

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH “F”,
MUMBAI**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

I.T.A No.2202/Mum/2015 (AY 2010-11)

Umang Madan, 7 Papa Industrial Estate, Suren Road, Andheri-E, Mumbai-400069 PAN: AANPM7593H	Vs.	Pr. CIT-16, R. No. 442, Aayakar Bhavan, M.K.Road, Mumbai-400020
(Appellant)		(Respondent)

Assessee by : Shri Ashok J. Patil
Revenue by : Shri Sangram Gaikwad (DR)

Date of hearing : 16.11.2015
Date of Pronouncement : 18.11.2015

ORDER

PER PAWAN SINGH, JM:

The present appeal filed by the Assessee against the order dated 19.03.2015 passed by the Pr. Commissioner of Income Tax-16, Mumbai ('CIT') for short) in respect of assessment years 2010-11 on the following grounds of appeal:

The grounds mentioned hereunder are without prejudice to one another.

- 1. The Learned Pr. Commissioner of Income Tax erred in initiating action under section 263 inspire all the relevant details required for completing the assessment under section 143(3) were furnished to the Assistant Commissioner of Income Tax 11(3) for completing the assessment for the assessment year 2010-11.*
- 2. The Learned Pr. Commissioner of Income Tax -16 erred in appreciation of valuation report of a approved valuer for Rs.15,19,10,000. The approved valuer has very categorically mentioned in the Report that Anticipated Value after completion including interiors.*
- 3. The Learned Pr. Commissioner failed in appreciation of the fact that approved valuer has given three reports, the main Valuation Report is Report dated 07/09/2008 other two reports are stage wise Reports.*
- 4. The Learned Pr. Commissioner failed to appreciate the clarificatory Report dt. 11/03/2015 given by the same valuer.*
- 5. The Learned Pr. Commissioner of Income Tax failed in appreciating fresh valuation Report regarding the bear shell of the building by SRUJAN CONSTRUCTION MANAGEMENT SOLUTION.*

2. The assessee, who is an Architect deriving his income from Salary, Business & Profession, Income from House Property, Capital Gain and income from Other Sources, filed return of income on 30.08.2010 in respect of AY-2010-11, declaring total income at Rs. 50,80,529/-. The return of income was selected for scrutiny and after serving statutory notices and giving the opportunity of hearing, the Assessing Officer (AO) made the disallowance @ 16% from the income arising out of Salary and Business & Profession. The assessee declared his income from Salary at Rs. 48,00,000/- and income from profession at Rs. 9,00,000/-, thus, a total income from Salary and Profession of Rs. 57,00,000/- out of which 16% was disallowed being percentage of expenses attributable to professional income and assessed the income vide order dated 18.01.2013.

3. The Id. CIT(A) while exercising the power u/s 263 of the I.T.Act issued a show cause notice dated 24.02.2015 giving the details reason in the notice that the order of AO is erroneous as well as prejudicial to the interest of Revenue. The show cause notice further contained a reference that assessee sold two plot and commercial building at Hingewadi, District Pune to M/s Emerald Electric Pvt. Ltd. on 09.02.2010 for a consideration of Rs. 20,00,00,000/-. However, in the computation of capital gain, the assessee has taken the consideration of the said property at Rs. 7,25,00,000/- and after deducting the cost of land and cost of construction, the assessee claimed Short Term Capital Gain (STCG) of Rs. 33,45,848/-. The show cause notice further contained the reference that the assessee leased the entire property to M/s Astrix Property Pvt. Ltd. vide lease dated 24.12.2008, wherein the lessee was entitled to undertake the internal and other development work as per the requirement of the said commercial property at his own cost and noticed that assessee made Inter se Agreement dated 26.03.2010 with M/s Astrix Property Pvt. Ltd. in which it is mentioned that out of sale consideration of Rs. 20,00,00,000/-, the assessee would give Rs. 12,75,00,000/- to M/s Astrix Properties Pvt. Ltd. against the expenditure incurred by that party in respect of internal work, machinery, equipment, furniture and fixtures etc. and the remaining amount of Rs. 7,25,00,000/- would only be retained by assessee against the sale of both the plot of land. The notice further disclosed that no basis of such bifurcation is mentioned in the inter se agreement. The show cause notice specifically contained the reference that AO had not made any investigation to find out whether a sum of Rs. 7.25 Crore was a reasonable amount for two plot of land, whose cost of purchase were Rs. 3,12,35,080/- and Rs. 1,71,60,000/- respectively and the commercial building having built up area of 33369 sq.ft. and not made any verification regarding detailed of internal work, plant and machinery, equipment of furniture and fixture for which Rs. 12.75 Crore was given to M/s Astrix Property Pvt. Ltd.

4. The show cause notice was replied by assessee vide its reply dated 11.03.2015 wherein assessee has replied that as per the lease agreement, the assessee has to complete RCC structure along with brick work and external plaster etc., the allocation of Rs. 20,0000000/- is made on the basis of expenditure, lease incurred by each parties APPL has incurred expenditure on the project to the extent of above Rs. 15 Crore merely internal furniture, equipment etc. and thereafter was not able to pay rent to the assessee w.e.f. 01.04.2009, hence the assessee has no option but to sale the building on the basis of As is Where is and was sold to M/s Emerald Electric Pvt. Ltd. of Rs. 20,0000000/-. After considering the reply of assessee, the CIT(A) made the following observation in his order:

“I have considered the facts of the case and submissions of the assessee carefully. I agree with him on the general legal position regarding the applicability of sec. 263 as submitted by Shri Osani. But the facts in this case are different. This is not a case where the AO had adopted one of the courses permissible in law or where the order was passed by the AO after due application of mind. The present case is on different footing. As mentioned above, this is a case where the AO did not make proper investigation in respect of following very important and obvious facts:

(i) The A.O. did not investigate whether the sum of Rs.7.25 crore retained by the assessee out of the sale consideration of the property at Rs. 20 crore was a reasonable amount for 2 plots of commercial land whose costs of purchase were Rs. 3.12 crore and Rs. 1.71 crore and the commercial star hotel building having built-up-area of 33,368 sq.ft.

(ii)The A.O. did not examine/investigate the details of the interior work, plant & machinery, equipments, furniture and fixture, etc for which .Rs. 12.75 crore was given by the assessee to M/s. Astrix Properties (P) Ltd out of the total sale proceedings of Rs. 20 crores.

(iii) Despite there being such a big difference between the cost of construction of the building as valued by the Govt. approved valuer at Rs. 15,19,10,000/- and Rs. 2,74,50,768/- only accounted by the assessee, the AO did not make any enquiry or investigation of facts in this regard. He did not apply 'his mind to see whether any unexplained investment - was made in the construction of the property for the purpose of application of sec. 69B. He did not even refer the matter to the District Valuation Officer- for valuation of the cost of construction of the said property when the gap between the value estimated by the Govt. approved valuer and that of the assessee was so large.

(iv) The AO did not make any investigation or conduct any enquiry regarding the genuineness of the sale consideration of the property comprising of said 2 plots of commercial land and hotel building with interiors and other

developmental works at Rs. 20 crores only, when it was valued by the Govt. approved valuer at Rs 30,19,10,000/-.

(v) The AO did not make any verification from the stamp duty authority also to find out whether the provision of Sec. 50C was applicable.

Shri Osani, Ld. A.R. of the assessee has not produced any evidence to show that the AO had raised any query or made any investigation in respect of any of the above issues during the assessment proceeding. Shri Osani, Ld A.R. has also not submitted any evidence to show that any submissions were made or any documents were filed with respect to the above issues by the assessee during the course of the assessment proceeding. As such, this is a clear case of inadequate investigation on the glaring vital issues on the part of the AO. It is a settled position of law that the assessment made without inquiry is erroneous and prejudicial to the interest of revenue and proceeding u/s. 263 lies in such case”.

4. We have heard both the parties and perused the material available on record, the Id. Authorized Representative (AR) of the assessee has argued that assessee has provided all document relating to the transaction of the property which includes the valuation report, lease deed dated 24.12.2008, deed of surrender of lease, valuation report dated 07.09.2008 and 05.03.2009 both prepared Govt. Approved Valuer, copy of conveyance deed dated 19.02.2010 and argued that the Paper Book which is filed before us were filed before the AO.

5. We have seen that the valuation report which were prepared at the instance of assessee by Shri Avinash Kulkarni, copy of which available at page 50 of Paper Book contained the reference that estimated cost of construction Rs. 15,19,10,000/- with status of completion of 100% and cost of furniture and fixture, equipment Rs. 15,00,000,00/-.

6. The AR of assessee further argued that after submission of all the document which was the AO to consider the same while making the assessment and that the same is not find reference in the assessment order, the order is not erroneous nor can be said prejudicial to the interest of Revenue.

7. The Departmental Representative (DR) of revenue had categorically argued that as per Govt. Approved Valuer, the report of which was prepared at the instance of assessee valued the property along with the internal work at Rs. 30,19,10,000/- and the assessee has shown the sale consideration only at Rs. 20 Crore and such a huge difference in the said two figures required investigation by the AO.

8. We have seen that the order of AO is silent about the sale consideration and the total cost of property even does not refer whether the AO made any investigation regarding the genuineness of the sale consideration. Similarly, the order of AO is silent, whether the AO

made any verification from stamp authority to find out if the provision of section 50C was applicable in the case of assessee or the fair value of the property at the time of sale.

9. The Id. AR of the assessee relied upon the judgment filed before us, particularly, in case titled as CIT vs. J.P.Goel 247 ITR 555(Kol) and CIT vs. Amalgamation Ltd. 238 ITR 963 (Madras). None of the authority cited by the Id. AR is helpful to the assessee as facts of both the cases are at the variance and altogether different. In the assessment order dated 18.01.2013, the AO has not referred any other source of income or transaction during the relevant Financial Year (FY) although all the details of transaction made during the FY were filed, however, the AO has only computed the income in respect of income from salary and profession and the order is silent about the income from house property, hence we find no illegality in the order passed by CIT(A) by invoking the provision of section 263 of the Act. The order of the CIT(A) qualify both the conditions contained in the Section 263 of the Act.

10. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 18/11/2015

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated : 18.11.2015

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT- concerned
5. DR, ITAT, Mumbai
6. Guard File

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai