IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7201/Del/2017
Assessment Year: 2010-11

Angeela Vasandani, 93, Pocket-II, Jasola, New Delhi. PAN: AHTPV3859Q	Vs	DCIT, International Taxation, Circle-3(1)(1), New Delhi.
(Appellant)		(Respondent)

Assessee by	:	Shri Rakesh Gupta, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	03.02.2020
Date of Pronouncement	:	14.02.2020

<u>ORDER</u>

<u>PER R.K. PANDA, AM:</u>

This appeal filed by the assessee is directed against the order dated 27th September, 2017 of the CIT(A)-43, New Delhi, relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 14th July, 20102 declaring the total income at Rs.4,70,82,272/- which included long-term capital gain to the tune of Rs.4,20,84,000/-. The AO,

during the course of assessment proceedings, noted that the assessee has claimed the capital gain to the tune of Rs.4,70,84,000/- on the sale of house property located at B-59, May Fair Garden, Hauz Khas, New Delhi, which was jointly held by the assessee with her brother Shri Anil T. Kriplani. The same property was purchased/acquired in 1975 and the assessee has claimed indexed cost of acquisition to the tune of Rs.6,38,32,000/- against the sale consideration of Rs.15,80,00,000/-. The AO noted that in the case of Shri Anil T. Kriplani, the matter was referred to the DVO for computation of fair market value of the property as on 01.04.1981 by the Director of Income-tax, Circle 3(1), International Taxation, New Delhi. The valuer valued the fair market value of the property as on 01.04.1981 at Rs.6,70,000/- as against the value declared by the assessee at Rs.1,01,00,000/-. In view of the above difference, the AO confronted the assessee and asked her to explain as to why the fair value of the property as on 01.04.1981 should not be taken as Rs.6,70,000/- as adopted by the DVO instead of Rs.1,01,00,000/- taken by the assessee. Rejecting various explanations given by the assessee and adopting the fair market value as on 01.04.1981 as Rs.6,70,000/-, the AO determined the indexed cost of acquisition at Rs.42,34,400/-. After deducting the same from the sale consideration of Rs.15,80,00,000/-, the AO determined the total capital gain at Rs.15,37,65,600/-. Considering the share of the assessee in the said property at 50%, the AO determined the capital gain at Rs.7,68,82,800/- and after deducting an amount of Rs.50 lakhs u/s 54EC, the AO determined the taxable long-term capital gain in the hands of assessee at

Rs.7,18,82,000/-. After deducting the amount of capital gain shown by the assessee at Rs.4,20,84,000/-, the AO made an addition of Rs.2,97,98,800/- in the hands of the assessee.

3. In appeal, the ld.CIT(A), considering the various arguments advanced before him, directed the AO to consider the total cost/fair market value of the property as on 01.04.1981 at Rs.16,32,036/- and accordingly recompute the capital gain.

9. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> ñ1. The learned CIT(A) erred in adopting the FMV as on 01/04/1981 at Rs.16,32,036/- instead of Rs. 95,28,000/- as determined by the registered valuer in terms of the provisions of section 55(2)(b)(ii) after referring to comparable instances in his said valuation report.
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> 2. That the learned CIT(A) erred in law in ignoring the fact that the assessee has claimed the cost of acquisition of property as on 1.4.1981 at Rs. 95,28,000/- as per the fresh valuation report obtained from a Registered Valuer in terms of Honøble IT AT order/ direction in the Assesseeøs Case. However, the Ld CIT(A) proceeded to determine the cost as on 1.4.1981 on its own by referring to land Rates schedule on the website of Ministry of Urban Development and accordingly determined the same at Rs. 16,32,036/-.
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> 3. That the Learned CIT(A) while estimating the ôFair Market Valueö completely ignored the provisions of Section 2(22B) of the I.T Act which makes it clear that fair market value is the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date. In doing so, learned CIT(A) also ignored the Honøble ITAT observation made in Assesseeøs own case that ñit is clear that fair market value is the price that the capital asset would ordinarily fetch on sale in the open market on the relevant dateò.
>
> 4. Further Learned CIT(A) also completely erred in determine the cost as on 1.4.1981 on its own. In doing so, learned CIT(A) ignored the fact that the first appellate authority is not a technical expert in the matter relating to valuation of land and building and accordingly, he contended that the Registered Valuer's report should be preferred over his estimation.

5. That on the facts and circumstances of the case the determination of the market value as on 1.4.81 was not lawful and proper. Therefore, the order of the CIT(A) be modified and the assessee be given the relief prayed for.

6. That the learned CIT(A) has further erred in upholding the initiation of proceedings, the addition made and the interest levied.

It is therefore prayed that the addition made and sustained be deleted and it be held that the proceedings were not validly initiated.ö

4. The ld. Counsel for the assessee submitted that in the case of the assessee as well as in the case of the brother of the assessee, the matter had travelled upto the Tribunal and the Tribunal vide ITA No.6081/Del/2013 and 6358/Del/2013, order dated 23rd September, 2015, restored the issue to the file of the AO for adjudication of the issue afresh by observing as under:-

ñ5. We heard the rival submission and perused the material on record. At the first instance, we shall deal with the validity of the reference made to DVO under Section 58 of the Act. The respondent assessee has challenged the validity of the reference made to the DVO before the CIT(A) on the ground that the Assessing Officer had not formed an opinion that the fair market value of the property sold is less than the estimate made by the registered valuer. On this ground, the CIT(A) held that the respondent assessee could not establish that no such prior opinion was formed by the Assessing Officer. Hence, this ground of appeal was dismissed. Against this dismissal, the respondent assessee had neither filed any appeal, nor cross objection before this Tribunal. Hence, finding of the CIT(A) on this issue attained finality. Therefore, we are now required to adjudicate as to which report to be adopted either of DVO or of Registered Valuer. To adjudicate this issue, we had gone through the reports, we find that both the registered valuer as well as the DVO had not referred to any comparable instances and simply adopted the value without any reference of the supporting material. The term ófair market valueô has been defined under the provisions of Section 2(22B) of the Act to mean that the fair market value to the value which asset would ordinarily fetch on the sale in the open market on the relevant date. In our opinion, the concept of fair market value envisages of hypothetical seller and hypothetical buyer in hypothetical market. The value assessed by registering authorities for stamp duty purpose cannot be the basis for estimating the fair market value. Therefore, any valuation report based on the value as per the register maintained by the Registering Authorities cannot be taken as the basis for the purpose of valuing fair market value. Hence, we are of the considered opinion

> that interest of justice would be met, if the matter is restored back to the file of the Assessing Officer for de novo assessment. Accordingly, the matter is restored back to the file of the Assessing Officer for de novo assessment, after affording reasonable opportunity of being heard to the assessee.
>
> 6. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.ò

5. Referring to page 78-82 of the paper book, the ld. Counsel for the assessee drew the attention of the Bench to the copy of the assessment order in the hands of the brother of the assessee. He submitted that the AO, in the assessment order,has taken the fair market value of the property as on 01.04.1981 at Rs.95,28,000/- which was accepted by the assessee and no appeal was filed. Referring to the order passed u/s 263 of the IT Act in the case of the brother of the assessee, a copy of which is placed at paper book pages 83-88, the ld. Counsel drew the attention of the Bench to the same and submitted that the ld. CIT(A) has invoked the jurisdiction u/s 263 and set aside the assessment order passed u/s 143(3) in the case of the brother of the assessee. Referring to page 89 to 100 of the paper book, the ld. Counsel drew the attention of the Bench to the order of the Tribunal in the case of the brother of the assessee in ITA No.506/Del/2019, order dated 29.11.2019 and submitted that section 263 proceedings have been quashed. The ld. Counsel for the assessee drew the attention of the Bench to para 12 of the order which reads as under:-

> ñ12. Before going into the merits whether the value has been correctly determined or not, we may refer to the decision of Hon'ble Bombay High Court in CIT vs Puja Prints (supra) wherein it has been laid down that the provisions of section 55A(a) of the Act cannot be applied and no reference is possible to be made to the DVO for determining the market value of the

> property at a figure less than that shown by the assessee. Accordingly, the Assessing Officer had no authority to make any such reference to the DVO to determine the value of the property i.e. cost of acquisition as on 01.04.1981, at any price less than the price shown by the assessee. In such facts and circumstances of the case, the Assessing Officer has to accept the valuation shown by the assessee as on 01.04.1981. The said valuation is supported by a report of the Registered Valuer and other sales instance during the period. In such facts and circumstances, we find no merit in the exercise of the jurisdiction by the Commissioner u/s 263 of the Act. Hence, we reverse the same and hold the said order passed u/s 263 of the Act as both invalid and bad in law. Thus, grounds raised by the assessee are allowed.ö

6. He accordingly submitted that in view of the decision of the Tribunal in the case of brother of the assessee quashing the reassessment proceedings, the value determined by the assessee should have been adopted and the grounds raised by the assessee should be allowed.

7. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the ld. CIT(A) has already granted substantial relief to the assessee by directing the AO to adopt the fair market value of the property as on 01.04.1981 at Rs.16,32,036/- as against the value determined by the AO at Rs.6,70,000/-. Therefore, the assessee should not have any grievance and the grounds raised by the assessee should be dismissed.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find the AO, in the instant case, determined the long-term capital gain in the hands of the assessee at Rs.70,68,82,800/- being 50% of assesseeọs share in the property before allowing deduction u/s 54E by considering the fair

market value of the property at Rs.6,70,000/- as on 01.04.1981 as against Rs.1,01,00,000/- taken by the assessee. We find, in appeal, the ld.CIT(A) directed the AO to adopt the computation of capital gain as on 01.04.1981 as declared by the assessee on the basis of the report of a registered valuer. We find on appeal by the assessee, Tribunal, vide order dated 23rd September, 2015, restored the issue to the file of the AO for fresh adjudication. We find, the AO, subsequently, passed an *ex parte* order u/s 144 of the Act and determined the total income in the hands of the assessee at Rs.7,68,81,070/- as against the returned income of Rs.4,70,82,272/-. We find, the ld.CIT(A) gave partial relief to the assessee by substituting the fair market value of the property as on 01.04.1981 at Rs.16,32,036/-. It is the submission of the ld. Counsel for the assessee that in the case of the brother of the assessee, the Tribunal has quashed the section 263 proceedings initiated by the CIT against the order passed by the AO wherein he has considered the fair market value of the property at Rs.95,28,000/- as on 01.04.1981. Considering the totality of the facts of the case and considering the fact that in the hands of the brother of the assessee the AO has already considered the fair market value of the property as on 01.04.1981 at Rs.95,28,000/- and since the assessee is holding 50% of the share in the said property, therefore, in the fitness of things the fair market value of the property has to be adopted at Rs.95,28,000/- as on 01.04.1981. The AO is accordingly directed to recompute the indexed cost of acquisition and consequential capital gain in the hands of the assessee. Since levy of interest on tax demand is consequential, the ground on this is dismissed. The grounds raised by the assessee are accordingly partly allowed.

9. In the result, the appeal filed by the assessees is partly allowed.

The decision was pronounced in the open court on 14.02.2020.

Sd/-	Sd/-
(BHAVNESH SAINI) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated:14th February, 2020.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi