

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 471/Del/2022
Assessment Year: 2016-17**

Shrim Software Pvt. Ltd., 59/17, Bahubali Apartments, New Rohtak Road, Karol Bagh, New Delhi PAN: AATCS8911L (Appellant)	Versus	ACIT, Central Circle-3, New Delhi (Respondent)
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Appellant by : Sh. Amit Goel, Ld. CA &
Sh. Nipun Mittal, Ld. CA
Respondent by : Sh. Jeetendra Kumar Kale, Ld. Sr. DR

Date of hearing: 06.02.2023
Date of order : 17.02.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 04.02.2021, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-23, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. In the instant case, the Assessee declared a total loss of Rs.1,92,86,667/- by filing its return of income electronically on dated 17.10.2016, which was taken into consideration for limited scrutiny and thereafter various statutory notices were issued to the Assessee, in response to which, the Assessee filed necessary details/clarifications.

2.1 By perusing the return filed by the Assessee, the Assessing Officer observed that during the year under consideration, the Assessee has sold a property for a consideration of Rs.15,39,45,000/- to M/s. SAPL Industries Pvt. Ltd. However, for stamp duty purposes, the value of the property was taken at Rs.18,18,06,500/-. Therefore, finding difference in consideration, the Assessing Officer made a reference to the District Valuation Officer-2, Mumbai to estimate the fair market value of the property on the date of transfer. The DVO by its preliminary valuation report dated 15.11.2018 estimated the fair market value of the property at Rs.17,72,11,000/-, on which the Assessee was confronted and vide notice dated 06.12.2018, show caused to explain as to why the difference in the consideration of the property may not be added to the income of the Assessee and the expenses claimed against the capital gain/loss may not be disallowed as no business activities were carried out during the year.

2.2 In response to the said show cause, the Assessee primarily raised the objections on the valuation report and claimed that the cost of property transacted be computed by adding the expenses incidental to the transfer of property and reiterated that no capital gain is applicable in view of the cost being higher than the sale consideration. The Assessee also claimed that the addition of cost of Rs.16,47,42,469/- and expenses of Rs.84,78,957/- be added to arrive at the cost of asset on the date of transfer, as the expenses were exclusively incurred for property.

2.3 The said reply was considered by the Assessing Officer, but found not tenable and ultimately by considering the information furnished by the Assessee and available on record, the cost of asset transferred was taken by the AO as follows :

Cost as declared	Rs.16,47,42,469/-
Add: Interest paid on loan to be capitalized	Rs.35,59,840/-
Add: Brokerages (TDS paid to be capitalized)	Rs.23,09,175/-
Add: Foreclosure of loan charges to be capitalized	<u>Rs.20,87,194/-</u>
Cost of property :	<u>Rs.17,26,98,678/-</u>

2.4 The Assessing Officer ultimately under the provisions of section 50C of the Act, computed the fair market value of the property for the purpose of computing capital gain on

the transfer of the asset at Rs.17,72,11,000/- and cost of the property upto the date of sale at Rs.17,26,98,678/- and in the result added the amount of Rs.45,12,322/- (17,72,11,000 - 17,26,98,678) being the difference between the fair market value and the cost of property upto the date of sale.

The Assessing Officer also disallowed the amount of Rs.1,92,86,667/- the loss claimed on the ground that since no business activities was carried out during the year, so the loss claimed by the Assessee in ITR is not allowed as the company is not eligible to claim this expense against transfer of property activities and the computation of income furnished by the Assessee is also not correct, so the claim is rejected as such.

3. The Assessee being aggrieved before the Id. Commissioner , also challenged adopting the value of the property to the tune of Rs.17,72,11,000/- as fair market value instead of actual sale consideration to the tune of Rs.15,39,45,000/- by the AO and claimed as under :

“3. The assessing officer however disregarded the submission of the assessee and made the addition on the basis of report of DVO. It is humbly submitted that the action of the AO in adopting the value as per report of DVO

is and making the addition is erroneous. It is humbly submitted that the fair market value of the property as on date of transfer was Rs. 15,39,45,000/ which is also the actual consideration received by the assessee. Therefore, the amount of Rs. 15,39,45,000/ has rightly been shown by the assessee as full value of consideration received for the purpose of computation of capital gain u/s 48 of Income Tax Act, 1961.

3.1 The AO had made reference to District Valuation Officer (DVO) and as per report of DVO the estimated value of the property has been shown at Rs. 17,72,11,000/ which is less than the value adopted for stamp duty purposes. This also proves that the value adopted for stamp duty purpose was in excess of the fair market value of the property as on date of sale. Accordingly, it is submitted that no adverse inference could have been made by the AO u/s 50C of the Income Tax Act, 1961.

3.2 Even the reference to the DVO, the report of the DVO and the value mentioned therein are erroneous. From the report of the DVO it can be seen that there is no reference to section 50C of the Income Tax Act. As per the valuation report the reference / purpose of valuation was for determining the estimation of value of investment made by the assessee company. Even the value of Rs. 17,72,11,000/ determined by the DVO in his valuation

report has been stated to be estimation of valuation of investment made by assessee company. Thus the reference for valuation and the valuation report itself are out of context and cannot be basis for making addition u/s 50C of the Act.

Without prejudice to the above, it is submitted that even otherwise the valuation done by DVO is erroneous and excessive. In the report of DVO, the valuation of the property has been made Rs.346148/- per square meter whereas as per the 4 sales instances provided in the valuation report itself the value prevailing was Rs.347141/, Rs.336316/-, Rs.336321A and Rs. 336317/respectively. Thus, the most prevalent rate as per the DVO report itself was around Rs. 336000/per square meter and this rate was also the nearest to the date of sale of property by the assessee among the 4 sales instances provided in the valuation report. The area of property sold by the appellant company is 486.87 sq. mtr. Among the area(s) of properties of sales instances given by DVO, the area closest to the area of appellant's property is 452 sq. mtr whose sales price as per report of DVO was Rs. 3,36,321/. Therefore, even if the value was to be taken as per the sales instances given in DVO report, it could have been Rs. 3,36,321/ per sq. mtr. and not Rs. 3,46,148/ per sq. mtr. as valued by DVO. On this ground

alone, the valuation made by DVO and adopted by AO will reduce by Rs. 47,84,471/ i.e 486.87 sq. mtr. x Rs. 9827(Rs. 346148 Rs. 336321). Further in the valuation report amount of Rs. 8682257/ has been added for Car Parking whereas the sales consideration received by the assessee was full value of consideration and no separate consideration was to be received in respect of car parking nor any separate sale deed was registered by stamp valuation authority in respect of car parking. Even in the sales instances given by DVO in his report there is no mention of separate amount for car parking. Therefore, this amount of Rs.8682257/ mentioned in the valuation report is also excessive and erroneous.

3.3 Without prejudice it is submitted that the valuation by the DVO is merely an estimate and it is not possible that each and every property in a particular area will fetch identical sale price. Every property has its distinguished feature / disadvantage due to location, size, vicinity, quality of construction, shape of property etc.

3.4 Without prejudice to the above, it is submitted that since the value as per report of DVO is less than the value adopted for stamp duty purpose, no adverse inference could have, been drawn by AO u/s 50C of the Act. The provisions of sub-section(3) for adoption of value as per stamp duty purpose can be done only where the value

determined by DVO exceeds the value as per stamp duty purpose. The provisions of sub-section (3) of section 50C is reproduced as under:-

3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

From the above, it is clear that in a case where reference is made to the DVO the value adopted for stamp duty purpose can be treated as full value of consideration received only where the value determined by DVO exceeds the value as per stamp duty purpose. Since in the present case the value determined by DVO is less than the value as per stamp duty purpose, no adverse inference could have been made under 50C of the Act.”

3.1 Though the Id. Commissioner considered the submissions of the Assessee, however by relying upon various judgments of the Hon’ble High courts and Tribunal held that in view of the above judicial decisions, the DVO is

a specialized person and his estimate is binding upon the Assessing Officer. Hence, the Assessing Officer was justified in adopting fair market value of the property at Rs.17,72,11,000/- and making addition of Rs.45,12,322/- on account of short term capital gain.

4. The Assessee being aggrieved with the confirmation of the adoption of the value of the property to the tune of Rs.17,72,11,000/- as fair market value of property instead of actual sale consideration at Rs.15,39,45,000/- by the Ld. Commissioner , is in appeal before us.

5. We have given thoughtful consideration to the peculiar facts and circumstances. The Assessee in order to demonstrate the factual aspects of this case filed the following chart:

Sl. No.	Rate	Date
i)	Rs.3,47,141/- per sqm	26/12/2013
ii)	Rs.3,36,316/- per Sqm	07/08/2014
iii)	Rs.3,36,321/- per Sqm	07/08/2014
iv)	Rs.3,36,317/- per Sqm	07/08/2014

By referring the aforesaid chart, the Assessee claimed that the DVO in its report, recorded four sale instances referred to above and valued the property at Rs.17,72,11,000/- @ 3,46,148/- per sqm.

5.1 We observe that the DVO has taken into consideration the highest sale instance as mentioned at Sl. No. 1 of the aforesaid chart, which is of dated 26.12.2013 @ 3,47,141/- per Sqm, but deliberately failed to consider the other instances mentioned at Sl. No. 2, 3 & 4 even dated 07.08.2014.

5.2 As in the instant case, the property under consideration was sold in the financial year 2015-16, therefore, the instances of financial year 2014-15 would be most relevant for determining the sale consideration. Hence, considering the peculiar facts and circumstances, we deem it appropriate to direct the Assessing Officer to take into consideration, the average of three instances as mentioned at Sl. No. 2 to 4 of the chart referred to above and also add the fair market value of covered car parking as well, while estimating the fair market value of the property, as on the date of transfer and determine/compute the capital gain accordingly.

6. In the result, the appeal filed by the Assessee stands allowed in the aforesaid terms.

Order pronounced in the open court on 17/02/2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-