
Ward-20(2),  
New Delhi.

PAN: AAEHK4023P

(Appellant)

(Respondent)

Assessee By : Shri Kapil Goel, Advocate  
Department By : Shri Rajesh Kumar, Sr. DR

Date of Hearing : 26.09.2016  
Date of Pronouncement : 26.09.2016

ORDER

This appeal filed by the assessee is directed against the order passed  
by the CIT(A) on 15.2.2016 in relation to the assessment year 2009-10.

2. No ground other than challenging the sustenance of addition of Rs.33,77,730/- on merits was pressed by the Id. AR. Thus, all other grounds, including challenging the initiation of re-assessment, are dismissed as not pressed.

3. Coming to the merits of the case, the facts are that the assessee sold a property situated at Maliwara, Chandni Chowk, Delhi admeasuring 293.15 sq. mtr. for a consideration of Rs.29.25 lac. On perusal of the Sale deed, the AO observed that stamp value was Rs.1.14 crore, whereas capital gain was computed with reference to the amount of sale consideration. Invoking the provisions of section 50C, the AO opined that the long-term capital gain ought to have been computed by taking the sale consideration at Rs.1.14 crore and not Rs.29.25 lac, being the sale consideration declared in the sale deed. On being called upon to explain the reasons for not considering circle rate as full value of consideration in terms of section 50C of the Act, the assessee submitted that the entire building was let out and in occupation of tenants. The Id. AR put forth that, applying rent capitalization method, the value of the property comes at Rs.7,34,750/-. Since the actual sale consideration of Rs.29.25 lac was

more than this, the capital gain was stated to have been computed accordingly. The AO referred the matter of valuation of this property to the DVO, who determined its fair market value at Rs.65,55,600/-. The AO adopted this figure as the full value of consideration and worked out the amount of long-term capital gain at Rs.33,77,730/- by reducing cost of acquisition amounting to Rs.31,77,870/- from the fair market value as per DVO's report at Rs.65,55,600/-. The assessee remained unsuccessful before the Id. first appellate authority. That is how, the appeal is before me.

4. After considering the rival submissions and perusing the relevant material on record, it is observed that the DVO has determined the value of the property by applying the Land and building method and Cost reproduction method. In the absence of any sale instances available, the DVO took up circle rate for determining the 'Cost of land' and allowed rebate of 40% for old tenancy. Value of the 'Building' was determined at Rs.8,66,800/- by considering cost of construction. It is undisputed that the entire property was let out to tenants and the same was sold as such fully encumbered. Under such circumstances, the DVO cannot be considered

as reasonable in applying the Land and building method for determining the value of land and allowing a rebate of 40%. The Delhi Bench of the Tribunal vide its order dated 27.3.2015 in *Mahesh Chand Jain vs. ITO (ITA No.203/Del/2012)*, has held in the context of section 50C that the fair market value in the case of let out properties should be computed by rent capitalization method. The Tribunal was pleased to restore the matter to the file of AO for re-determining the value of rented property on the basis of rent capitalization method. In reaching this conclusion, the Division Bench relied on the judgment of the Hon'ble jurisdictional High Court in the case of *CIT vs. New India Construction Company (1980) 123 ITR 68 (Del)*. In the absence of any distinguishing feature having been brought to my notice and respectfully following the precedent, I set aside the impugned order and remit the matter to the file of AO for redetermining the amount of capital gain by taking into consideration the valuation of land as per the rent capitalization method, if the same turns out to be less than the full value of consideration realized. Needless to say, the assessee will be allowed a reasonable opportunity of being heard.

5. In the result, the appeal is partly allowed for statistical purposes.

The order pronounced in the open court on 26.09.2016.

Sd/-

[R.S. SYAL]  
ACCOUNTANT MEMBER

Dated, 26<sup>th</sup> September, 2016.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.