

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.4445/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

ACIT-16(3) 446, 4 th Floor, Aaykar Bhavan, Churchgate, Mumbai-400 020	बनाम/ Vs.	Shri Vishwang Y. Desai 2 nd Floor, Lentin Chambers Dalal Street, Fort Mumbai-400 023
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACPD-4371-R		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Revenue by	:	Shri Sanjay Sethi-Ld. DR
Assessee by	:	Shri Sanjay Parikh-Ld. AR
सुनवाई की तारीख/ Date of Hearing	:	24/12/2020
घोषणा की तारीख / Date of Pronouncement	:	04/01/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by the Revenue for Assessment Year 2015-16 contests the order of the Ld. Commissioner of Income-Tax (Appeals)-7 [in short ‘CIT(A)], Mumbai, Appeal No.CIT(A)-7/IT-110/2017-18 order dated 12/04/2019 following ground of appeal:-

1. On the facts and in circumstances of the case and in law, Whether the Ld. CIT(A) has erred in deleting the addition of ₹2,23,98,632/- made by the AO under section 50C of the I.T. Act 1961 for Assessment Year 2015-16.

2. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 An assessment was framed against the assessee u/s 143(3) on 26/12/2017 wherein the assessee has been saddled with an addition of ₹223.98 Lacs under the head Long-Term Capital Gains (LTCG). The same would stem from the fact that the assessee along with Mr. Yeshwant Desai and Mrs. Paulomi Desai sold a certain property situated at Unit No..14, 14th Floor, Lodha Excellus, Apollo Mills Compound, N.M.Joshi Marg, Mahalaxmi, Mumbai on 28/11/2014 for consideration of ₹56.38 Crores. The assessee's share therein was to the extent of 37.5% which was 25% self acquired while purchasing the property in the year 2011 whereas balance 12.5% was acquired out of share of her mother upon her death on 04/07/2013. The property was purchased for ₹48 Crores and the assessee's share therein worked out to be ₹18 Crores. The assessee's share in sale consideration worked out to be ₹21.14 Crores. After indexation benefit, Long-Term Capital Loss was worked out at ₹296.54 Lacs which was reflected in the return of income.

3.2 However, the dispute arises in view of the fact that the stamp duty valuation of the property was ₹82.27 Crores and the provisions of Sec.50C were found applicable to the case of the assessee. As per assessee's request, the matter of valuation was referred to Ld. District Valuation Officer (DVO), who valued the property at ₹62.35 Crores. The assessee also filed independent

valuation report from two valuers who valued the property at ₹59.40 Crores & ₹53.96 Crores. The assessee objected to valuation made by Ld. DVO by pointing certain errors but Ld. AO chose to adopt the same since the valuation was done after adjusting the sale instances of properties with reference to time lag, floor valuation, car parking etc. The valuation thus adopted by Ld. AO resulted into reduction of Long-Term capital loss to that extent.

4. Upon further appeal, Ld. CIT(A) deleted the same, inter-alia, by observing that the difference between the agreement value and value determined by Ld. DVO was less than 10% of the value determined by Ld. DVO and therefore, the additions were not justified. Reliance was placed, *inter-alia*, on the decision of Hon'ble Jammu & Kashmir High Court in **Honest Group of Hotels (P) Ltd. V/s CIT (177 CTR 232)** as well as the decision of Pune Tribunal in **Rahul Constructions V/s DCIT (38 DTR 19)** besides other decisions which have already been enumerated in the impugned order. Resultantly, the addition so made by Ld. AO was deleted. Aggrieved, the revenue is in further appeal before us.

5. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, it is quite evident that the stamp duty value of ₹82.27 Crores was certainly not the prevailing market price which is evident from the valuation made by Ld. DVO. Upon perusal of valuation made by Ld. DVO, we find that arithmetic average rate per square meters for 3 sales instances would work out to be ₹211367 per square meter as against ₹225732 adopted by Ld. DVO. How the rate was arrived at by Ld.DVO is not discernible from the valuation report. Adopting the correct rate, the

valuation made by Ld. DVO would fall further. Secondly, as rightly concluded by Ld. CIT(A), the overall difference was less than 10% of valuation made by Ld. DVO and therefore, the additions were not justified in terms of the cited decisions. We concur with the same since the matter of valuation was mere estimation and the assessee would not gain to under-value the property in view of the fact that it incurred Long Term Capital losses of ₹296.54 Lacs. Viewing from any angle, impugned order would not require any interference on our part.

6. The appeal stand dismissed.

Order pronounced on 4th January, 2021.

Sd/ (Amarjit Singh)	Sd/- (Manoj Kumar Aggarwal)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 04/01/2021
Sr.PS, Sudip Sarkar; Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.