

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMS", LUCKNOW

BEFORE SHRI. T.S. KAPOOR, ACCOUNTANT MEMBER
AND SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.375/LKW/2016
Assessment Year:2008-09

Atul Kumar Garg, HUF 35, Cantt. Kanpur	v.	Income Tax Officer I(1) Kanpur
TAN/PAN:AADHA0605A		
(Appellant)		(Respondent)

ITA No.376/LKW/2016
Assessment Year:2008-09

Pawan Kumar Garg, HUF 35, Cantt. Kanpur	v.	Income Tax Officer I(1) Kanpur
TAN/PAN:AADP9699F		
(Appellant)		(Respondent)

ITA No.475/LKW/2016
Assessment Year:2008-09

Rakesh Kumar Garg, HUF 35, Cantt. Kanpur	v.	Income Tax Officer I(1) Kanpur
TAN/PAN:AACHR9261E		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Smt. Jyoti Verma, D.R.		
Date of hearing:	25	04	2018
Date of pronouncement:	02	05	2018

ORDER

PER PARTHA SARATHI CHAUDHURY, J.M:

These three appeals preferred by three different assesseees emanate from separate orders passed by the Id. CIT(A)-I, Kanpur as per grounds of appeal on record.

2. These cases were heard together and the facts being common and issue similar, these cases are disposed of in this consolidated order. As a matter of convenience, we take up the facts as appearing in ITA No.375/LKW/2016. At the time of hearing also, the Id. A.R. of the assessee stated before us that so far as merit is concerned, all the three cases are same.

3. The brief facts in this case are that the assessee is HUF. Return was filed showing income of Rs. 563850/-. This income included Long Term Capital Gain of Rs.402451/- on sale of 1/3 share of part of property No 107/3 B, Dwarikapuri, Kanpur. The properties under reference is very old and there are various tenants with whom litigation are going on for property recovery as covered by the Rent Control Act. Considering the nature of property and various deficiencies attached to it, fair market value of the property sold was not more than the sale consideration received by the assessee as per sale deed. In support of this, assessee had obtained report of the approved valuer. The return was processed on returned income. However, Assessing Officer as per difference of the property on stamp duty and as per sale deed, initiated re-assessment proceedings under section 147/148 of the Act. During the course of re-assessment, assessee had furnished various evidences in support of the fair market value of the property and it was contended that stamp duty value was not correct. The Assessing Officer referred the matter to the valuation cell for determining the fair market value as on the date of sale. In compliance to the notice of Valuation Cell, various objections prepared by the approved valuer and other documents were furnished. It was contended that fair market value of the property was not more than the value reflected in the sale deed. The valuation officer estimated the fair market value of the property at Rs.59,60,000/- as against sale deed value of Rs.37,00,000/- shown by the assessee. The income was assessed by the Assessing Officer at Rs.15,38,790/-.

4. Before the Id. CIT(A), assessee had filed written submission in support of his case and relevant portion are reproduced hereunder for ready reference:-

1. The appellant HUF had filed the return of Income on 31.03.2009 declaring net income of Rs. 563850/- which included Long Term Capital Gain of Rs.402451/-

(Rs. 412801/- on sale of 1/3 share in immovable Assets (-) Rs.10350/- set off of loss of A. Y. 2002-03).

1. That although there was- no escapement of any income, the Learned AO on the ground that the Capital Gain has not been shown as per provisions of Section 50C on the Sale of immovable^ assets wrongly initiated the proceedings u/s 147/148 of the Act on 27.03.2012.

3. That the properties under reference is part of a big Ahata bearing Municipal No 107/3, Dwarikapuri, Kanpur jointly owned by:-

(i)Atul Kumar Garg, HUF (appellant) 1/3rd share.

(ii) Rakesh Kumar Garg, HUF Co-owner 1/3rd share

(iii) Pawan Kumar Garg, HUF, Co-owner 1/3rd share

4. That particulars of properties sold by the three joint co-owners during the year under consideration are given as under:

*(a) 1st Deed part portion of property No.107/3B Dwarikapuri
Kanpur sold on 17.10.2007 1300000/-*

*(b) 2nd Deed part portion of property No.107/3B Dwarikapuri
Kanpur sold on 24.10.2007 2400000/-*

3700000/-

5. That during the course of assessment proceedings the appellant- explained that looking to the various adverse factors like (1) Property covered under Rent Control Act & having several tenants (2) Litigation involved in the, court with tenants (3) Land to be surrendered for road widening (4) Prevailing market rate etc, the sale

6. That the valuation of the two properties as per approved valuer's report dated 29.01.2013 of Shri A.S. Agarwai was at Rs. 2554000/- whereas the sale consideration as reed by the three Co-owners was Rs. 3700000/- which was quite fair & reasonable.

