

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDEN

ITA No.34/Bang/2019
Assessment year : 2015-16

Shri Rama Jogi Reddy Sanepalli, 113, Ferns Habitat, Outer Ring Road, Marathahalli, Bangalore – 560 037. PAN: ACYPR 5244F	Vs.	The Income Tax Officer, Ward 2(3)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Rama Jogi Reddy Sanepalli, Appellant.
Respondent by	:	Shri S. Venkatesh, JDIT

Date of hearing	:	24.01.2019
Date of Pronouncement	:	15.02.2019

ORDER

This appeal by the assessee is against the order dated 01.08.2018 of the CITA-2, Bengaluru relating to assessment year 2015-16.

2. The only issue that arises for consideration is as to, whether the revenue authorities were justified in making an addition of Rs.6,25,560 on account of unexplained investment in construction of a property by the assessee u/s. 69A/56(2) (vii) (b) of the Income-Tax Act, 1961 ["the Act"].

3. The assessee is an individual. He is a Chartered Accountant by profession. He acquired a property for a sum of Rs.1,45,00,000. The value adopted for the purpose of stamp duty and registration by the Sub-Registrar was a sum of Rs.2,05,52,400. There was a difference of Rs.60,52,400 between the actual value and the value for which the assessee purchased the property. As per the provisions of the 69A of the

Act read with Sec.50C and 56(2)(vii)(b)(ii) of the Act, the following income shall be charged to tax under the head **Income from other sources, viz.,**

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in [section 14](#), items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

(a)

(b) *any immovable property,—*

(i) *without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

(ii) *for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

4. In order to determine the fair market value of the property as on the date of purchase by the assessee, the AO made a reference to the DVO. The DVO estimated the fair market value of the property at Rs.1,51,75,560. The assessee was confronted with the report of the DVO. The assessee

submitted that since the difference between the value of the property at which he purchased the property and the report of the DVO was less than 10%, no addition should be made in respect of the difference. He also submitted that the DVO had not considered the odd shape and large size of the property and the enhanced guideline value and also the fact that the guideline value of the property was enhanced by 20% on 13.11.2014, less than a month on which the assessee purchased the property which was on 09.12.2014. The AO, however, did not consider the above plea of the assessee and made an addition of Rs.6,25,560 to the total income of the assessee i.e., difference between Rs.1,51,75,560 (DVOs estimate – 50,000 (upto Rs.50000 exempted - 1,45,00,000 (actual sale consideration for purchase of the property).

5. On appeal by the assessee, the CIT(Appeals) confirmed the order of AO.

6. Before me, the Id. Counsel for the assessee relied on the decision of ITAT Pune Bench in the case of *Smt. Ratnakanta B. Agarwal v. ITO, ITA 587/PUN/2014, order dated 24.07.2017* wherein the Hon'ble Pune Bench took the view that if the variance between the value estimated as fair market value by the DVO and the value adopted by the assessee is less than 5%, then no addition should be made since the matter of valuation is always based on estimation and some differences do occur.

7. The Id. DR relied on the order of CIT(Appeals).

8. I have considered the rival submissions. I am of the view that the decision of the Pune Bench of the Tribunal rendered in the case of *Smt. Ratnakanta B. Agarwal (supra)* is applicable to the facts of the present case. Without going into the objections of the assessee with regard to the report of the DVO, I find that the difference in valuation as adopted by the

DVO and the price paid for the property by the assessee is less than 5%. In the given circumstances, as held by the coordinate Bench of Pune Bench in the case of *Smt. Ratnakanta B. Agarwal (supra)*, valuation is always a matter of estimation and the difference of less than 5% is only a difference which should be construed as a difference in estimation and the value adopted by the assessee should be accepted in such circumstances. Respectfully following the decision of the ITAT Pune Bench, I direct that the addition sustained by the CIT(Appeals) should be deleted.

9. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 15th day of February, 2019.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 15th February, 2019.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.