

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH VC, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 727/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16.

Shri Mohan Sharma A-10, Sudershanpura Ind. Area, 22 Godam, Jaipur.	बनाम Vs.	The DCIT Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AISPS 2714 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Ms Chanchal Meena (Addl.CIT)
निर्धारिती की ओर से/ Assessee by : None

सुनवाई की तारीख/ Date of Hearing : 25.08.2020.
घोषणा की तारीख/ Date of Pronouncement : 26/08/2020.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 20th March, 2019 of Id. CIT (A)-2, Jaipur for the assessment year 2015-16. The assessee has raised the following grounds :-

1. In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of the Id. AO in making addition of Rs. 3,80,100/- under section 56(2)(vii) of the Income Tax Act, 1961. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 3,80,100/-.
2. In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of the Id. AO by adopting the stamp duty valuation without referring the case to the District Valuation Officer. The action of the Id. CIT (A) is illegal,

unjustified, arbitrary and against the facts of the case. Relief may please be granted by making the reference to DVO.

3. The assessee craves his rights to add, amend or alter any of the grounds on or before the hearing."

2. None has appeared on behalf of the assessee despite the fact that on the earlier date the hearing was adjourned for today i.e. 25.08.2020 which was duly noted down by the Id. A/R of the assessee. Further, though the assessee has requested for adjournment of the hearing but without giving a reasonable cause for not attending the hearing despite the link and invite was sent to the Id. A/R well in time. Accordingly, we proposed to hear and dispose off this appeal ex parte.

3. The hearing of the appeal is concluded through Video Conference due to prevailing condition of COVID 19 pandemic.

4. The only issue raised in this appeal is regarding addition made by the AO under section 56(2)(vii) of the IT Act on account of difference of purchase consideration of the immovable property purchased by the assessee in comparison to the value determined by the Stamp Duty Authority. The Id. D/R has submitted that the AO has noted that the assessee purchased immovable property during the year under consideration being Unit No. 1, Ground Floor, Plot No. E-28, Malviya Nagar, Jaipur on 24.11.2014 for a consideration of Rs. 19,50,000/- whereas the value of the property was determined by the Stamp Duty Authority at Rs. 23,30,100/-. The AO accordingly treated the difference of Rs. 3,80,100/- as Income from other sources as per section 56(2)(vii) of the IT Act. The Id. D/R has further contended that the assessee has not brought on record any contrary material to

show that the fair market value of the property is less than the value determined by the Stamp Duty Authority. She has relied upon the orders of the authorities below.

5. We have considered the argument of the Id. D/R as well as the submissions of the assessee made before the Id. CIT (A). The assessee has mainly contended that the AO ought to have referred the matter to the DVO for determination of fair market value under section 50C(2) of the IT Act which is applicable while making the addition under section 56(2)(vii) of the Act. The assessee also relied upon various decisions on this point that once the assessee has disputed the value determined by the Stamp Duty Authority to be adopted by the AO for the purpose of section 56(2)(vii), the AO is required to refer the matter to the DVO for determination of fair market value. The Id. CIT (A) has also reproduced the contention of the assessee in para 2.3.1 and the finding in para 2.3.2 as under :-

" 2.3.1. *Before me Id. AR of the assessee explained that the flat which was purchased was skeleton flat which was not habitable and did not have any connection of water and electricity. The construction was unapproved and unauthorized because of which few flats of the building were partly demolished by JDA. However, before me assessee could not furnished any evidence to substantiate his claim.*

2.3.2. *Therefore, after considering the facts of the case, I do not find any reason to interfere with the findings of the AO. Thus the addition made by the AO is hereby confirmed. In view of the above, the appeal of the assessee is dismissed."*

Thus it is clear that the Id. CIT (A) has acknowledged the objections of the assessee against the adoption of the value determined by the Stamp Duty Authority for the purpose of addition made by the AO under section 56(2)(vii). The assessee has raised various points being Flat in question is only skeleton without having all necessary amenities and facilities. Thus the assessee has contended that the flat in question is not habitable and even the construction was not approved by the JDA, therefore, the value adopted by the AO is not representing the fair market value of the property. Though there was no such objection raised by the assessee before the AO, however, once the assessee has raised these points before the Id. CIT (A), the issue of determination of fair market value of the property in question was required to be determined through remand proceedings and DVO valuation. Accordingly, in the facts and in the circumstances and in the interest of justice, we set aside this issue to the record of the AO for limited purpose of getting the fair market value of the property in question to be determined by the DVO and then decide the issue after giving a proper opportunity of hearing to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 26/08/2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 26/08/2020.

Das/

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

1. The Appellant- Shri Mohan Sharma, Jaipur.
2. The Respondent – The DCIT Circle-6, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 727/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar