THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 2028 /Ahd/2018 **Assessment Year 2012-13**

Ushaben Ambalal Oza, 401, Harsh Appartments Nr. Himali Tower, Kenyug Char Rasta, Satellite, Ahmedabad-380015 PAN: AAAPO6352P (Appellant)	Vs	ITO, Ward-3(3)(15), Ambawadi, Ahmedabad-380015 (Respondent)

Assessee by: **Shri S.N. Divatia, A.R.**
Revenue by: **Shri R.R. Makwana, Sr. D.R.**

Date of hearing : 30-03-2022
Date of pronouncement : 17-05-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-3, Ahmedabad in Appeal no. CIT(A)-3/671/Wd. 3(3)(5)/16-17 vide order dated 16/08/2018 passed for the assessment year 2012-13.

2. The assessee has taken the following grounds of appeal:

"1.1 The order passed u/s. 250 on 16.08.2018 for A.Y.2012-13 by CIT(A)-3, A'bad upholding the valuation u/s 50C as per AVO at Rs. 74,36,400/- and thereby confirming addition of Rs. 7,47,813/- towards capital gain is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned additions.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in upholding valuation u/s 50C as per AVO at Rs. 74,36,400/- and thereby confirming addition of Rs. 7,47,813/- towards capital gain.

2.2 That in the facts and circumstances of the case, the Ld CIT(A) ought not have upheld the valuation u/s 50C as per AVO at Rs. 74,36,400/- and thereby confirmed addition of Rs. 7,47, 813/- towards capital gain ignoring the relevant points/principles for the valuation of property.

It is therefore prayed that the valuation u/s 50C as per AVO and addition towards capital gain of Rs 7,51,128/- upheld by CIT(A) should be deleted."

3. The brief facts of the case are that the appellant is an individual and derives income from business, capital gain and interest income. She had filed her return of income for A.Y.2012-13 on 29.07.2012 declaring total income of Rs. 61,470/-. Later on, the AO issued notice u/s. 148 on 27.04.2014 for the reason that the appellant had sold immovable property for Rs.60 lakhs on 05.12.2011 whereas the stamp duty authority had valued it at Rs. 94,43,030/- so that the provisions of section 50C were attracted.

3.1 During the course of assessment proceedings, the AO issued show cause notice on 02.11.2015 proposing to adopt sale value at Rs.94,43,030/- and arrived at capital gain liability accordingly since this is the value on which additional stamp duty had been paid by the assessee at the time of sale of property. The AO observed that if the assessee had any grievance on the sale value assessed by the Stamp Duty Authority, he should have objected before the stamp valuation authority to such valuation done. The assessee has not furnished any supporting evidence that he has made any representation or dispute with respect of stamp valuation adopted by the state authority after determination of fair market value of such property. As regards the objections filed by the assessee vide letter dated 09.12.2015, the AO held that the objections of the assessee are general in nature and section 50C is a deeming provision and it is not required to establish that the assessee has received more consideration than what has been shown in the sale deed. The assessee vide letter dated 19.02.2016 requested AO to refer the valuation to DVO and as such it was referred to DVO. However, the DVO vide his letter dated 18.03.2016 expressed his inability to finalize the valuation before 31.03.2016. Hence, the AO took sale value of the property was taken at ₹ 94,43, 030/- and accordingly worked out LTCG of Rs.17,51,128/- towards appellant's half share.

3.2 During the course of appellate proceedings, the CIT(A) allowed the admissibly of report of DVO u/r 46A(2) since there was reasonable cause on part of appellant for not furnishing the same earlier and also adopted the sale value of impugned property at ₹ 74,36,400/- as per the said report. It was contended during the appellate proceedings that the report of DVO suffered

from several defects such as: (i) defective title of the property, comparable instances for valuation, rate for RCC tank etc.(ii) reasonable deduction on account of CPWD rates as against local rates and supervision charges which were supported by case laws like Dommalapati Narendra v ITO and Smt Swaroop Sekhon v ITO. However, the contentions were rejected by CIT(A) stating that the claim was without evidence and the claim was an afterthought as it was never made before AO and it is not as per conditions of 46A. The Ld. CIT(A) further held that the case law cited are on different facts and hence the ratio of these cases cannot be applied to the instant set of facts. Further, Ld. CIT(A) also observed that DVO has considered all relevant factors while finalizing the report wherein his decision has been quite favourable to the assessee and wherein the DVO has reduced the FMV from ₹ 94,43,030/- to ₹ 74,36,400/-. Accordingly, Ld. CIT(A) directed the AO to take FMV adopted by DVO at ₹ 74,36,400/- and hence partly allowed the assessee's appeal.

4. Before us, counsel for the assessee at the outset drew our attention to page 24 of paper book, where the DVO has given examples of comparable sale instances while arriving at the FMV of the property. The counsel for the assessee pointed out that the DVO has taken the land rate at ₹ 21,795/- which is quite excessive and drew attention to serial number 3 at page 24 of the paper book, wherein in respect of similarly placed property which was sold in the same vicinity, the rate per square metre has been taken at ₹ 12,066.45. He submitted that it is the above rate which should have been adopted since the above property is in the same vicinity. The counsel for the assessee further pointed out that for the structure, the DVO has adopted the

Central rates instead of State rates, while the letter should have been adopted in the instant set of facts. In response, the Ld. Departmental Representative relied upon the observations made by the Ld. CIT(A) in his order.

5. We have heard the rival contentions and perusal the material on record. We have taken note of the objections filed by the assessee placed before DVO while finalizing the sale value of property. The assessee at serial number 1 of the said objection had submitted that the sale value of property situated at Shreenath Society should be adopted for the reason that firstly it is in the same society where the assessee's plot is located and secondly, just as in the case of the assessee, these plots are not having NA/ NOC i.e. the title is not clear. Further, the assessee during the course of proceedings before Ld. CIT(A) had submitted that the property is situated at serial number 1, 2 and 4 in the list of comparable properties at page 24 of the paperwork are situated at a distant place from where the assessee's property is situated and further these properties are having a clear title and hence their market value cannot be compared with that of the assessee, but no sound rationale was given for rejecting assessee's objection. In the case of **DCIT v. Unitech Industries (P.) Ltd [1998] 98 Taxman 343 (Punjab & Haryana)**, the Hon'ble High Court held that fair market value has to be based on factors such as sale of properties situated in same locality, and since land which was treated as a comparable sale instance was not located in same village, the High Court held that reliance by DVO on that sale instance could not be treated as fair basis for determining fair market value. In our considered view, the DVO should have considered the assessee's objection with regard to the value of comparable cases and should have taken into consideration

value of property in the same vicinity or nearby places and also take into consideration the fact that the sale value of property also gets impacted on account of not having a clear title. Accordingly, in our view taking the value of property at ₹ 21,795/- is on the excessive side, especially when the assessee has specifically pointed out that the properties on which reliance has been placed by the DVO are not located in the nearby vicinity and their market value is high since they have a clear title and are situated in a far better locality.

5.1 Another issue for consideration before us is the regard to the assessee's objection that it is not proper to adopt CPWD rates for arriving at cost of construction. In our view, various courts have held on various occasions that unless there are similarities in rates of CPWD and State PWD, it is not proper to adopt CPWD rates for arriving at cost of construction. In the case of **CIT v. K. Jayakumar [2013] 35 taxmann.com 179 (Madras),** the Assessing Officer on basis of valuation done by DVO, adopted CPWD rates and completed assessment, thereby making addition. The High Court held on considering geographical location, availability of work force and cost of materials, it is not proper to blindly go by CPWD rates for purpose of arriving at cost of construction unless there are similarities in rates of CPWD and State PWD. The High Court further held that where DVO adopted CPWD rates for arriving at cost of construction of assessee's property and there was a substantial difference between CPWD rates and State PWD rates, matter was to be remitted back to Assessing Officer for working out cost of construction by taking State PWD rates. In the case of **C.S. Daniel v. DCIT [2013] 40 taxmann.com 524 (Kerala)**, the High Court held that

depending upon availability of building material as well as cost of labour, cost of construction may vary from State to State and, therefore, it is just and proper to place reliance on local PWD rates rather than Central PWD rates in order to arrive at valuation of renovation and construction of house property. In the case of **CIT v. Dinesh Talwar [2004] 265 ITR 344**, the High Court observed as under :

> *"The Tribunal has valued the property adopting the rate of PWD. What should be the value of the construction, is basically a question of fact and that depends upon the material used, the location and the quality of construction. Therefore, straightaway, applying the PWD rate or CPWD rate is not justified in case of each house. What should be the cost of construction,* ***the Tribunal has applied the rate of PWD that is on the facts and circumstances of this case, which is part of the finding of fact****. No interference is called for."*

5.2 In our view, the valuation done by the DVO is on the excessive side since it has not taken into consideration value of similarly placed properties in the same vicinity having same marketable value, taking into consideration various factors like clear title of property etc. Further, as held by various Courts, the DVO should have done a comparable analysis of the CPWD rates and State PWD rates and should not have simply set aside the assessee's objection by stating that CPWD rates is the approved method as per departmental directions. Accordingly, the matter is restored to the file of the AO to rework the sale consideration in light of the observations regarding valuation of property made above. In the result, the impugned

order is set aside to file of AO for reworking the value of sale consideration and the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17-05-2022

Sd/-	**Sd/-**
(WASEEM AHMED)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad : Dated 17/05/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद