

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.1959/Del/2017  
Assessment Year: 2011-12

Rajendra Kumar 380, AGCR Enclave, Vikash Marg, Extn. Delhi PAN No. AAJPK5780A <b>(APPELLANT)</b>	Vs.	DCIT Circle – 29 (1) New Delhi <b>(RESPONDENT)</b>
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Appellant by	Sh. Ved Jain, CA Ms. Umang Luthra, Advocate Sh. Himanshu Aggarwal, CA
Respondent by	Sh. Gayasuddin Ansari, Sr. DR.

Date of hearing:	30/01/2020
Date of Pronouncement:	27/02/2020

**ORDER**

**PER R.K PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 09.01.2017 of the CIT(A)-16, New Delhi relating to A. Y. 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and drives income from trading of various types, shapes, quantities of nut, bolts, screws and fasteners. The assessee is a general order suppliers catering to a vast number of customers and having various types of needs and requirements.

He filed his return of income on 29.09.2011 declaring total income of Rs.58,21,680/-.

3. The AO during the course of assessment proceedings noted that assessee has purchased two properties during the year, the details of which are as under :-

S. No.	Description of property	Circle Rate as mentioned on the Sale Deed	Actual cost on which the property has been purchased
1	3402, Ground Floor Bazar Sita Ram Delhi - 110006	7,60,000/-	4,50,000/-
2	Part of Property no. 3402 to 3413, Bazar Sita Ram, Delhi-110006	66,90,000/-	15,50,000/-

4. Since there is huge difference in the purchase price and circle rate, the AO asked the assessee to explain with evidence as to how the properties were purchased at such a lower value as against the higher circle rate. The assessee vide letter dated 14.03.2014 filed the following reply to substantiate the difference in the value:-

Justification of value on which the properties have been purchased:-

a. The property situated at ground floor, part of property no-3402 to 3413,

measuring 178 sq mtrs situated in Gali Murghan, Sita Ram Bazar, Delhi was

*purchased by the assessee for Rs. 15,50,000/- only while the circle rate was Rs. 66.90.000/-. The reasons are as under:-*

- i. The property is situated in slum area.*
- ii. The construction of the building is very old.*
- iii. The property was occupied by the tenants namely M/s Prem Sukh Dass Jawahar Lai and Sh. Mohan Saroop since ages. There was a great element of risk involved in purchasing a property which is occupied by tenants.*
- iv. The assessee took a great risk in purchasing such a tenant occupied property, iv. The assessee got the property valued by a registered valuer whose report is annexed as per annexure 80.*

*b. The property situated at ground floor, part of property no-3402 to 3413, measuring 33.56 sq mtrs situated in Gali Murghan, Sita Ram Bazar, Delhi was purchased by the assessee for Rs. 4,50,000/- only while the circle rate was Rs 7,60,000/-. The reasons are as under.*

- i. The property is situated in slum area.*
- ii. The construction of the building is very old.*
- iii. The property was occupied by the tenants namely M/s Prem Sukh Dass Jawahar Lai since ages. There was a great element of risk involved in purchasing a property which is occupied by tenants. The assessee took a great risk in purchasing such a tenant occupied property.*
- iv. The assessee got the property valued by a registered valuer whose report is annexed as per annexure 81*

5. However, the AO was not satisfied with the explanation given by the assessee. He referred the matter to the DVO for obtaining a report on the valuation of the properties. He also confronted the seller of the properties and recorded the statement of Sh. Manoj Kumar Gupta u/s. 131 of the Act. After considering the report of the DVO and the statement given by one of the seller the AO made addition of Rs.53,47,387/-being the difference in the purchase price and value reported by DVO in the case of property No.3402, Sita Ram Bazar and Circle Rate of the other property to the total income of the assessee by observing as under :-

Value calculated as per Valuation Report of Property no. 3402, Sita Ram Bazar	Rs.15,23,450/-	
Purchase price of property shown by assessee	(-) <u>Rs.4,50,000/-</u>	
DIFFERENCE IN VALUE		10,73,450/-
Circle Rate of part of Property no. 3402-3413, Sita Ram Bazar	Rs.58,23,937	
Purchase price of property shown by assessee	(-) <u>Rs.15,50,000/-</u>	<u>42,73,937</u>
DIFFERENCE IN VALUE		53,47,387/-

6. The AO accordingly determined the total income of the assessee at Rs.1,13,57,970/-.

7. In appeal the Ld. CIT(A) gave part relief to the assessee by directing the AO to give 15% rebate by observing as under :-

*“I have considered all facts and circumstances of the case, the submission of the Ld AR and the valuation report. I agree with the contention of the Ld AR that during the assessment proceedings the appellant was not given the reasonable time to study and submit his objections to the valuation report. It is also a fact that the DVO in his report has mentioned categorically that in case the instances*

*of nearby sale were brought to his notice he would consider them. It is in this background the additional evidence in the form of two sale deeds submitted by the appellant, has to be viewed. I find enough merit in the contention of the Ld AR that these two additional evidences on merit, needs to be considered. I find these additional evidence as quite relevant for deciding the appeal, The appellant has stated that the appellant's books of accounts were examined and accepted by the Assessing Officer and unless the books of accounts are rejected, the reference to valuation officer cannot be made.*

*I am afraid that the contention of the appellant cannot be accepted. The appellant is a proprietor and has submitted his return in the capacity of an individual. Since there was a very substantial difference in the valuation as per circle rate and the valuation as computed by the regd. Valuer, the Assessing Officer was right in referring the matter to the valuation cell. Therefore, there is no infirmity in the action of the Assessing Officer.*

*The appellant has also stated that the method adopted for valuation by the DVO was not correct. In this regard, it must not be forgotten that the DVO is a specialised officer to help the Assessing Officer, 'the DVO possess the needed technical competence to undertake the valuation of immovable property. The DVO has considered the objections raised by the appellant and after considering them has come to a conclusion that no review of the earlier report was called for. It is not as if the method adopted by the DVO is illegal. The DVO adopted the method which at the time of valuation was most suitable.*

*As far as the statements of the sellers are concerned, both the sellers are the interested parties as if they accept to have received more consideration than reflected in the regd. Document, they will also be affected in the same proportion. So their denial is rejected.*

*The appellant has also challenged the valuation report saying that the properties purchased were tenanted. Even Assessing Officer has not disputed this fact. In such a situation, the value of the property is bound to come down whether there was dispute between tenant and landlord or not, was of no consequence. Therefore, in my opinion rebate of 15% on this account is called for. The Assessing Officer is directed to give consequential relief.”*

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

*1. That the order passed by the Ld. Commissioner of Income Tax (Appeals)-16 (Hereinafter Ld. Commissioner] is bad in law and against the provisions of The Income Tax Act (Hereinafter "Act")*

*2. That the Ld. Commissioner has erred in understanding facts of the case and misunderstood the facts.*

*3. That the order passed by Ld. Commissioner is self contradictory in nature.*

*4. That the order passed by Ld. Commissioner is biased and he has harassed the assessee.*

*5. That the order passed by Ld. Commissioner is against the principles of natural justice*

*6. That the Ld. Commissioner has ignored all the facts, information and submissions given by the assessee while passing order.*

*7. That the assessee reserves a right to add, alter or withdraw any grounds of appeal before or at the time of final hearing.*

9. The Ld. Counsel for the assessee submitted that during the course of hearing before CIT(A) the assessee had filed additional evidence in the form of sale deeds of properties in the similar vicinity at about the same time which were sold at a price below the circle rates. The Ld. CIT(A) had forwarded the application filed before him under Rule 46 A and called for a remand report from the AO. He submitted that the assessee filed a rejoinder to the said remand report. He submitted that after considering the remand report and submission of the Ld. Counsel for the assessee the CIT(A) has allowed only a rebate of 15% although he

had stated that the AO himself has not disputed to the fact that such properties are tenanted properties.

10. The Ld. Counsel for the assessee submitted that the provisions of section 50C are not applicable in the present case as the assessee is the buyer of the property and not seller of the property. He submitted that provision of section 50C is applicable only in the hands of the seller of the land or building or both and not in the hands of the buyer of the property. Similarly the provisions of section 56 (2) (vii) (b) is also not applicable to the assessee, since these provisions were introduced by the finance bill 2013 w.e.f. 01.04.2014 whereas the assessment year involved is assessment year 2011-12. For the above proposition he relied on the decision of the Mumbai Bench of the Tribunal in the case of ITO Vs. Sh. Sunil Ghanshyamdas Verliani vide ITA No. 3813/Del/2014 order dated 28.11.2016. He further submitted that the provisions of section 69 are also not applicable to the facts of the present case. He submitted that the AO in the instant case has conducted an independent enquiry by recording the statement of the seller of both the properties i.e. Mr. Manoj Kumar Gupta who had categorically admitted that the properties were sold at price below the prevalent circle rates. Further there is no evidence in the possession of the revenue to prove that the assessee has paid something more over and above the sale consideration as mentioned in the sale deed. The basis of addition is only on the basis of the estimate made by the DVO in valuation

report. He accordingly submitted that the addition made by the AO and sustained by the CIT(A) should be deleted.

11. The Ld. DR on the other hand heavily relied on the order of the CIT(A).

12. 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 have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.53,47,387/- being the undisclosed investment u/s.69 of the Act on the ground that assessee has purchased two properties for Rs.20 lacs whereas the value determined by the valuer in one of the properties is Rs.15,43,450/- and the circle rate of the other property is Rs.58,23,937/-. We find the Ld. CIT(A) directed the AO to give 15% rebate out of the sale value determined by the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that these properties were situated in slum area and are old construction and are tenanted one. The assessee had also submitted valuation report from approved valuer. Further assessee has filed sale deeds of properties in the similar vicinity at about the same time and the statement of the seller was also recorded who had confirmed to have sold the properties at the price mentioned in the sale deed and there is nothing on record to suggest that assessee has paid any extra money over and above



what is stated in the sale deed. It is also his submission that neither the provisions of section 50C are applicable to the assessee nor the provisions of the section 56 (2) (vii) (b) are applicable to the assessee. It is also his submission that addition could not have been made in the instant case u/s. 69 of the IT Act since the AO has conducted independent enquiry by recording the statement of the seller of both the properties i.e. Mr. Manoj Kumar Gupta.

13. We find sufficient force in the above arguments of the Ld. Counsel for the assessee. We find the assessee before the AO had categorically mentioned that both the properties were situated in slum area and were very old and tenanted properties. Further the assessee had filed sale deeds of properties in the similar vicinity at about the same time which were also sold at a price below the circle rate. In the present case since the assessee is a buyer of the property and not the seller of the property, therefore, the provisions of section 50C are not applicable. Similarly the assessment year involved is 2011-12 and, therefore, the provisions of section i.e. 56 (2)(vii) (b), which were introduced by finance bill 2013 w.e.f. 01.04.2014 are also not applicable. As per the said amendment if the immovable properties are purchased /received for inadequate consideration, i.e. less than stamp duty value by Rs.50,000/- or more, then the difference between the stamp duty value and inadequate consideration shall be taxable in the hands of the individual or HUF as income from other sources. We further find the AO in the instant case has

conducted independent enquiry by recording the statement of the seller of both the properties wherein he has categorically admitted by stating the reasons for selling the property at price below the prevalent circle rates. Further nothing has been brought on record to prove that the assessee has paid anything extra over and above the value of agreement in any other form of consideration. Nothing has been brought on record that money has emanated from the assessee's coffers. The sole reliance in the instant case is the basis of estimates made by the DVO in the valuation report. It has been held in various decisions that additions cannot be made on the basis of surmises and conjectures in the absence of any tangible material on record. Since in the instant case assessee has purchased old tenanted properties situated in slum areas, filed copies of sale deeds of properties in the similar vicinity at about the same time which were sold at price below the circle rate, also filed valuation report of registered valuer and the seller of the properties has appeared before the AO and has confirmed to have sold the property at the price mentioned in the sale deed only and there is no material available before the revenue authorities that assessee has paid anything more than what is mentioned in the sale deed, therefore, we are of the considered opinion that no addition is warranted in the instant case by invoking the provisions of section 69 of the Act, IT 1961. We, therefore, set aside the order of the CIT(A) and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.02.2020.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

\*Neha\*

Date:- 27.02.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	27.02.2020
Date on which the typed draft is placed before the dictating Member	27.02.2020
Date on which the approved draft comes to the Sr.PS/PS	27.02.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	27.02.2020
Date on which the fair order comes back to the Sr. PS/ PS	27.02.2020
Date on which the final order is uploaded on the website of ITAT	27.02.2020
Date on which the file goes to the Bench Clerk	27.02.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	