

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'D': NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.3352/DEL/2023
[Assessment Year: 2021-22]**

Lalita Trehan, 815, Indraprakash, 21 Barakhamba Road, New Delhi-110001	Vs	DCIT, Circle Int. Tax-3(1)(1), E-2 Block, Civic Centre, Minto Road, New Delhi-110002
PAN-ACHPT3256E		
Assessee		Revenue

Assessee by	Sh. Ashok Khandelwal, CA
Revenue by	Sh. Vijay B. Vasanta, CIT-DR

Date of Hearing	26.07.2024
Date of Pronouncement	23.10.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the Assessing Officer dated 31.10.2023 passed u/s 143(3)/144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act') arising out of order of Dispute Resolution Panel dated 14.09.2023 pertaining to Assessment Year 2021-22.

2. The grounds of appeal raised by the assessee are as under:-

"1. Action of the A.O. in computing the Capital Gain on sale of property at Rs.8,53,13,827/- as against returned Capital Gain of Rs.1,41,22,248/- is unjust, illegal, arbitrary and against the facts and circumstances of the case.

2. Action of A.O./DRP ignoring the valuation report of a Government Approved Valuer evidencing fair market value of the property as at 01.04.2001 at Rs. 6,18,38,946/- is unjust, illegal, arbitrary and against the facts and circumstances of the case.

3. Action of A.O. in working the circle rate of land as at 01.04.2001 at Rs.5,472 Per Sq. Yard as against the DRP's directions to apply land rate somewhere between Rs.4500 and 6,450 per Sq. Yard as against Rs.7,250 taken by the appellant's Government Approved Valuer as Market Price is unjust, illegal, arbitrary and against the facts and circumstances of the case

4. Action of the A.O. in completely disallowing the cost of construction in the building carried out in the year 2003-2004 claimed at Rs. 91,09,820/- is unjust, illegal, arbitrary and against the facts and circumstances of the case

5. Action of the A.O. in completely disallowing the cost of development in the building carried out in the year 2003-2004 claimed at Rs.21,31,493/- is unjust, illegal, arbitrary and against the facts and circumstances of the case.”

3. Brief facts of the case: The assessee is a non-resident residing in Texas, USA. During the year, the assessee was the owner of the property being institutional (School) building and land measuring 1.55 Acres (covered area 2600 sq.ft.) situated at plot no. 2101 DLF City, Phase-II, Village-Sarhaul, Gurgaon, Haryana, which she sold during the year to M/s Delhi Educational Charitable Foundation and received a sum of Rs.23,63,00,000/-towards its sale consideration. The assessee furnished the valuation report dated 05.12.2019 of a government registered valuer wherein, it was stated that the construction of school (American Montessori Public School) on the above land was done before 2001 and further construction was completed in F.Y. 2003-04. The assessee claimed indexed cost of acquisition amounting to Rs.16,37,12,395/- on

i. Indexed cost of construction of 13,236.4 sq. ft. (Constructed in F.Y. 1997-98) @ Rs.562.80 - Rs.2,24,22,832/-

ii. Indexed cost of construction of 13,236.4 sq. ft. (Constructed in F.Y. 2003-04) @ Rs.688.24 - Rs.2,51,56,475/-

iii. Cost of land Development of 60899.8 sq. ft.(Financial Year 2003-04 in which the payment was made)- Rs.58,86,049/-

[illegible]

Computation of capital gains by the assessee.

Income from Capital Gain (Chapter IV E)		14122249
Long Term Capital Gain		
1.DLF Phase II, Village Sarhaul, Tehsil & Dist. Gurugram 31/03/2021		
Value u/s 50C	236300000	
Sales Consideration Received	236300000	
Sale Consideration		236300000
Less: Transfer Expenses		0
		236300000
Less: Indexed Cost Value of Land F.Y. 2001-02 54389500/100*301	163712395	
Value of Land F.Y. 2001-02 7449446/100*301	22422832	
Value of Land F.Y. 2003-04 9109820/109*301	25156475	
Land Development Charges F.Y. 2003-04 2131493/109*301	5886049	
		217177751
		<u>19122249</u>
Deduction u/s 54EC	5000000	<u>5000000</u>
Capital Gains		14122249
Investment in Specified Bond u/s 54EC Rs.5000000		

3.1. During the draft assessment stage, the AO noted that the assessee did not submit any documentary evidence in support of her claim of cost of construction and land development charges. In the assessment proceedings, the AO has considered the cost of construction and land development charges for FY 2003-04. The AO issued notice u/s 142(1) of the Act dated 12.12.2022 requesting to submit the relevant documentary evidences to justify the cost of improvement and land development charges claimed by the assessee. Further, the assessee was also requested to submit the documentary evidences to justify the circle rates

taken to calculate the cost of land as on 01.04.2001. Thereafter, the AO noted that the assessee had not submitted any documentary evidence/bills or other details in support of her claim of cost of construction (Rs.91,09,820/-) and land development charges (Rs.21,31,493/-) incurred during FY 2003-04 and the assessee relied on the valuation report furnished by the approved valuer. On the said expenses, the assessee had claimed indexed cost of Rs.2,51,56,475/- and Rs.58,86,049/- respectively totalling Rs.3,10,42,524/-. The assessee submitted the occupancy certificate dated 31.07.2001 issued by senior town planner, wherein, the details of existing structure in 2001 were mentioned. The assessee also enclosed a demand notice dated 16.05.2003 issued by senior town planner with respect to the occupation certificate, which was paid by the assessee on 19.05.2003.

3.2. The AO held that in absence of any relevant evidentiary documents, the above expenses of Rs.91,09,820/- and Rs.21,31,493/- remains unexplained. However, he was of the view that disallowing the entire expenses would not be judicious and therefore in view of natural justice, the claim of expenses was restricted to 70% of such expenses.

4. The matter travelled to DRP which in para 10 of its order directed as under:-

“For cost of construction and land development charges, assessee has submitted report of Govt Approved Valuer but has not submitted any bills/ vouchers in support of her claim. She has doubted the valuation report of Govt Approved Valuer in this regard. In absence of any concrete proof for claiming the cost of construction and land development charges by the assessee, Assessing Officer is directed to take a more reasonable approach and pass a reasoned order on

basis of findings in the valuation report, one way or the other, instead of an adhoc disallowance in form of percentage disallowance. Ground of objection in this regard is disposed off, accordingly”.

5. In the final assessment order passed u/s 143(3) r.w.s. 144C(13) dated 31.10.2023, the AO discussed the directions of the DRP and stated that the assessee did not produce any documentary evidence/bills in support of her claim of cost of construction/improvement and land development charges during the assessment proceedings/DRP proceedings and therefore the entire expenses incurred in financial year 2003-04 remained unexplained and disallowed the total amount amounting to Rs.3,10,42,524/- claimed under this head. The relevant finding of the AO in this regard in para 8.2 of the final assessment order is reproduced as under:-

“8.2 The Hon'ble DRP has further directed to take a more reasonable approach and pass a reasoned order on basis of findings in the valuation report, one way or the other, instead of an adhoc disallowance in form of percentage disallowance. In view of the same, it is stated that the assessee has not produced any documentary evidence/bills in support of its claim of cost of construction/improvement and land development charges during the assessment proceedings and during the DRP proceedings. In absence of any relevant evidentiary documents, the entire expenses remain unexplained. Therefore, in view of the directions of the Hon'ble DRP, the entire expenses w.r.t. the cost of construction/improvement and cost of land development charges amounting to Rs. 3,10,42,524/- are being disallowed.”

6. As seen from the table on page-3, the assessee took the cost of land at Rs.7250/- per sq. yd. of the land measuring 7502 sq. yd. The AO asked the assessee to submit documentary evidences to justify the above circle rate to calculate the cost of land as on 01.04.2001. The AO issued a show cause notice dated 17.12.2022 giving a final opportunity to the assessee

to justify as to why the circle rate taken by the assessee, which is an average of residential and commercial circle rates should not be rejected as the current circle rates of commercial plots of same locality are higher than five times and circle rates of residential plots are higher than three times of institution plots. In reply, the assessee submitted that the circle rates for institutional land may not be available for 01.04.2001. In absence of same, the valuer of the assessee had taken average of commercial rate and residential rate. Further, the assessee submitted a copy of conveyance deed dated 28.06.2017 purchased by Surpal Education LLP for reference and stated that the land which was situated more than 13 kms away and the colony where the land is situated was much inferior to the assessee's land and was purchased @ of Rs.23,760/- per yard. On this purchase price, the assessee back calculated to arrive the value of the land as on 01.04.2001 after taking into the cost inflation index of the year 2017-18 of 272 and calculated the price to the tune of Rs.8735/- per sq. yard. $(Rs.23,760/- * 100/272)$ as compared to Rs.7,250/- per sq. yard adopted by the valuer."

6.1 The AO did not accept the above submissions of the assessee on the ground that increase in circle rate of any property depends upon many factors like infrastructure developments, location of property, connectivity with road and other transport facilities, future prospect of development of that area, etc and that the back calculation of the same will never give any factual result.

6.2 The assessee vide submission dated 26.12.2022 provided rates of residential plots purchased by DLF from 2002 to 2009 and submitted that

the average rate of residential plots purchased by the DLF is Rs.8500 per sq. yd. The AO also did not accept the above submission of the assessee on the ground that the plots are residential and not institutional and as mentioned above, rates of institutional plots are always lower than residential plots. Secondly, the AO stated that the above purchase price was based on market rate and not circle rates. The AO stated that as per amendment made to section 55 of the Act, applicable from AY 2021-22, fair market value of property as on 01.04.2001 cannot be more than the stamp duty value as on 01.04.2001.

6.3. Thereafter, the AO stated that the assessee had taken value of land at Rs.7250 per sq. yd. which was an approximation of the mean value of circle rates for residential Rs.6500 per sq. yd. and commercial properties (Rs.8000 per sq. yd.) within and in around the same locality. The AO noted that the assessee had not enclosed the circle rates for the institutional plots for the FY 2001-02. The AO perused the current circle rates available on the website of sub-registrar office of Gurugram and found that circle rates of commercial plots (Rs.1,65,000/- Per Sq. Yds) in the same locality are five times higher than the circle rates of institutional plots (Rs.28,000/- Per Sq. Yds). Likewise, the AO noted that the current circle rates of residential properties (Rs.72000 per Sq. Yds.) was found to be three time higher than the circle rate of institutional properties. The AO for these reasons did not accept the adoption of the mean value of circle rates for commercial and residential properties towards the cost of acquisition, as according to him to admit the assessee's claim of rate of lands would result in are arbitrary cost of acquisition therein causing

losses to Revenue. He also noted that the assessee's submission that there was no substantial difference between circle rates of residential and institutional property in 2001 was not supported by any documentary evidence. The AO, thereafter, noted from the public domain the circle rate list for the year 2011 w.e.f. 01.04.2011 for Tehsil Gurugram issued by the Administration of Gurugram for licensed colonies and institutional areas. Upon comparison, he noted that the circle rate of the institutional land is given at Rs.27000 per sq. yds and residential land w.e.f. 01.04.2010 was given at Rs.40,000/- for DLF phase-II, in which the property of the assessee was situated. The AO held that in order to calculate the approximate circle rate of the institutional land in 2001, the percentage decrease in circle rate for the institutional land is taken, which 32.5% less than that of residential land in 2011. The AO further noted that the circle rate of residential land in 2001 was Rs.6500 sq. yd. and therefore the circle rate of the institutional land may be taken as 4387.5 which is 32.5% less than that of residential land. Accordingly, he recalculated and determined the capital gains in the draft assessment order, which is as under:-

Sl. No.	Particulars	Calculation	FY in which payment made/ Value as per valuation report	CII for the FY in which payment was made	CII 2020-21	Indexed COA FY 2020-2021 (in Rs.)
1	Land measuring	7502 Sq. Yd. X Rs.4387.52 per Sq. Yd. = Rs.3,29,15,025/-	1990-91 /2001-02	100	301	9,90,74,225/-
2.	Cost of	13236.40 Sq. Ft. X Rs.562.80 Per	1997-98	100	301	2,24,22,832/-

	Construction	Sq. Ft. =Rs.74,49,446/-	/2001-02			
3	Cost of construction / improvement	13236.40 Sq. Ft. X Rs.688.24 Per Sq. Ft.= Rs.91,09,820/-	2003-04	109	301	2,51,56,475
4.	Cost of Land Development	60899.80 Sq. Ft. X Rs.35 Per Sq. ft. = Rs.21,31,493/-	2003-04	109	301	58,86,049/-
Total of Sl. No.3+4 (Cost of construction/improvement & Land Development)						3,10,42,525/-
Allowable to the extent of 70% of total expenses claimed as discussed above						2,17,29,767/-
Grand Total						14,32,26,825/-

The comparative valuation in accordance with 50C is here as under:-

Sl. No.	Particulars	Area	Circle Rates (in Rs.)	Amount in Rs.
1	Land measuring 1.55 Acre	7502 Sq. Yd.	28000 Per Sq. Yd.	21,00,56,000/-
2	Year 1997-98	13236.40 Sq. ft.	800 Per Sq. Ft.	1,05,89,120/-
3	Year 2003-04	13236.40 Sq. Ft.	800 Per Sq. Ft.	1,05,89,120/-
Total value of land and building as per stamp valuation purpose				23,12,34,240/-
Actual Sales Consideration				Rs.23,63,00,000/-

5.1. Computation of total income in case of Smt. Lalita Trehan :-

The assessee has declared Rs.1,41,22,249/- as income from Capital Gain.

The income of the assessee is recomputed as under:-

Total Sale Consideration:- Rs.23,63,00,000/-

50C Valuation of property: Rs.23,12,34,240/-

Indexed cost of acquisition Rs.14,32,26,825/-

(i) Long Term Capital Gain (Rs.23,63,00,000 – Rs.14,32,26,825/-):-
Rs.9,30,73,175/-

(ii) Less: Deduction u/s 54EC (NHAI Bonds):- (Rs.50,00,000/-)

Long Term Capital gain

Rs.8,80,73,175/-

7. Against the above draft assessment order, the assessee raised objections before the DRP. The DRP considered the findings of the AO in the draft assessment order and the submissions of the assessee and largely agreed with the AO for the rejection of the cost of construction and its basis adopted by the assessee. Before the Id. DRP, the assessee submitted following table of circle rates of her locality to prove her case as under:-

Year	Residential	Commercial	Institutional
2000-2001	6,500	8,000	–
2001-2002	6,500	8,000	–
2005-2006	–	–	12,000
2006-2007	15,000	27,000	15,000
2007-2008	16,000	34,000	19,000
2007--2008 Revised	–	–	20,900
2008-2009 Revised	–	–	22,000
2009-2010	–	–	24,000
2010-2011	–	–	26,000

7.1. The Id. DRP noted from the above table that between 2000-01 and 2006-07, the circle rate of residential land more than doubled and for the commercial land more than tripled within just five years. The Id. DRP compared between these aforesaid rates for the FY 2006-07 for the reason that for the first time circle rates of all the three types of property appears. The Id. DRP noted that the AO had applied the circle rates of

2010. The ld. DRP was of the view that better comparison would be to compare with the rates of 2006-07, since, the circle rates of 2000-01 are not available and the only option was to estimate on the basis of most reliable and closet data available. Following this principle, the ld. DRP was of the opinion that if the same percentage of increase in circle rates of residential and commercial property between 2000-01 and 2006-07 is applied to the institutional land then the rate would be somewhere between Rs.4500 and Rs.6450. The Ld. DRP observed that though this was not perfect method of calculation but under the circumstances, it is the one closest to the year under reference and directed the AO to recalculate the per sq. yd. cost taking guidance from the logic given as above. Further, the ld. DRP also took note of the fact that in respect of two sale deeds submitted by the assessee as an additional evidence, no remand report could be called due to the paucity of time and the AO may examine the same at his end also. In coming to the above conclusion, the Ld. DRP in para-7 of its order also noted that the rate of Rs.7,250/- taken by the approved valuer has been rejected by the AO as well as the assessee on the ground that the AO found the rates over quoted and the assessee found the rate under quoted. Accordingly, the ld. DRP held that since valuation report are unacceptable to both and therefore it considered the rate submitted by the assessee as reproduced in para-5 of its order. However, the ld. DRP also did not refer the matter to the Valuation Officer for ascertaining the valuation of the property being sold during the year.

7.2. Following the above directions, the AO determined the average rate i.e. Rs.5472 per sq. yd. for the calculation of cost of acquisition of institutional land rate as on 01.04.2001. The findings of the AO in this regard is discussed in para-8 of the Final Assessment Order, which is reproduced as under:-

“8. The Hon'ble DRP has directed to recalculate the per sq yard cost on the basis of the logic given by the Hon'ble DRP. The Hon'ble DRP has stated that "Since the circle rates of 2000-01 are not available, the only option would be to estimate on the basis of most reliable and closes data available." Following the principle, the percentage increase of circle rates between 2001-02 and 2006-07, for the commercial land is 237.5% and for the residential land is 130.77%. The circle rate of 2006-07 for the institutional land is Rs. 15,000/- per square yard. If we apply the above principle here, then the circle rate as on 01.04.2001 will be in between Rs.4444.44/- and Rs.6500/-. The average rate i.e. Rs. 5,472/-(per sq yards) is being taken for the calculation of cost of acquisition of institutional land rate as on 01.04.2001.”

7.3. The AO also did not accept the two sale deeds for the reasons that the same were not comparable. The findings of the AO in para no.8.1 of the final assessment order is reproduced as under:-

“8.1 Further, as directed by the Hon'ble DRP, the two sale deeds submitted by the assessee as additional evidence has been examined. The assessee has submitted sale deed of educational institute lands purchased by Sh. Vinod Kumar Dua on 13.04.2006 and by Sukhjeet Kaur Mann on 20.09.2004 as additional evidence. The Hon'ble DRP has given its view on the same wherein it is stated that the land of Sh. Vinod Kumar Dua is in the same locality but the it is 1674 sq yards which is much less than 7000 sq yards. In view of the fact that rate of property is inversely proportional to the size of property, the above institutional land purchased by Sh. Vinod Kumar Dua is not comparable with the assessee's land. Similarly, the of Miss. Mann is located in Phase-3 which is different from the locality of the assessee and it is less than 1000 sq yards which is much smaller than the land of the assessee and hence is not comparable as mentioned above. The view of the Hon'ble DRP is logical and hence the same is being applied in this case.”

7.4. As stated above, in the foregoing paragraphs, the AO had disallowed the entire claim of cost of construction/improvement and land development charges amounting to Rs.91,09,820/- and Rs.21,31,493/- on which indexed cost amounting to Rs.3,10,42,524/- was claimed.

7.5. Based on the above discussion, the AO determined the capital gains of the assessee as under:-

Sl. No.	Particulars	Calculation	FY in which payment made/ Value as per valuation report	CII for the FY in which payment was made	CII 2020-21	Indexed COA FY 2020-2021 (in Rs.)
1	Land measuring	7502 Sq. Yd. X Rs.5472 per Sq. Yd. = Rs.4,10,50,944/-	1990-91 /2001-02	100	301	12,35,63,341/-
2.	Cost of Construction	13236.40 Sq. Ft. X Rs.562.80 Per Sq. Ft. =Rs.74,49,446/-	1997-98 /2001-02	100	301	2,24,22,832/-
3	Cost of construction / improvement	13236.40 Sq. Ft. x Rs.688.24 Per Sq. Ft.= Rs.91,09,820/-	FY 2003-04	109	301	Disallowed by the AO NIL
4.	Cost of Land Development	60899.80 Sq. Ft. X Rs.35 Per Sq. ft. = Rs.21,31,493/-	FY 2003-04	109	301	Disallowed by the AO NIL
Grand Total						14,59,86,173/-

The income of the assessee is recomputed as under:-

Total Sale consideration Rs.23,63,00,000/-

50C value of property:- Rs.23,12,34,240/-

Indexed cost of acquisition Rs.14,59,86,173/-

(i) Long Term Capital Gain (Rs.23,63,00,000 – Rs.14,59,86,173/-)=
Rs.9,03,13,827/-

(Taxed @ 20% on Long Term Capital Gain)

(ii) Less : Deduction u/s 54EC (NHAI Bonds):- (Rs.50,00,000/-)

Long Term Capital gain Rs.8,53,13,827/-

8. Against the above final order, the assessee is in appeal before us.

9. Before us, the main thrust of the argument of the ld. AR was that the government approved valuation report dated 06.12.2019 evidencing the fair market value of the property should have been accepted by the AO and if the AO had any doubt on the correctness of its valuation, it was open for him to refer the matter to the Department's Valuation Officer (DVO) but this exercise was not done by the AO. The ld. AR further submitted that in the absence of such an exercise, the valuation made by the assessee's government approved valuer should have been accepted. In this regard, the ld. AR relied upon the following case laws:-

- i. Sushiladevi R Somani vs. ACIT in ITA No.5795/Mum/2016, A.Y. 2012-13, order dated 26.08.2022 (Page No.150 to 154 of the Paper book)
- ii. Ved Kumari Subhash Chander vs ITO in ITA No.2041/Del/2016, A.Y. 2011-12, order dated 26.08.2019 (Page No.155 to 160 of the Paper book)
- iii. Harivadanbhai Manganlal Patel vs ITO in ITA No.30/SRT/2023, order dated 08.05.2023 (Page No.161 to 167 of the Paper book)
- iv. DCIT vs Ajanata Tubes Ltd. In ITA No.4432/Del/2014, order dated 05.09.2019 (Page No.168 to 174 of the Paper book)

9.1. In this regard, the Id. AR drew our attention to letter dated 26.12.2022, placed at page no.98 of the Paper book, in which, it was submitted that if needed, the AO may refer the matter to the valuation sale, who could confirm that the land rate taken by the assessee as on 01.04.2001 was very reasonable and that the assessee's valuer had taken the land value on a very conservative basis at Rs.7,250/-. The said letter of the assessee is reproduced as under:-

ASHOK KHANDLWAL ASSOCIATES CHARTERED ACCOUNTANTS		912-B, IndraPrakash, 21, Barakhamba Road, New Delhi - 110001. Tel.: 23319140, 43526370 Fax: 23730523 Mob: 9810313391, 9312221061 e-mail: ashok@khandelwalassociates.com	98
To, Assistant/Deputy Commissioner of Income Tax, Circle Int. Tax - 3(1)(1) Delhi		Dated: 26.12.2022	
Reg: Mrs. Lalita Trehan 815, Indra Prakash, 21, Barakhamba Road, New Delhi - 110001 PAN: ACHPT3256E			
Sub.: Assessment Proceedings u/s 143(3) of I. T. Act 1961 for A. Y. 2021-22			
Dear Sir,			
In continuation of our earlier submissions made vide reply letter dated 20.12.2022 and 22.12.2022, it is submitted that the assessee has been able to obtain details of various residential plots purchased by DLF and its Associates from various persons from year 2002 to 2009. The average rate of residential plot on 02.09.2003 was Rs. 8,500 per Sq. Yard as per details given in S. No. 2, Rs. 14,000 as per details given in S. No. 4 dated 08.08.2003, Rs. 12,000 as per details given in S. No. 6 dated 28.10.2002. Rs. 10,451 at S. No. 11 dated 17.12.2002, Rs. 99,534 at S. No. 14 dated 05.09.2002 , which is more than the rates taken by the assessee's valuer.			
If you have any doubt about the genuineness of the details you may please issue summons to DLF Cyber City Developers Ltd. to confirm that the details submitted by the assessee are correct. You may also obtain such details from the Sub Registrar Office of Gurugram.			
If needed, you may refer the matter to Valuation Cell who would confirm that the land rate taken by the assessee as on 01.04.2001 is very reasonable.			
From the aforesaid it is apparent that the assessee's valuer has taken the land value on a very conservative basis at Rs. 7,250/-.			
Hope you will find the above in order. In case any other information is desired the same may be communicated to enable us to furnish the same.			
Thanking you,			
			
Ashok Khandelwal Chartered Accountant			

9.2. Further, in this regard, the AR referred to the valuation report dated 05.12.2019 of M/s Sehgal and Associates, government registered valuers, on the basis of which, the cost of acquisition was worked out by the assessee while computing her capital gain. The said valuation report appearing on page no.35 to 37 of the paper book is reproduced as under:-

SEHGAL & ASSOCIATES
ARCHITECTS, ENGINEERS, GOVT. REGD. VALUERS
SHOP NO. 15, SEC.-14, OPP. HUDA OFFICE, GURGAON-122001

Gurgaon
23/11/19

VALUATION REPORT

On pursuance of Smt. Lalita Trehan the undersigned inspected the school building so called American Montessori Public School to assess its value as on 31.01.2001 plus for the construction done post 2001 i.e., in the year of 2003-04.

Keeping in view of specification and this building , year of construction and corresponding CPWD (PAR) during this period I assess its value as on 31.03.2001 .

This building is very neatly finished and nicely maintained . Good land development, with 5'-6" boundary wall , pavements in cement rough finished , a basket ball court and good grassy lawn at entrance . Rest all the area has been left kucha but raised from the adjoining roads .

Construction of first phase of school comprised of Ground Floor and First Floor , both having covered area 615.072 Sq.mts i.e., 6618.2Sq.Ft each floor , comprising of 8 class rooms , staircase , toilet block for girls and boys with separate drinking water system . The school looks very open and airy . The size of the class room are as per CBSE and big glass boards all electrical and computer facilities in all rooms .

The location of the school is also very ideal , it's at quite close and safe distance from main Gurgaon Mehrauli road , enjoying area of 1.55 Acres, leaving school building in front, there is a big play ground for children, quite raised from adjoining road level to avoid any storm water overflowing from road .

Keeping in view of its specifications, location of the land & year of construction, I assess its value as below as on 31.3.2001 plus the construction done during the year 2003-2004.

(A)

1. Area constructed during 1997-98
 - Ground floor - 6618.2 sq ft
 - First floor - 6618.2 sq ft
2. Area constructed during 2003-2004

ATTESTED TO BE TRUE COPY
PARMOD KUMAR TYAGI
Advocate & Notary Public
Gurgaon, Haryana (India)
06 DEC 2019

NOTARY
Parmod Kr. Tyagi
GURGAON
Regd. No. 6957
GOVT. OF INDIA

S. C. SEHGAL
B ARCH. A. I. I. A
Regd. Govt. Valuer
GAV - 1 - 2

Ph : 0124-4223313, Fax : 0124-2320642, E-mail : info@sehgalarchitects.com

Second floor - 6618.2 sq.ft

Third floor - 6618.2 sq.ft

Mumty - 420.4 sq.ft

Rate as per CPWD 1992 for 4 storey high RCC frame structure & 11'-0" ht Rs.
2665/sq mts

- Plus Rs.125/Sq.mts for extra 1'-0"ht of rooms
- Plus Rs. 250/Sq.mts for zone III and IV resisting earthquake forces with a design seismic coefficient equal to or less than 0.06.
- Plus 12.5% sanitary and 7.5% electrical installation .

The total rate for the year 1992 comes as under

- Rate for RCC frame structure 4 floor high : 2665.00
- Extra for 1' high rooms : 125.00
- Extra for zone III and IV seismic coefficient

equal or less than 0.06 : 250.00

Total 3040

Add 12.5% for sanitation / plumbing (quite elaborate) : 380.00

Add 7.5%for electrical facilities : 228.00

Add 166% for the value as on 01.04.2001 : 3648

i.e., Rs. 6055.68/Sq.mts

or 562.8 / sq.ft

And add $\frac{197+209}{2} = 203$ P.I. for year 2003-2004 i.e., 7405.44 or Rs.688.24/sq.ft

- Value of construction = 13236.4 Sq.ft @ Rs.562.8/Sq.ft = Rs.7449445.92 as on 31.03.2001
- Value of construction = 13236.4 Sq.ft @ Rs.688.24/Sq.ft = Rs.9109819.94 as on 2003-2004
- Add land development = 60899.8 Sq.ft @ Rs 35/ Sq.ft = Rs.2131493.0
- B.wall + U.G tanks ,b.b court
- grass lawn and roughed concrete
- pavement including fire fighting



Grand total

=

Rupees 18691758.86

ATTESTED TO BE TRUE COPY

PARMOD KUMAR TYAGI
Advocate & Notary Public
Gurgaon, Haryana (India)

06 DEC 2019


S. C. SENGAL
B ARCH, A. I. I. A
Regd Govt. Valuer
GAV - 1 - 2


(B) Value of land as on 31.03.2001 (Area 7502.0 sq yds):
 Value in the area 1. Residential :- Rs. 6500/ sq yds
 2. Commercial :- Rs. 8000/ sq yds
 As this area is neither residential or commercial and its rate should be mean of these two values i.e Rs.7502/ Sq yds

Value : Rs. 7502 Sq.yds @RS. 7250/sq yards = Rupees 54389500.00

Total value of property A+B=Rupees73080758.86


Say Rupees Seven hundred thirty lacs eighty thousands seven hundred fifty eight & paisha eighty six only.


 S.C. Sehgal 05/12/19
 Regd. valuer
 B ARCH, A. I. I. A
 Regd Govt. Valuer
 GAT - 1-1



ATTESTED TO BE TRUE COPY
 PARMOD KUMAR TYAGI
 Advocate & Notary Public
 Gurgaon, Haryana (India)

06 DEC 2019



9.3. The Id. AR strongly relied upon the decision of the Co-ordinate Bench in the case of Ved Kumari Subhash Chandra (supra) and drew our attention towards para-5 of the said order, wherein, it has been held that the AO was not right in discarding the report of the registered valuer without having made a reference to the DVO and therefore the rate adopted by the AO for the purpose of computation of fair market value cannot be upheld.

10. The Ld. DR strongly relied upon the orders of the AO and submitted that the valuation of 2001 was not notified by the Government. It is further submitted that it was not mandatory for the AO to refer the matter to the DVO. The ld. DR also relied upon the findings of the DRP in para no.8 to 10 of its order. The Ld. DR also submitted that the matter may be set-aside to the file of the AO with a direction to re-examine the facts and if required to refer the matter to the DVO for its valuation of the property to determine the cost of the property, on which the capital gains has accrued to the assessee.

11. Further, the matter was put up for clarification on 26.07.2024, to enquire how in ground no.2 of the appeal, the figures of Rs.6,18,38,946/- was arrived at evidencing the fair market value as on 01.04.2001. Further, the assessee was also requested to clarify the date on which the valuation report dated 05.12.2019 was placed before the AO during the assessment proceedings. In this regard, the ld. Counsel for the assessee submitted that the assessee had made an application for lower deduction of tax at source u/s 197 of the Act before the AO on 16.01.2021. It was further submitted that during these proceedings, the valuation report was filed before the AO as per letter dated 12.02.2021. The submission dated 08.08.2024 of the ld. Counsel is reproduced as under:-

“The Hon’ble Tribunal has sought for the clarification as to how in the Second Ground of Appeal the figures of Rs. 6, 18,38,946/- was arrived at evidencing the Fair Market Value as at 01.04.2001. It is submitted that the assesses valuer, whose report has been placed on record at Page No. 28 to 37 has valued the property as at 01.04.2001, which was constructed prior to 01.04.2001, as under: -

Value of Construction 13,236.40 Sq. ft. @ 562.8 Sq. ft	=	Rs. 74,49,445.92
As on 31.03.2001 (Page No. 36)		
Value of Land	=	Rs.
7502 Sq. Yard @ 7,250 / Sq. Yards		5,43,89,500.00
(Page No. 37)		
Total	=	Rs. 6,18,38,945.92
Rounded off	=	Rs. 6,18,38,946/-

2. At the time of hearing of the appeal it was wrongly mentioned that the figure of Rs. 6,18,38,946/- was a mistake as the valuer has worked out the total value of property at Rs.7,30,80,758.86/-. The mistake at the time of hearing is sincerely regretted.

3. The Hon'ble Tribunal also wanted to know as to when the valuation report of the valuer was placed on record before the A.O. It is submitted that the assessee has made an application for lower deduction of tax at source u/s 197 of I. T. Act 1961 before the A.O. on 16.01.2021. During the course of these proceedings, the valuation report was filed before the A.O. as per letter dated 12.02.2021, copy enclosed.

4. Further during the course of assessment proceedings, the appellant as per letter dated 26.12.2022 (Page 98), requested the A.O. to refer the matter to valuation cell if he was no satisfied about the valuation.

5. It was argued that the department is not justified in rejecting the valuation report of an approved valuer and has relied upon on following judgements: -

Judgements relied upon – Valuation as per Govt. Approved Valuer should be accepted		Page No.
ITAT Mumbai G Bench in the case of Sushiladevi R. Somani vs. ACIT, Circle 18(1), Mumbai in ITA No. 5795/Mum/2016 A. Y. 2012-13 dated 26.08.2022		150 to 154
ITAT Delhi B Bench in the case of Ved Kumari Subhash Chander vs. ITO Ward 11(1), Gurgaon in ITA No. 2041/Del/2016 A. Y. 2011-12 dated 26.08.2019		155 to 160
ITAT Surat Bench in the case of Harivadanbhai Mangalal Patel vs. ITO Ward 1(3)(7), Surat in ITA No. 30/SRT/2023 A. Y. 2013-14 dated 08.05.2023		161 to 167
ITAT Delhi Bench "A" in the case of DCIT Circle 1(1), New Delhi vs. Ajanta Tubes Ltd. in ITA No. 4432/Del/2014 dated 05.09.2019 for A. Y. 2008-09		168 to 174

6. It was also argued that the Tribunal in the case of Ved Kumari Subhash Chander vs. ITO Ward 11(1), Gurgaon in ITA

No. 2041/Del/2016 A. Y. 2011-12 dated 26.08.2019 in Para 5.2 has relied upon two high courts judgements in arriving at the decision that the A.O. was not right in discarding the report of a registered valuer without having made a reference to the DVO (Refer Page No. 159/160).

5.2 In the case of CWT Vs Raghunath Singh Thakur (304 ITR 268 HP) the Hon'ble High Court of Himachal Pradesh held that if the Assessing Officer does not agree with the report regarding the valuer relied upon by the assessee, rejection of such valuers report without making reference to the valuation, order is invalid and the report of the registered valuer shall be accepted.

5.4 The Hon'ble Bombay High Court in the case of C.I.T. vs. Raman Kumar Suri reported in (2013) 255 CTR 107 had held that the valuation done by the registered valuer is with regard to a specific property and the same takes into account its various advantages and disadvantages, all of which would influence the valuation of property. The Hon'ble Bombay High Court went on to hold that the valuation done by an empanelled registered valuer of the Income Tax Department would certainly take precedence over other indicators.”

12. We have heard both the parties and perused the material available on record. The main dispute in this appeal is with respect to disallowance of entire expenses with respect to the cost of construction/ improvement amounting to Rs.91,09,820/- (indexed cost Rs.2,51,56,475) and land development charges to Rs.21,31,493/- (indexed cost Rs.58,86,049/-) incurred in FY 2003-04 on which total indexed cost amounting to Rs.3,10,42,524/- was claimed and adoption of land value at Rs.5,472/- (per sq. yard) by the AO as against Rs.7,250/- (per sq. yard) adopted by the assessee. In this regard, we have examined the facts in the case of Ved Kumari Subhash Chander (supra) relied upon by the assessee

relevant to the facts of this case. In the cited case, the assessee had sold a residential house in Gujarat during AY 2011-12 for Rs.9 crores, in which the assessee's share worked out to Rs.1.80 Crores. The AO noted in this case that the assessee after deducting Rs.90,000/- towards brokerage charges paid adopted Rs.1,79,10,000/- as the net consideration. From this, the assessee deducted the cost of acquisition by taking fair market value as on 01.04.1981 (which was based on valuation report obtained by the assessee from a registered valuer), wherein, the indexed cost of acquisition came to Rs.77,48,905/- and the resultant Long Term Capital Gain was computed at Rs.1,01,61,095/-, which was claimed as exempt u/s 54 of the Act as amount spent towards purchase of flat in Mumbai. The AO noted that in the valuation report submitted by the assessee, the rate of land had been taken at Rs.5800 per sq. mtr., whereas, average rate of land as per the various sale instances given in the Annexure-A of the valuation report was only Rs.1,160/- per sq. mtr. and the assessee had increased the rate of land by five times. The AO issued a show cause notice and after examining the submissions of the assessee, determined the fair market value of the land as on 01.04.1981 at Rs.1,160 per sq. mtr. as against Rs.5800 per sq. mtr. adopted by the assessee. The AO also noted that the assessee had adopted the cost of construction at Rs.1800 per sq. mtr. whereas, the rate fixed by Ahmedabad Urban Development Authority was Rs.1000 per sq. mtr. By adopting the said rates, the AO recomputed the Capital Gains of the assessee at Rs.1,61,81,888/-. Aggrieved with this order, the assessee filed an appeal before the Ld. CIT(A). The CIT(A) directed the AO to refer the valuation of the property to the DVO for ascertaining correct fair market value as on

01.04.1981, which was done by the AO. However, the valuation officer at Ahmedabad reported that the property in question was inspected along with the assessee but he noted that the property was non-existent on the date of inspection as the purchaser had dismantled the old construction and new apartments were being constructed. He, therefore, expressed his inability to carry out the valuation of the property as there was no existing structure, which could be measured for the purpose of arriving at the fair market value of the property. However, the Id. CIT(A) referring to actual sale deeds, wherein, the sale price of the land in the area was around Rs.1160 per sq. mtr. held the action of the AO to be justified in estimating the fair market value as on 01.04.1981 at Rs.1160 per sq. mtr. Aggrieved with this order, the assessee filed an appeal before the Tribunal. The Tribunal in paras-5 to 6, set-aside the order of the Id. CIT(A) and directed the AO to recompute the fair market value of the land as on 01.04.1981 by taking into account the rate as adopted by the registered valuer. The said finding of the Tribunal is as under:-

“5. We have heard the rival submissions and have also perused the material available on record. It is the contention of the assessee that the lower authorities have erred in overriding the report of the registered valuer without supporting evidence and, therefore, the same is bad in law. It is also the contention of the assessee that the Assessing Officer should have referred the matter to the DVO if he was not in agreement with the valuation as computed by the registered valuer and that in absence of any evidence on record, the report of the registered valuer should have been accepted with regard to fair market value as on 1.4.1981 for the purpose of computing the capital gains. It is seen that the Assessing Officer while rejecting the registered valuer's estimate at Rs. 5800/- per sq mtr has noted that the average rate at which the sales deeds were being executed was Rs. 1160/- per sq mtr. However, it is our considered opinion that valuation done by the empanelled registered valuer of the Income Tax Department would certainly take precedence over a value which the Assessing Officer might adopt on his own without making a reference to the DVO. The fact of the matter remains that the Assessing Officer, during the course of

assessment proceedings, did not make any reference to the DVO even though he chose not to accept the rate adopted by the registered valuer. Therefore, in our considered opinion, the Assessing Officer exceeded the powers entrusted to him in this regard by undertaking to compute the fair market value on his own without being supported by the expert knowledge of the DVO. The law is fairly settled in this regard and coordinate benches of the Tribunal have time and again held that where the assessee had submitted valuation report of a registered valuer and the matter was not referred by the Assessing Officer to the DVO, the Assessing Officer is bound to accept the report of the registered valuer regarding the market value of the land as claimed by the assessee. We take support from the order of ITAT Chandigarh Bench in the case of *Barjinder Singh Bhatti v. ITO* in [IT Appeal No.1101 (Chd.) of 2014, dated 15-7-2015] wherein vide order dated 15.7.2015, the Bench had ruled in favour of the assessee by holding that if the Assessing Officer was not satisfied with the report of the registered valuer, he should have made a reference to the DVO and in absence of such a reference, the Assessing Officer should not have made his own calculation for the purpose of computation of capital gains. Reliance is also placed on the order of the ITAT, Lucknow Bench in the case of *Adarsh Kumar Agrawal v. ACIT* in [IT Appeal No.66 (LKW) of 2014, dated 23-9-2013] wherein vide order dated 23.03.2014, it was held that where the assessee had submitted the valuation report of the registered valuer and the matter was not referred by the Assessing Officer to the DVO, the Assessing Officer has to accept the report of the registered valuer regarding the fair market value of the land as claimed by the assessee. ITAT Cochin Bench in the case of *Mrs. Susamma Paulose v. JCIT* reported in 79 TTJ 573 (Coch.) on identical facts held as under:

"A registered valuer is competent to value properties as per the provisions of the IT Act and Rules made there under. The AO is not justified in brushing aside the report of the registered valuer without pointing out any specific reason for that. The AO did not have any materials with him to rebut the valuation worked out by the registered valuer. The AO was rejecting the report of the registered valuer with a stroke of pen as if the law does not recognise the valuation made by a registered valuer. The method followed by the AO is quite unlawful and arbitrary. The report of a registered valuer is a valid piece of evidence in deciding matters of valuation. Such report can be modified or questioned or rebutted by the AO only in the light of reliable materials available with him. In the present case, the AO himself has not referred the matter to valuation. In the facts and circumstances of the case, the AO as well as the CIT(A) have erred in coming to their conclusions regarding the valuation of the property as on 1st April, 1981. Fair market value of the land as on 1st April, 1981, estimated by a registered valuer being based on sound factual basis and the phenomenal development in that area could not be rejected by the AO without assigning any specific reasons."

5.1 Similarly, in the case of *Pyare Mohan Mathur HUF v. ITO* (in ITA No. 471/Agra/2009 vide order dated 21/04/2011/Pyare Mohan

Mathur HUF v. ITO [[2011\] 12 taxmann.com 170/ 46 SOT 315 \(Agra\)](#)) the Agra Bench of the ITAT has held that in view of the provision of section 55A once the assessee has submitted the necessary evidence by way of the valuation report made by the registered valuer, the onus gets shifted on the AO to contradict the report of the registered valuer. The registered valuation officer is a technical expert and the opinion of an expert cannot be thrown out without bringing any material to the contrary on record. In case the AO was not agreeable with the report of the registered valuer, he was duty bound to refer the matter to the DVO for determining the fair market value of the land as on which he failed to do so. The tribunal held that the revenue has not discharged the onus but merely rejected the fair market value taken by the assessee. It set aside the order of the CIT (A) and directed the AO to recompute the capital gain after taking the fair market value of the land as on 1/4/1981, as claimed by the assessee. Fair market value of the land as on 1 /4/1981 estimated by the registered valuer being based on sound factual basis and the phenomenal development in that area could not be rejected by the AO without assigning any specific reasons.

5.2 In the case of *CWT v. Raghunath Singh Thakur* ([304 ITR 268 HP](#)) the Hon'ble High Court of Himachal Pradesh held that if the Assessing Officer does not agree with the report regarding the valuer relied upon by the assessee, rejection of such valuer's report without making reference to the valuation, order is invalid and the report of the registered valuer shall be accepted.

5.4 The Hon'ble Bombay High Court in the case of *C.I.T. v. Raman Kumar Suri* reported in [[2013\] 31 taxmann.com 122/255 CTR 107/213 Taxman 214](#)] had held that the valuation done by the registered valuer is with regard to a specific property and the same takes into account its various advantages and disadvantages, all of which would influence the valuation of property. The Hon'ble Bombay High Court went on to hold that the valuation done by an empanelled registered valuer of the Income Tax Department would certainly take precedence over other indicators.

5.5 Therefore, respectfully following the aforesaid juridical precedents, we have no option but to accept the assessee's contention that the Assessing Officer was not right in discarding the report of the registered valuer without having made a reference to the DVO and, therefore, the rate adopted by the Assessing Officer for the purpose of computation of fair market value cannot be upheld. Accordingly, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to re-compute the fair market value of the land as on 1.4.1981 by taking into account the rate as adopted by the registered valuer.

6. In the result, the appeal of the assessee stands allowed.”

13. The facts in the above cited case are similar to the facts in the case of the assessee inasmuch as in the cited case also the valuation of the land and the cost of construction was disputed by the AO and the AO did

not refer the matter to the Valuation Officer u/s 55A of the Act for its valuation. The said action of the AO was confirmed by the Ld. CIT(A). The assessee challenged the above action of the Ld. CIT(A) with respect to the dispute relating to determination of the fair market value of the land. The Tribunal set-aside the order of the Ld. CIT(A) and directed the AO to re-compute the fair market value of the land as on 1.4.1981 by taking into account the rate as adopted by the registered valuer on the ground that the AO had not refer the matter to the Valuation Officer for valuation once it was disputed by him. Similarly, in the present case also, the AO disputed the valuation of the land as on 01.04.2001 and the cost of construction/improvement and land development charges incurred by the assessee in FY 2003-04 but did not refer the matter to the Valuation Officer for its valuation. Similarly, the ld. DRP also did not conduct any enquiry as provided u/s 144(7)(a) of the Act or directed the AO u/s 144(7)(b) of the Act to refer the matter to the Valuation Officer for valuation of the property sold during the year in which the quantum of capital gains on account of valuation of the land has been disputed. Therefore, respectfully following the aforesaid order of the Coordinate Bench of the Tribunal, we hold that the Assessing Officer was not right in discarding the report of the registered valuer regarding the determination of the fair market value of the land as on 01.04.2001 without making a reference to the DVO and, therefore, the rate adopted by the Assessing Officer for the purpose of computation of capital gains in the final assessment order cannot be upheld. Accordingly, we set aside the order of the AO and direct the Assessing Officer to re-compute the fair market value of the land as on 01.04.2001 at Rs.7,250/- per sq. yard as adopted

by the registered valuer and allow indexation accordingly. Similarly, the cost of construction (Rs.91,09,820/-) and land development charges (Rs.21,31,493/-) incurred during FY 2003-04 was also valued by the registered valuer and being an integral part of the capital asset and which was again disputed by the AO but not referred to the Valuation Officer by the AO and therefore considering the same reasoning in the cited case of the Co-ordinate Bench of the Tribunal, the AO is directed to adopt the cost of construction (Rs.91,09,820/-) and land development charges (Rs.21,31,493/-) incurred during FY 2003-04 as adopted by the registered valuer and allow indexation accordingly. Grounds of appeal are allowed.

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

Order pronounced in the open court on 23rd October, 2024.

Sd/-
[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 23.10.2024.

SPK

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi