

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.347/Hyd/2022		
Assessment Year: 2019-20		
Saichandu Thanneru, 1, Opp. Jamuna Takies, Podalakur Village, Nellore District. PAN : AJMPT5967E.	Vs.	Asst. Commissioner of Income Tax, Central Circle, Tirupati.
(Appellant)		(Respondent)
Assessee by:		Shri E. Phalguna Kumar, C.A.
Revenue by:		Shri D.J.P. Anand
Date of hearing:		14.09.2022
Date of pronouncement:		21.09.2022

ORDER

PER LALIET KUMAR, J.M.

This is an appeal filed by the assessee feeling aggrieved by the order of learned Commissioner of Income Tax (Appeals) – 3, Visakhapatnam dt.23.02.2022 for sustaining an addition of Rs.32,06,639/- on account of addition made by the Assessing Officer u/s 69B of the Act.

2. The grounds raised by the assessee reads as under :

“1. The order passed by the ld.CIT(A), Visakhapatnam – 3 for the Asst. Year 2019-20 u/s 250 of Income Tax Act, 1961, is contrary to the facts and merits of the case. Hence, the order passed by the Assessing Officer is bad in law.

2. The ld.CIT(A), Visakhapatnam – 3 erred in allowing only 2.5% in addition to that allowed by AO towards self-supervision for construction of building. The ld.CIT(A) erred in not allowing 15% in total towards self-supervision for construction of building.

3. The ld.CIT(A), Visakhapatnam – 3 erred in not deleting the entire addition on account of estimation differences which is below threshold limits fixed in various judicial precedents.

4. The ld.CIT(A), Visakhapatnam – 3 erred in not considering the established judicial precedents and partly sustained the additions of the AO which are devoid of merit.

5. Therefore, the appellant prays the Hon’ble ITAT to delete the addition made by ld.AO and sustained by ld.CIT(A) and consequently, reduce the demand raised.”

3. The ld.AR for the assessee has drawn our attention to the order passed by the Assessing Officer, more particularly, Paras 8 to 12 of the assessment order.

4. It was the contention of the ld.AR that before the Assessing Officer, the assessee had filed certain documents viz Valuation Report issued by the Registered Valuer dt.15.08.2018, Valuation report dt.17.12.2021 issued by the DVO, Registered Sale Deed dt.01.09.2021 and the Valuation Report of SRO, Podalkaur dt.04.01.2022. In the valuation report issued by SRO, the cost of the construction for ground floor, 1st floor and 2nd floor had been taken as Rs.910/- per sq. ft and 3rd and 4th floors were taken as Rs.1,030 per sq.ft. Whereas, in the Valuation Report issued by the

DVO, the cost of construction for the ground floor was Rs.1,720/- per sq. ft, Rs.1,671/- for the first floor, Rs.1,675/-, Rs.1,667/- and Rs.1,673/- for 2nd, 3rd and 4th floors. As against the valuation of DVO, the corresponding value applicable for the property of the assessee as per the market rate was Rs.75 lakhs for 1 to 4 floors.

5. Besides that, the assessee has also furnished the copy of the registered sale deed dt.01.09.2021 by virtue of which the property was sold by the assessee to one Thummala Hemant Kumar for a total consideration of Rs.75 lakhs, including the cost of the land. The Id.AR before the Assessing Officer had also submitted that the assessee be given an opportunity to cross-examine the DVO as the valuation taken by the DVO was in accordance with the law. However, the Assessing Officer had made an addition of Rs.32,06,639/- without affording the opportunity of personal hearing and cross examining the DVO.

6. Feeling aggrieved with the order of the Assessing Officer, assessee carried the matter before Id.CIT(A), who had reduced the addition to Rs.17,79,376/- as per the consequential order passed by the Assessing Officer.

7. Now the assessee is in appeal before us for the grounds mentioned hereinabove.

8. Before us, the Id.AR for the assessee has submitted that the orders passed by lower authorities are required to be quashed as both the authorities have not considered the valuation report submitted by the assessee and no reason were assigned for the rejection of the same. It was also submitted that the Id.CIT(A) has not considered the registered sale deed executed on 01.09.2021 by virtue of which the valuation of the property was sold at Rs.75 lakhs. Beside that Id.CIT(A) had restricted the supervision charges to only 10% including to what had already been allowed by Assessing Officer towards supervision charges for construction of building.

9. The Id.AR relied upon the decision of Co-ordinate Bench of the Tribunal in the case of Asst.CIT Vs. Vinod Kumar Agarwal (ITA No.1497/Hyd/1996 dt. 29.11.2001 placed at Page 65 of the paper book wherein the Co-ordinate Bench of the Tribunal has held that there *“where two are more methods of valuation are available for determining the cost of construction and the statute does not provide for any particular method to be adopted, the option of the method of valuation should be given to the assessee.”*

10. Per contra, the Id.DR for the Revenue relied upon the orders of lower authorities. He had submitted that the Assessing Officer before referring the matter to the DVO has granted the opportunity to the assessee and the DVO before finalizing the valuation report has also granted the opportunity to the Assessing Officer and thereafter, valuation report was prepared by the DVO. There was no error in the report prepared by the DVO. However, the other aspect of consideration of subsequent sale deed and also for grant of

supervision charges, the ld.DR had submitted that the case may be decided in accordance with the law.

11. We have heard the rival submissions and perused the material available on record. Admittedly, the assessee was provided with the opportunity of hearing by the DVO before finalizing the report and he was called upon to file objections or submissions in support of correct valuation of the property. After following the procedure, DVO had calculated the valuation of the property. Nonetheless, besides the DVO report, the valuation report given by the SRO was available with the assessee as well as the DVO at the time of finalizing the valuation of the property. However, we could not go blindly on the valuation of the property as adopted by the SRO, as there was no occasion for the SRO to inspect the property and decide the true and correct value of the property, however the valuation of the property shown / notified by SRO shall have a bearing on the registered value. Similarly, the valuation of the property by DVO is to be made for the purpose for determining the tax liability under Income Tax Act 1961. As there are two competing valuation reports before DVO and SRO, hence without making any comments on the report of the DVO and SRO, we are of the opinion that the assessee is required to be given some benefit as valuation done by the assessee at the time of subsequent registration of the sale deed dt 01.09.2021 in line with the valuation done by SRO. The assessee has pointed out various errors in the report of the DVO and ld.AR further pointed out that AO / ld.CIT(A) has not granted any opportunity to cross-examine the assessee.

12. Therefore, in the interests of justice and to balance equities, I am of the opinion that the addition should be restricted to 50% of Rs.14,37,263/-. This benefit has been granted to the assessee considering the totality of peculiar facts and circumstances and shall also taking into account of self-supervision charges 10% and difference in valuation of property done by two authorities. Accordingly, I restrict the addition only to an amount of Rs.7,18,632/- (50% of Rs.14,37,263/-). Thus, the appeal of the assessee is partly allowed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 21st September, 2022.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 21st September, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	Saichandu Thanneru, 1, Opp. Jamuna Takies, Podalakur Village, Nellore District.
2	Asst. Commissionr of Income Tax, Central Circle, Tirupati.
3	Commissioner of Income Tax (Appeals)- Visakhapatnam – 3.
4	PCIT (Central), Visakhapatnam.
4	DR, ITAT Hyderabad Benches
5	Guard File