7. That the matter of valuation was referred" to the valuation cell who without properly considering the various adverse factors involved in the property worked out the valuation of the above properties at Rs.5960600/- as against actual sale consideration of Rs.3700000/-.

8. That while working out the fair market value, the Valuation Officer has not considered the following important factors mentioned in the report dated 29.01.2013 of the approved valuer Shri A.S. Agarwal,

Relevant portion of the report is reproduced :-

1. The premises was governed by rent control and eviction Act. The owners could neither increase the rent nor could get the premises evicted except as per the provision of rent control Act. There were three litigation going on in th-e court since 1994 & 1995 for getting the premises vacated but so far the owners were not able to get the premises vacated. The detail of the court cases are given below

Case no	Court	Parties
110/94	II Addl. Munsif	Rakesh Kumar Vs Har Charan Singh
283/95	JSCCII	Rakesh Kumar Vs Har Charan Singh
69/02	JSCC	Rakesh Kumar Vs Sant Prakash

2. The premises is facing G.T. Road. Width from Railway line is 100 ft. In the latest master plan the road width is provided as 150 ft. As such whenever road widening is done, the portion upto 50 ft. depth from the existins land shall be taken for road widening. As such the area 50'X70' equivalent to 325. 28 m² shall be taken for road widening. The building plan shall be approved by KDA after leaving the land required for road widening as would be evident from letters dated 02.01.2006 & 16.11.2006 of K.D.A. (Refer Annexure-I)The premises was suitable for residential purpose only. As per KDA by laws only portion facing G: T, Road could be used for commercial purpose. But since land up to 50 ft. depth facing G.T. Road shall be utilized in road widening as such the balance land left with the owner at the time of sale deed could be used for residential purpose only.

1. The premises- was also declared slum are under U.P. Slum &

Clearance Act 1962, in the year 1982 & 1985 (Refer Annexure II & III).

2. The premises even today is under the threat for declaration under U.P. Slum & Clearance Act 1962 (Refer Annexure-IV).

3. Considering the above points, the present market value of the portion under consideration is worked out as under:-

Total area of land	593.33m ²
Less the land to be used for road widening (50 'X70)(-)	325.28 m ²
Net Area =	268.05 m ² The balance

land can be used for residential purpose only as mentioned in the letter no. D/560/1221 Bhavan/04-05 dated 16.11.06 issued by Assistant Engineer (Bhavan) KDA to Shri Pawan Garg.

Present residential land rate for the area is Rs. 11000.00 m²

Value of land = 268.05 m² @ Rs. 11000.00 per m² = Rs.2948550.00

The structure in the premises is 60 years old and is in bad shape. The depreciated value of the same may be taken =Rs.300000.00

Total	Rs. 324855.00
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Since the entire premises is in occupancy of 3 tenants (-) = Rs.1072021.00

at a very small rental value. And the Net Value - Rs. 2176529.00

tenants cannot be evicted as per rent Say = Rs. 2177000.00

control Act as such 33% deduction in value be allowed due to tenancy.(Rs. Twenty One Lac Seventy Seven Thousand .

From the above it is seen that maxm. Land rate at which the property of same locality has been sold during 2007-08 is Rs.4305.00 per m². If the same rate is adopted then the value of the property under consideration comes to.

Total area of land = 593.33 m²

Land rate	= Rs. 4305.00 per m ²
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Value of property = 593.33 m² @ Rs. 4305.00 per m² = Rs. 2554285.00

Say= Rs. 2554000.00

From the above it is seen that maxm. Value of the premises sold as on 24.07.2007 can be taken. = Rs. 2554000.00

(Rs. Twenty Five Lac Fifty Four Thousand Only.)”

5. Thereafter, the matter was referred to the Valuation cell and the report of the Valuation Officer as appearing in the order of the Id. CIT(A) is as under:-

“The mater was referred to the valuation cell who vide letter dated 15.01.2016 have replied as under:-

1. The Assessee has contended that the Valuation Report of AVO, is arbitrary and unjustified. But on contrary Registered Valuer Report is arbitrary and unjustified. The Valuation Report of AVO has been prepared as per. CBDT approved rates and guidelines as against Registered Valuer Report.

2. Stamp Valuation Authority has valued the property at Rs.18,24,605, The AVO has calculated FMV as Rs.59,60,600/- considering various factors affecting the FMV of property. The FMV calculated by AVO is substantially lower than the valuation of Stamp Valuation Authority. Deductions on account of tenancy problem and other factors have been considered while calculating FMV.

3. Further, the assessee was given opportunity to raise his objection on FMV of Rs.3,26,200/- vide this office letter no.24&25/AVO/ITD/KNP/12-13/403 dated: 13.03.2013 (copy attached).

They have reiterated that the objections are without basis and the same were duly considered. They have advised that the valuation arrived by them is in order and no further relief is allowable.”

6. The Id. CIT(A), on the basis of the submissions of the assessee and the DVO's report, held as follows:-

“The proceedings initiated u/s 147/148 was valid as there was clear-cut escapement of any income. A.O. initiated the proceedings based on fresh information available on record as well after due application of mind.

The valuation by the Approved valuer, is a favorable report as per the convenience of the assessee and the same was duly considered by the DVO and I am of the opinion that there was no justification in adopting the valuation as worked out by the approved valuer Sh A.S. Aggarwal.

Based on the above the appeal is therefore dismissed and addition made is upheld."

7. We have perused the records, analysed the facts of the case and we find that objection of the assessee are threefold. Firstly, the property which is in question is not a free hold property. It is a property which is occupied by tenants and there are court cases going on to get the premises vacated, which itself is evident from the body of the order of the Id. CIT(A) and it is on record. Secondly, the objection stated by the assessee is that Kanpur Development Authority (KDA) had issued letters to the assessee to takeover certain portion of their property in connection with road widening and relevant documents are annexed in pages 83 to 87 of the paper book filed before us. These were also placed in front of the relevant authorities from time to time. Thirdly, the objection by the assessee that the Id. CIT(A) while deciding the case has observed that property is vacant possession and that vacant possession was given to the buyer and there is no question of any encumbrance. However, we find that in the property deed itself it is mentioned that it is occupied with tenants and more so it is proved since court cases are going on against them as per Rent Control Act, which is also evident in the order of the Id. CIT(A). The Id. CIT(A) has stated that valuation by the DVO is correct whereas that adopted by the authorized valuer is arbitrarily done. However, we do not find any evidence or any material on record, which highlight these facts. The order of the Id. CIT(A) is not at all a speaking order and written submissions put forth by the assessee before him pointing out main three objections are not at all dealt with by the Id. CIT(A) in his order. We also examined DVO's

report and we find that he has also not dealt with the issue as to why benefit should not be given to the assessee when KDA itself takes away some portion of the property for road widening. The DVO has also not pointed out that property already being occupied by tenants and court cases are going on, what could be the impact of valuation of such property. Whether it could be more than what is stated in the sale deed. These things have not been clearly dealt with by the DVO. The DVO has simply applied circle rate available and made report. The Income Tax legislation being a welfare legislation has always tried to protect a bona-fide assessee and here is a case where sale deed value is declared and independent valuation done by the authorized valuer, but we find that the subordinate authorities have not categorically dealt with the submissions of the assessee nor has brought out any material on record to support as to why DVO's report should be taken into consideration. We, therefore, set aside the order of the Id. CIT(A) and direct deletion of addition by allowing the appeal of the assessee.

8. Now we take up the appeals in ITA No.376 & 475/LKW/2016. The facts on merit of these cases are similar to the case which we have already dealt with i.e. ITA No.375/LKW/2016, therefore, the decision given therein shall even apply to these cases as well and, therefore, for these cases also, the additions are deleted and the appeals of the assessee are allowed.

9. In the result, all the appeals of the assessees are allowed.

Order pronounced in the open Court on 02/05/2018.

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[PARTHA SARATHI CHAUDHURY]
JUDICIAL MEMBER

DATED: 2nd May, 2018

JJ:2504

Copy forwarded to:

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