

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**  
**BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./I.T.A. No.6162/Mum/2011  
(निर्धारण वर्ष / Assessment Year : 2008-09)

Niranjanlal Sanghai (HUF) Room No.4, 1 <sup>st</sup> floor, 312, Kalbadevi road, Mumbai-400002	<b>बनाम/</b> Vs.	Income Tax Officer, 14(2)(2),Mumbai-
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**स्थायी लेखा सं./ PAN :AABHN3415P**

अपीलार्थी ओर से / Appellant by	None
प्रत्यर्थी की ओर से/Revenue by	Shri Suman Kumar

सुनवाई की तारीख / **Date of Hearing** : **9.12.2016**  
घोषणा की तारीख / **Date of Pronouncement** : **16.1.2017**

**आदेश / ORDER**

**PER RAJESH KUMAR, AM**

The appeal filed by the assessee is directed against the order dated 8.7.2011, passed by the CIT(A)-25, Mumbai, for the assessment year 2008-09.

2. The issue raised in the first grounds of appeal is against the confirmation of addition of Rs.19,75,550/- made by the Id.CIT(A) as made by the AO in respect of long term capital gains on sale of property. The second issue raised by the assessee is against the upholding the action of the AO by

the Id.CIT(A) not accepting the cost of acquisition of the assessee of ancestral property of Rs.6,62,627/- being fair market value as at 1<sup>st</sup> April, 1981 as per the registered valuer's report despite the fact that the appellant became the owner of the ancestral property prior to 1<sup>st</sup> April, 1981. The third issue raised by the assessee in ground No.3 is against the upholding the action of the AO by the Id.CIT(A) of taking cost of acquisition of Rs.2,95,000/- as appearing in the balance sheet as at 31<sup>st</sup> March 2007 as fair market value as at 1<sup>st</sup> April, 1981 which was not the cost of entire property comprising of land and house property comprising ground plus three floors, and the issue raised in the last ground is that the FMV as on 1.4.1981 at Rs.6,62,627/- as per the registered valuers report be considered as cost of acquisition under section 55(2)(ii) of the Act.

3. Facts of the case are that the assessee has filed its return of income on 23.7.2008 declaring total income at Rs.2,42,654/- which was processed under section 143(1) of the Act. The case of the assessee was selected for scrutiny under CASS and notices under section 143(2) ( and 142(1) were issued and served upon the assessee. During the assessment proceedings, the AO noticed that the assessee has sold residential property during the year and shown loss of Rs.40,054/- under the head "long term capital loss". Accordingly the assessee was asked to produce his purchase agreement and also called upon to show cause as to why the purchase value of Rs.50,000/- or value as shown in the

balance sheet as on 31.3. 2007 at Rs.2,95,000/- should not be taken as value of the property for the purpose of capital gain. In response to the said show cause notice the assessee replied vide letter dated 30.11.2010 that the said residential house comprising of land and super structure thereon became the property of the assessee prior to 1.4.1981 and therefore FMV as on 1.4.1981 should be taken for the purpose of calculation of long term capital gains and also submitted that as per Registered Valuer's report the FMV as on 1.4.1981 was Rs.6,62,627/-. The AO further asked the assessee after examination of the report that vide sheet entry dated 6.12.2010 to furnish supporting evidence of the valuation report of Rs. 44 per sq. ft. and other expenses of improvement qua the property sold. However, when the assessee failed to submit the same, the AO calculated capital gain by taking the said amount of Rs.2,95,000/- as FMV as on 30.3.1981 which was appearing in the balance sheet as on 31.3.2007 and calculated capital gains as under :

I	Income from other sources		3,42,654
	Bank interest (as per statement)		
II	Long term capital gain of sale of property as discussed above		19,75,550
	Gross total income		23,18,204
	Less <u>Chapter-VIA deduction</u> As per return of income		-1,00,000
	Total taxable income		22,18,204
	Rounded off u/s 288A		<u>22,18,204</u>

Ultimately, the AO framed the assessment by order dated 31.3.2008 under section 143(3) assessing the long capital gain at Rs. 19,75,550/-. Aggrieved by the assessee the order of the AO, the assessee preferred an appeal before the Id. CIT(A) who also dismissed the appeal of the assessee vide para 5 of appellate which reads as under:

*"5. After careful consideration of the arguments and written submissions made by the Ld. A.R., it is seen that it is undisputed that the impugned property was owned by the assessee prior to 01/04/1981. The assessee could not furnish evidences as to purchase price of the said property, stating that being old property, the purchase documents are not available. It is undisputed that the said property was sold for Rs.36,00,000/- in instant year. The Fair Market Value as on 01/04/1981 should be substantially low in comparison to sale consideration because the property boom is witnessed in the whole country only after the year 2005-06. In the year 1981, the property price were at minimum level. The property is located in a small town of Bihar. As stated by the AO, the assessee could not furnish any evidence before the AO on the basis of which the Registered Valuer had taken the value of the property at Rs.6,62,627/-. Undoubtedly there should be some basis and documents to arrive at the value as on 01/04/1981. No evidence has been furnished to ascertain when the construction was commenced and completed and cost incurred thereof. Even original purchase document is not furnished. On the basis of original purchase deed, the rate of appreciation of property can be extrapolated. It can be ascertained whether the Registered valuer had taken the value at abnormally high level or correct F.M.V. It is claimed that the said property was in municipal limit. No evidence is submitted in respect of permission obtained for the purpose of construction from Municipal Authorities. On the contrary, the assessee himself had shown the value of the property in his Balance Sheet at Rs. 2,95,000/-. This value is appearing on 31/3/2007. If the value of the property as on 01/04/2007 was at Rs, 2,95,000/-, the F.M.V. of the property as on 01/04/1981 should be much more low level than Rs.2,95,000/-. If the value taken by the Registered Valuer as on 01/04/1981 is per se correct, the assessee should have disclosed the same in Wealth Tax return. The value of Rs. 6,62,627/- in the year 1981-82 itself falls within the limit of Wealth Tax return for*

*relevant assessment year. The assessee was not able to furnish any particulars of Wealth Tax return. It should be mentioned that during the course of appellate proceedings, the Ld. A.R. was asked whether he would like to refer the valuation of the impugned residential property as on 1/4/1981 to the DVO at this stage. Since the property was located in Bihar and the assessee is residing in Mumbai, he expressed his difficulty to refer the valuation to the DVO at this point of time. He vehemently submitted that the AO should have referred to the DVO and not at appellate stage. In such circumstances, the reliance placed by the AO on value as appearing in Balance Sheet of the assessee can not be considered incorrect. On the contrary, the AO had rightly choose to adopt the value of the property as shown in assessee's own books as on 31/3/2007 amounting to Rs.2,95,000/-. The AO fairly, liberally and generously taken the said value as F.M.V. as on 01/04/1981. In given circumstances, the value adopted by the registered valuer cannot be accepted. On the contrary, it contradicts the assessee's own books of accounts i.e. as per assessee's books of accounts (Balance Sheet), the value of the property was Rs.2,95,000/- only. Under these circumstances, in my considered view, the value adopted by the AO is indeed fair and reasonable and resultant computation of Long Term Capital Gain requires to be confirmed. Accordingly, all the grounds of appeal on the issue are rejected and action of the AO is upheld in toto"*

*6. In the result, the appeal filed by the appellant is dismissed"*

4. The Id. AR submitted before us that the Id.CIT(A) has grossly erred in confirming the order of the AO in the matter of calculation of Long Term Capital Gains by taking the value of the property as appearing in the balance sheet as on 31.3.2007 at Rs.2,95,000/- by rejecting the FMV of Rs.6,62,627/- as on 1.4.1981 according to the Registered Valuation Report. The Id. AR also stated that the assessee became owner of the said property much prior to 1.4.1981 and therefore FMV has to be taken as per Registered Valuer's Report. Finally, the Id.

AR prayed that the AO should be directed to take the FMV as on 1.4.1981 as per Registered Valuer's report.

5. The Id. DR relied on the orders of authorities below.

6. We have heard the rival contentions and perused the material placed before us including the orders of authorities below. We find that in the instant case, the assessee became owner of the property by way of inheritance prior to 1.4.1981 which was sold by the assessee during the year. The assessee calculated capital gains on the basis of FMV as per the Registered Valuer's Report on 1.4.1981 showing Capital Loss from the said property at Rs.40,054/- which was rejected by the AO by not accepting the contentions of the assessee. After allowing him an opportunity of hearing calculated capital gains at Rs.22,18,204/- by taking the value of the property as per the balance sheet dated 31.3.2007 without referring the matter to the District Valuation Officer under section 50C. The FAA also held that the FMV as per Registered Valuer report cannot be accepted which is much higher to the value as appeared in the balance sheet of the assessee by upholding the order of the AO by giving various reasons and finding as reproduced hereinabove. In the present circumstances, we are of the opinion that in order to ascertain fair market value of the property, the AO is duty bound to refer the matter to the District Valuation Officer for ascertaining the FMV of the property when AO is not satisfied with the value as per the Register Valuer's report filed by the assessee and cannot act on whims

and fancies which is apparent from the fact that value shown in the balance sheet was taken as FMV when the asset was devolved upon the assessee by way of inheritance prior to 1.4.1981. In our opinion the action of CIT(A) upholding the adoption of value of Rs.2,95,000/- as per Balance sheet as on 31.3.2007 was not correct and contrary to the provisions of section 50C of the Act. In the facts and circumstances before us, we are of the considered view that the order of FAA upholding the order of AO is not correct as the AO has not taken the FMV of the property as on 1.4.1981 as the assessee became owner of property prior to 1.4.1981. We are, therefore, inclined to set aside the order of the Id.CIT(A) and direct the AO to take the FMV as on 1.4.1981 as per valuation report of the Registered Valuer filed by the assessee.

7. In the result, the appeal of the assessee is allowed.

Order has been pronounced in the Open Court on 16.1.2017.

Sd  
**(MAHAVIR SINGH )**  
**Judicial Member**  
**मुंबई Mumbai; दिनांक Dated : 16 .1.2017**  
 Sr.PS:SRL:

sd  
**(RAJESH KUMAR)**  
**Accountant Member**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai