

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.200/Ahd/2020
Assessment Year: 2012-13**

M/s. Kemco Chemicals,
C/o. Paras F. Jain & Co.,
First Floor, Dwarkesh Complex,
Opp. Patel Vas,
Mithakhali Gam,
Ahmedabad – 380 006.
[PAN – AAKFK 3309 E]
(Appellant)

vs. Income Tax Officer,
Ward – 1(3)(3), Ahmedabad.

(Respondent)

Assessee by : Shri P.F. Jain, A.R.
Respondent by : Shri Mukesh Sharma, Sr. DR

Date of hearing : 15.11.2022
Date of pronouncement : 30.11.2022

ORDER

This appeal is filed by the Assessee against the order dated 27.12.2018 passed by the CIT(A)-6, Ahmedabad for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1. *The Id. CIT (Appeals) has erred in law and on facts in upholding the addition of Rs.10,75,000/- on account of capital gain without properly appreciating the facts, submission and evidence adduced by the appellant.*
2. *The Id. CIT (Appeals) has erred in law and on facts in not accepting the valuation made by the Registered Valuer based on various factors having bearing on the property under consideration.*
3. *She has erred in law and on facts in upholding the addition u/s.50C based on the report of DVO without appreciating the facts that the instances mentioned in the DVO’s report were not applicable to the location of the property.*
4. *She has erred in law and on facts in upholding the reassessment proceedings inasmuch as that the property under consideration did not*

belong to the firm but to the then partners as co-owners on account of dissolution of the firm before sale of office.

5. *On the facts of the assessee, no interest ought to have been levied.”*

3. Information was received that the assessee entered into transaction of sale of immovable property wherein the assessee understated the sale consideration as per Jantri rate and thus there was understatement in respect of capital gain to the extent of Rs.16,53,000/- as observed by the Assessing Officer. The case was reopened after recording reasons and notice under Section 148 of the Income Tax Act, 1961 was issued. In response to the notices, the assessee filed return of income, computation and audit report as well as filed written objection against the reassessment proceedings thereby objecting that the Jantri value is not in consonance with real value fetched and requested to refer the matter to the Valuation Officer because on the date of transfer the value adopted as per Jantri rate far exceeds the fair market value of the office sold. The matter was referred to the DVO on 29.03.2016. The DVO submitted valuation details thereby determining the fair market value at Rs.17,75,000/- as on 21.02.2012 of the said immovable property. The value adopted by the assessee was Rs.16,53,000/- (sale value of the property declared in the sale deed was Rs.9,11,000/- whereas the fair market value calculated by the Stamp Duty Authority i.e. Sub-Registrar at Rs.25,64,000/-). The Assessing Officer made addition of Rs.10,75,000/- on account of capital gain.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that in respect of assessee the assessment order was passed making addition of Rs.10,75,000/- as capital gain on account of difference in valuation of office as per sale deed executed for Rs.9,11,000/- valued by the DVO at Rs.17,75,000/- as against the estimated fair market value by Sub-registrar at Rs.25,64,000/-. The assessee disputed the valuation and obtained valuation report from the registered valuer who valued the property at Rs.13,05,000/- as per report dated 16.12.2014. In respect of the objection, the Id. AR submitted that the purchaser has not been given the share certificate as mentioned in the sale deed. The said

property was situated in the middle class locality and there is no market nearby, most of the adjacent units were occupied by Auto Garage, Auto Service Centre and there is cemetery ground opposite to this complex and there was no common facilities/amenities available to the unit holders and as a result the impugned unit purchased was in non-use. At the relevant point of time there was no maintenance provided and there was no lift working for many years, underground as well as over head water tanks were of less capacity. The property was situated at fourth floor and there was no parking facility available and the available space was encroached upon by the unauthorised persons. Thus, the Ld. AR submitted that a sale instances relied upon by the DVO was not applicable to the office under consideration as those officers/commercial properties are not comparable with the assessee's property. The sale instances are also not comparable as given by the DVO as the position of the property was totally different from other properties situated in the same building. The Ld. AR submitted that Jantri value was Rs.25,64,000/- whereas the DVO estimated it at Rs.17,75,000/- which shows that the Jantri value was on higher side while the issued rate by the Government Registered Valuer was Rs.1,891/- per sq. ft. The Ld. AR relied upon the decision of Hon'ble Madras High Court in the case of Jagannathan Sailaja Chitta vs. ITO (International Taxation), 417 ITR 61 (Mad) and the decision of the Ahmedabad Tribunal in the case of Ushaben Ambalal Oza vs. ITO (ITA No.2028/Ahd/2018 A.Y. 2012-13, order dated 17.05.2022).

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). Ld. DR submitted that the assessee only has called for DVO's report, therefore, the DVO's report should be taken into account which was rightly done by the Assessing Officer.

7. Heard both the parties and perused all the relevant material available on record. The instances upon which the value of the property is determined was not fully taken into consideration by the DVO while doing the valuation as in the locality of the property there were drawback/lack of amenities in the premise which has been taken into consideration while determining the value of the property. It appears that the value taken by the assessee and by the DVO needs proper verification in respect of the actual standing of the property. Therefore, it will be appropriate to restore the issue to the file of the Assessing Officer to verify the correct position of the sale

consideration in the light of the observations made hereinabove. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. Appeal of the assessee is, therefore, partly allowed for statistical purpose.

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

Order pronounced in the open Court on this 30th day of November, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 30th day of November, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad