

(2024) 05 ITAT CK 0054

Income Tax Appellate Tribunal (Delhi D Bench)

Case No: Income Tax Appeal No. 2059/DEL/2023

Dilip Kapur

APPELLANT

Vs

ACIT

RESPONDENT

---

**Date of Decision:** May 30, 2024**Acts Referred:**

- Income Tax Act, 1961 - Section 142(1), 142A, 143(3), 144C(13), 234D

**Hon'ble Judges:** Dr. B. R. R. Kumar, (AM); Sudhir PAREEK, J**Bench:** Division Bench**Advocate:** Ved Jain, Aman Garg, Vijay B Vasanta**Final Decision:** Allowed

---

**Judgement**

1. The instant appeal preferred by the assessee against the order dated 22.06.2023 passed the Assessing Officer ('AO', for short) U/s 143(3) of r.w.s. 144C(1)(3) of the Income Tax Act, 1961, (hereinafter referred to as "the Act") pertaining to Assessment Year 2020-21, on the following grounds of appeal:

**"1. On the facts and circumstances of the case, the final assessment order passed by the learned Assistant Commissioner of Income Tax, Circle International Taxation, 2(1)(2) (hereinafter referred to as 'Assessing Officer') under Section 143(3) read with Section 144C (13) of the Act is bad both in the eye of law and on facts.**

**2. On the facts and circumstances of the case, reference made by the AO under section 142A of the Act to the valuation officer and consequent valuation report submitted by the District Valuation Officer for estimation of the fair market value of the capital asset is illegal, void and liable to be quashed.**

**3. On the facts and circumstances of the case, the AO has erred both on facts and in law in rejecting the contention of the assessee that the reference to Valuation Officer under Section 142A of the Act cannot be made for the purpose of computing the fair market value of the capital asset for the purposes of chapter-IV of the Income Tax Act.**

**4. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making the addition of Rs. 2,43,38,665/- while computing the income under the head long- term capital gain on sale of property.**

**5 On the facts and circumstances of the case, the learned AO has erred both on facts and in law in disallowing the indexed cost of acquisition by the amount of Rs. 1,97,79,784/- claimed by the assessee while computing the income under the head long term capital gain on the basis of report issued by DVO under Section 142A of the Income Tax Act**

**6. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making disallowance of Rs. 22,61,728/- on account of cost of improvement claimed by the assessee while computing the income under the head long term capital gain.**

**7. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in making disallowance of Rs. 27,49,400/- on account of transfer expenses claimed by the assessee while computing the income under the head long term capital gain.**

**8. On the facts and circumstances of the case, the AO has erred both on facts and in law in ignoring the contention of the assessee that the report has been made by the DVO without considering the comparable instances as well as certified copies of sale deeds in the vicinity brought on record by the assessee.**

**9. On the facts and circumstances of the case, the AO has erred both on facts and in law in ignoring the defects pointed out by the assessee in the report submitted by the DVO.**

**10. On the facts and circumstances of the case, the AO has erred both on facts and in law in ignoring the contention of the assessee that DVO has exceeded his jurisdiction in estimating the value of property as on 01.04.2001 whereas the reference was made to him under Section 142A to estimate the cost of construction of the property.**

**11. On the facts and circumstances of the case, the AO has erred in making the reference to the DVO under Section 142A without pointing out any defect or anomaly in the registered valuer report on the basis of which fair market value of**

**the asset is claimed by the assessee**

**12. On the facts and making the reference under Section 142A without giving any opportunity to the assessee to explain/ justify the valuation report of the registered valuer based on which FMV has been taken by the assessee as on 01.04.2001.**

**13. On the facts and circumstances of the case, the Ld. AO has erred both on facts and in law in computing the demand without giving the credit of self-assessment tax of Rs. 7,72,100/- deposited by the assessee and appearing in Form 26AS also.**

**14. On the facts and circumstances of the case, the learned AO has erred both on facts and in law in charging the interest under section 234D of the Income Tax Act.**

**15. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”**

2. Brief facts of the case are that assessee is a non-resident living in USA for more than 45 years. During the year under consideration assessee sold his 50% share in the inherited property A-12, Gulmohar Park, New Delhi. The total sale consideration for the property was Rs.23,00,00,000/- and assessee share in that was Rs. 11,50,00,000/-. Thereafter, assessee filed its return of income on 17.09.2020 declaring long term capital gain of Rs 4,28,60,146/-after claiming indexed cost of acquisition of Rs 6,52,96,660 indexed cost of improvement of Rs. 65.36.394/- and cost of transfer & other misc. expenses of Rs. 3,06,800/-

3. The issues involved are:-

Disallowance of Indexed cost of acquisition by amount of Rs. 1,97,79,784/- on the basis of report issued by DVO under section 142A of the Act.

Disallowance of Rs. 22,61,728/- on account of cost of improvement

Disallowance of Rs. 27,49,400/- on account of transfer expenses.

4. The assessee submitted that assessee inherited 50% undivided share in plot and super structure in A-12, Gulmohar Park New Delhi from his father Late Sh. Shadi Lal Kapur vide will testament dated 04.05.1964 and the will/ testament was probated on 07.04.2009. The Assessee submitted the details of Gulmohar property expenses and various documentary evidences, to support its claim of cost of improvement and transfer expenses.

5. The assessee recomputed long term capital gain at Rs.4,51,44,459/-. Consequently, gross total income increased from Rs. 4,42,4,308 to Rs. 4,64,88,621/- .

6. Thereafter, the AO vide letter dated 15.02.2022 informed assessee that property A-12, Gulmohar Park, New Delhi has been referred to valuation officer for determination of Fair Market Value. Thereafter, AO issued notice u/s 142(1) of the Act dated 01.09.2022 wherein he mentioned that a reference was made in the case of assessee u/s 142A of the Act for determination of fair market value of residence property A-12 Gulmohar Park, New Delhi and provided assessee a copy of valuation report issued by DVO and the AO asked assessee that why the valuation of investment for construction should not be taken at Rs. 1,57,49,784/-. Thereafter, assessee filed its reply dated 19.02.2022 and submitted a second valuation report dated 21.05.2022 issued registered valuer Paramjeet Associates along with certified copy of registered sale deed dated 02.05.2001 under registration No. 3859, Book No.1 Volume No. 2365, wherein the value of property was calculated at Rs.2,43,12,980/-.

7. Hence, the issue before us narrows down to examination of valuation of the capital asset at Rs.2,43,12,980/- as determined by the valuer of the assessee and of Rs. 1,57,49,784/- as determined by the DVO.

8. The addition made by the Assessing Officer based on the report of the DVO has been affirmed by the Ld. DRP.

9. Aggrieved, the assessee filed appeal before the Tribunal.

10. Before us, the Ld. Counsel for the assessee argued that the AO failed to take cognizance of valuation report dated 18.03.2020 issued by registered valuer Er. B.P. Singh, which was the basis of assessee calculation of cost of acquisition and assessee has valuation report dated 21.05.2022 issued registered valuer Paramjeet Associates to strengthen its contention. It was argued that the Assessing Officer has blindly relied report of the DVO inspite of the objections raised by the assessee on the valuation report given by the DVO.

11. Rebutting the contentions of the Ld. Counsel, the Departmental Representative argued that once the DVO report has available with the Assessing Officer, the AO has to followed the same report in determining the cost of acquisition.

12. Heard the arguments of both the parties and perused the material available on record.

13. We find that the only dispute between both the reports of valuation pertain to determination of cost of acquisition of land as on 01.04.2001, the valuer of the assessee has determined the cost @ Rs. 89,800 per sq. yard whereas the DVO determined the value @ of 72,000/- per square meter. There is no dispute about the cost of construction of the property. The Departmental Valuer has taken the base land valuation taking into consideration the cost of property at Safdurjung Development Area (SDA) B Block which was registered on 19.10.2000 whereas the valuer of the

assessee has determined the value of land at Rs. 89,800/- based on sale of a property of D Block, Defence Colony, New Delhi, dated 2nd May, 2001 and the property in question has been valued as on 01.04.2001. Thus, we find that none of the properties pertained to the exact location of the property in question i.e, Gulmohar Colony.

14. Hence, the realistic estimation of the cost of property is resorted to, based on the land area, road width, land cost, FMV of structure, land rate per sqm (as per DVO) etc. The land area of the assessee property is 418.06 square meters whereas the land area of the base line the property at SDA was 337.11 square meters. The road width of the assessee property was 100 ft. and on the main road whereas the road width of the base line the property at SDA was 45 ft. internal road. Further, the assessee property as a back side service lane and base line the property at SDA do not have any service lane. Further, the property of the assessee was valued based on the comparable date of 2nd May, 2001 whereas base line the property at SDA date of sale was 19.10.2000. Thus, the property valued taken by the valuer of the assessee was at a closer date than that of the DVO. Hence, keeping in view, the tangible differences it can be held that the absence of any mistake pointed out in the valuation report submitted by the assessee no addition on account of cost of land is warranted in this case.

15. With regard to the brokerage expenses, the copy of the invoice of the broker namely credible Infracon LLP has been provided, the details of payment made by cheque on 10.04.2019 for Rs. 27,14,000/- being 2 percent of the total sale consideration. No evidence has been brought by the Revenue to prove theses payments as bogus or ungenune. Similarly, the litigation expenses paid to DUA Associates on the confirmation thereof or not disputed by the Revenue. Further, the mutation expenses incurred by the assessee and paid to the legal consultants is also not disputed by the revenue.

16. We hold that the expenses of brokerage, documentation fee, litigation expenses mutation / conversion expenses and probate expenses or commonly incurred expenses in regularizing the will , transfer of the property to the assessee and for sale of the such acquired property. In the absence of any contrary evidences to prove that the expenses are bogus or not incurred, we hereby direct that no disallowance is called for on such compulsory expenses required for acquisition and sale of property.

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