

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.6527/Mum/2018(A.Y.2014-15)

M/s. Swastik Developments,
1102, Girnar Apartment,
69, Tardeo Road, Mumbai 400 034.
PAN:AABFS 1155M

..... Appellant

Vs.

Asstt. Commissioner of Income Tax,
Circle – 19(3), Matru Mandir,
Tardeo, Mumbai 400 007

..... Respondent

Appellant by : Shri Parth Sanghvi
Respondent by : Shri Kumar Padmapani Bora

Date of hearing : 12/12/2019
Date of pronouncement : 11/02/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)- 2, Mumbai (in short 'the CIT(A)') dated 05/10/2018 for assessment year 2014-15.

2. The brief facts of the case as emanating from records are: The assessee filed his return of income for the impugned assessment year declaring total income of Rs.58,08,824/-. In scrutiny assessment proceedings, the Assessing Officer made addition of Rs.16,95,000/- under section 43CA of the Income Tax Act, 1961 (in short 'the Act'). Aggrieved, against the assessment order dated

30/12/2016 passed under section 143(3) of the Act, the assessee filed appeal before CIT(A). The CIT(A) rejected the contentions of assessee and confirmed the addition. Hence, the present appeal by the assessee.

3. Shri Parth Sanghvi appearing on behalf of the assessee submitted that assessee had sold a property i.e. Industrial Unit No.33-34-35-36, 1st Floor, Building No.2, Sheetal Supreme Industrial Estate for a consideration of Rs.99.00 lacs. The Assessing Officer based on reckoner value determined fair market value of the property at Rs.1,15,95,000/- Thus, the Assessing Officer proposed to make addition of the difference between the value of property sold and fair market value i.e.Rs. 16,95,000/-. The assessee filed valuation report from the Approved Valuer before Assessing Officer . The Approved Valuer determined the market value of the said property at Rs.90,20,000/-. The Assessing Officer without considering the valuation report and without assigning any reason to reject the report made addition of the difference between the fair market value determined by him and the actual sale consideration received by the assessee. The Id. Authorized Representative of the assessee submitted that the CIT(A) also failed to appreciate the documents on record in right perspective and confirmed the addition.

4. On the other hand, Shri Kumar Padmapani Bora representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee . The Id.Departmental Representative submitted that CIT(A) had sought remand report from the Assessing Officer. After examining the report, CIT(A) came to the conclusion that the Assessing Officer had considered the valuation report and thereafter, had rejected the same.

5. We have heard the submissions made by rival sides and have perused the orders of the authorities below. The only issue in appeal is qua addition of Rs.16,95,000/- made under section 43CA of the Act. Ostensibly, the assessee had filed valuation report from approved valuer before the Assessing Officer. A perusal of the assessment order shows that the Assessing Officer while passing the assessment order has observed that '*assessee has not made any satisfactory submissions*'. No reason has been given by Assessing Officer for rejecting the valuation report furnished by the assessee. In fact there is no mention of valuation report in the assessment order. The CIT(A) has upheld the findings of Assessing Officer on the presumption that the Assessing Officer has considered valuation report furnished by the assessee . Taking into consideration entirety of facts, we deem it proper to restore this issue back to the file of Assessing Officer with a direction that the Assessing Officer after considering the valuation report shall pass a speaking order accepting/rejecting the same. Needless to say, the Assessing Officer shall allow a reasonable opportunity of hearing to the assessee before passing fresh order, in accordance with law.

6. In the result, the impugned order is set-aside and appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on Tuesday, the 11th day of February, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 11 /02/2020
Vm, Sr. PS(O/S)

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai