

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2347/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

G G Dandekar Machine Works Ltd.,
B-211/1, MIDC Butibori Industrial Area,
Kinhi Village, Tal.-Hingna,
Distt.-Nagpur – 441122

PAN : AAACG6146L

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 1, Kalyan

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 20-03-2019
घोषणा की तारीख / Date of Pronouncement : 03-06-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Thane dated 14-07-2016 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are: The assessee company is engaged in manufacturing and trading of food processing machines and its spares. The assessee filed its return of income for the impugned assessment year on 30-09-2011 declaring total income of Rs.63,71,570/-. In scrutiny assessment proceedings, the Assessing Officer observed that the assessee has sold pieces of land situated at S. No. 11 admeasuring 12382 sq. mtrs. The assessee had declared the sale value of aforesaid property as Rs.2,00,00,000/- as against stamp duty value of Rs.3,79,31,400/-. The Assessing Officer invoked the provisions of section 50C and made addition of difference in value i.e. Rs.1,79,31,400/-.

Aggrieved against the assessment order dated 20-02-2014, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) dismissed the appeal of assessee and confirmed the addition. Now, the assessee is in second appeal before the Tribunal assailing the findings of First Appellate Authority by raising following grounds :

- “1. *The learned CIT(A) erred on facts and in law in upholding the addition of Rs.1,79,31,400 to the income from capital gain under provisions of section 50C of the Act. He failed to appreciate the fact that the said land was reserved for school and play ground as per Town Planning Scheme by Bhiwandi Nizampur City Municipal Corporation due to which land valuation is lower than the actual market value. He further failed in contending that, assessee did not filed evidences whereas assessee has already submitted all the evidences in support of its claim.*
2. *The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”*

3. Shri C.H. Naniwadekar appearing on behalf of the assessee submitted that the land sold by the assessee was under reservation. The said land was reserved by the Municipal Corporation, Bhiwandi for school and play ground. The ld. AR referred to communication from Bhiwandi Municipal Corporation dated 18-08-2008 at page 16 of the paper book. The ld. AR submitted that during scrutiny assessment proceedings, the assessee was not properly represented before the Assessing Officer. A perusal of assessment order would show that no written submissions or explanation were filed on behalf of the assessee. Since, the assessee failed to furnish the details as sought, the Assessing Officer made addition. The difference in the stamp duty value and actual consideration was primarily for the reason, the plot was under reservation.

3.1 The ld. AR further contended that during First Appellate proceedings, the assessee had filed written submissions before the Commissioner of Income Tax (Appeals) and vehemently contested the addition. In the impugned order the Commissioner of Income Tax (Appeals) has erred in observing that the ld. AR of assessee conceded that the appellant is not interested in pursuing the appeal. The ld. AR pointed that on some part of the consideration received in respect of plot sold addition was made in assessment year 2008-09. However, the same was not contested and accepted by the assessee due to smallness of amount. Whereas, in the assessment year under appeal the addition was huge and the assessee has bonafide reasons to explain difference between the stamp duty valuation and actual sale consideration received. Therefore, there was no reason for conceding and agreeing for the addition in the impugned

assessment year. The ld. AR submitted that before Commissioner of Income Tax (Appeals) the assessee had filed all the relevant documents including copy of letter from Municipal Corporation indicating reservation on plot for school and play ground, a copy of appeal u/s. 47 of Maharashtra State Forest Conservation Act, 1966 and the copy of Valuation Report from Government Approved Valuer obtained by the assessee. The ld. AR prayed that if an opportunity is afforded to the assessee, the assessee would be able to explain with documentary evidence the reasons for difference in stamp duty valuation and the actual consideration received on sale of plot.

4. On the other hand Shri Pankaj Garg representing the Department vehemently defended the impugned order. The ld. DR submitted that a perusal of impugned order would show that the assessee had not pressed the ground of appeal assailing addition on account of capital gains on sale of land. Once, the assessee has agreed for the addition, the assessee cannot challenge the same before the appellate authority.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the documents furnished by the assessee in support of his contentions. It is an undisputed fact that the assessee had sold pieces of land admeasuring 12382 sq. mtrs. during the period relevant to the assessment year under appeal. There is substantial difference in the sale value of land declared by the assessee and the stamp duty valuation. As per the Sale Deed the sale consideration of land was fixed at

Rs.2,00,00,000/-, whereas, the value of land as per stamp duty valuation is Rs.3,79,31,400/-. The Assessing Officer invoked the provisions of section 50C and made the addition of difference between the above said two values i.e. Rs.1,79,31,400/-. The reason as explained by the assessee for the difference in the two valuations was reservation on land. In support of his contentions the assessee has placed on record communication between Bhiwandi Municipal Corporation and the District Collector at page 15 of the paper book. The ld. AR has certified that the documents furnished by the assessee before the Tribunal in the form of paper book were filed before the authorities below. Whereas, a perusal of impugned order reveal that there is no discussion on such documents. In fact, the Commissioner of Income Tax (Appeals) has confirmed the addition on the basis of alleged statement of authorized representative of the assessee stating that the appellant is not interested in pursuing this ground of appeal. The ld. AR has also drawn our attention to the written statement filed by the assessee before the Commissioner of Income Tax (Appeals) against the addition of Rs.1,79,31,400/-. The ld. AR before us has fairly admitted that the assessee has not agitated the addition made in respect of sale of plot in the assessment year 2008-09 as the amount involved was meager.

6. After taking into consideration entirety of facts and the documents filed by the assessee in the form of paper book, we deem it appropriate to restore this issue back to the file of Commissioner of Income Tax (Appeals) for de-novo adjudication on merits after considering the documents filed by the assessee in support of his contentions. Without commenting on merits

of the case this appeal is restored back to the file of Commissioner of Income Tax (Appeals) for fresh adjudication. The Commissioner of Income Tax (Appeals) shall grant reasonable opportunity of hearing to the assessee, in accordance with law. The impugned order is set aside and the appeal of assessee is allowed for statistical purpose.

7. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced on Monday, the 03rd day of June, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd June, 2019

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Thane
4. The Pr. Commissioner of Income Tax-2, Thane
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune