

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.549/Bang/2019
Assessment Year : 2015-16

Sri Santhemathavathur Bhadregowda Shivalingaiah, #115/116, 1 st Main, 4 th Cross Magadi Road, HVR Layout Bangalore 560 079 PAN NO : AKTPS9680H	Vs.	ITO Ward-7(2)(5) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	N o n e
Respondent by	:	Smt. Priyadarshini Baseganni, D.R.

Date of Hearing	:	06.02.2023
Date of Pronouncement	:	08.02.2023

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the CIT(A)-7, Bengaluru dated 4.2.2019 on the following grounds of appeal:

1. *“The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT[A] is not justified in upholding the addition of Rs.89,50,000/- in respect of difference between*

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the guidance value and the actual consideration paid by the appellant as per the sale deed by invoking the provisions of Section 56(2)(vii)(b) of the Act under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] ought to have appreciated that the appellant had objected to the adoption of the guideline value of the property and had contended that the actual consideration paid was the fair market value of the property and that reference ought to have been made to the valuation officer to determine the fair market value and hence, the impugned addition made without reference to the valuation officer was bad in law and liable to be deleted.

2.2 Without prejudice to the above, the learned CIT[A] ought to have directed reference to the valuation officer instead of holding that the appellant had not objected to the adoption of the guideline value before the learned A.O. especially when the appellant had raised objections in first appeal under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in upholding the addition in respect of loan creditors of Rs.1,25,50,000/- being the loan creditors without appreciating the fact that the appellant had filed confirmation letters for the loans received during the year and there were certain opening balances in respect of loan creditors as well which could not be added for the year under appeal under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B, 234-C and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

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2. This case was heard on many times i.e. on 1.12.2021, 10.1.2022, 9.2.22, 2.3.22, 31.3.22, 21.4.22, 30.5.22, 22.6.22, 30.6.22, 19.7.22, 2.8.22, 23.8.22, 19.9.22, 17.10.22 & 3.1.23 and now on 6.2.23. Notices were also issued to the assessee but none appeared on behalf of the assessee, therefore, the case was heard qua the ld. DR.

3. The brief facts of the case are that the assessee filed return of income on 10.11.2015 declaring Nil income and subsequently, the return was revised on 20.11.2015 declaring income at Rs.17,74,710/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings the AO observed that the assessee has purchased an immovable property bearing document Sale deed no.3047/1425 dated 18.7.2014 and the property situated at no.76, Ward no.183, 3rd phase, 5th block, 100 ft. Road, BSK 3rd stage, Bengaluru 560085 for a consideration of Rs.3,15,00,000/- from Shri A.V. Murali. It was seen that the guidance value of the property is Rs.4,04,00,000/- and the difference of Rs.89,50,000/- has not been declared by the assessee under the head "income from other sources" for the assessment year u/s 56(2)(vii)(b) of the Act. Therefore, the same was added as income of the assessee u/s 56(2)(vii)(b) of the Act.

3.1 On verification of the financial statement for the AY 2015-16, it was observed that assessee has shown an unsecured loan of Rs.1,25,50,000/-, in this regard, the AO observed as under:

"During the hearing on 05/12/2017 with assessee's AR Shri Harish Kumar, accountant has been requested to furnish the details of loan creditors along with their address, PAN and credit worthiness of the loan creditors on the loan the amounts. In response to the request, Shri. Harish Kumar, accountant appeared on 20/12/2017 and filed two confirmations signed by partner of M/s Sumukha Merchants Finance Company, No.128/4, 2nd Floor, Heggahalli main road, Peenia 2nd Stage, Bangalore stating that Rs.29,82,000/- paid to Shri. SB Shivalingaiah vide cheque No.855033

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dated 22/10/2014 and Rs. 17,00,000/- to Shri. Vijay S/o SB Shivalingaiah vide cheque no.855277 dated 1.6/10/2014. On verification of the confirmation letters, it is found that the amount was written afterwards by someone else other than the person written the confirmation letter. To verify the genuines of the same, a verification letter has been served on M/s Sumukha Merchants Finance Company, Peenia 2nd Stage, Bangalore on 23/12/2017 requesting to confirm the transaction along with relevant proofs/documents. Till date, M/s Sumukha Merchants Finance Company, Bangalore has not responded for the verification letter. Further, after repeated requests made to the assessee to furnish the details of the loan creditors, the assessee has not furnished any details of the loan creditors. It is seen from the financials of the previous year as on March 2014 (A.Y.2014-15) that the assessee had three loan creditors named Sakkamma - Rs.53,63,000/-, Suresh - Rs.35,00,000/-, Srinivas - Rs.20,00,000/- and Vijay S - Rs.24,31,000/- totalling Rs.1,32,94,000/-. The assessee has not furnished any details of the repayments made to these creditors or details of loans received during the year Hence, it is construed that the assessee has no evidence/proof to furnish in this subject. Hence, it is proposed to add back Rs.1,25,50,000/- as additional income in the hands of assessee for the A.Y.2015-16.”

3.2 Accordingly, the AO completed the assessment and determined the income at Rs.2,34,77,135/- after making addition of Rs.2,02,425/- towards difference in the closing balance of Co-operative bank. Aggrieved from the above order, the assessee filed appeal before the CIT(A). During the course of appellate proceedings, the assessee filed detailed written submissions, which were considered by the CIT(A). Before the Id. CIT(A), the assessee also challenged that without referring the matter to the DVO, the AO made addition u/s 56(2)(vii)(b) of the Act and without spot verification and physical visits and without any reference for the valuation to the DVO. The Id. CIT(A) observed that the law provides that where the stamp duty value of immovable properties as referred in clause (B) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C of the Act; the AO may refer the valuation of such property to the valuation officer. However, the assessee has not brought anything on record to show that he has disputed the stamp duty value of the property before the AO and requested for referring

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the property for valuation, which has been refused by the AO. Accordingly, the ld. CIT(A) did not find anything on merits of the case and confirmed the addition made by the AO u/s 56(2)(vii)(b) of the Act. Further, in case of loan creditors of Rs.1,25,50,000/-, the details were submitted before the CIT(A) and before the ld. CIT(A), the assessee also contended that the loan creditors of Rs.1,25,50,000/- has been carried forward from the previous financial year. As per the opinion of the ld. CIT(A), the assessee could not establish as per the requirement of the AO's observations. Accordingly, he upheld the order of the AO.

4. The ld. D.R. relied on the order of lower authorities and the ld. DR submitted that the assessee was unable to prove anything against the finding of the AO, the ld. CIT(A) has also examined the issue in detail on merits of the case as well as on the legality of the issue. The assessee did not disprove the addition made by the AO in terms of section 50C(2)(vii)(b) of the Act and in case of addition on account of loan creditors, the CIT(A) has examined in detail the issues. Therefore, the order of the ld. CIT(A) should be upheld.

5. We have heard the rival submissions and perused the materials available on record. On going through the order of the lower authorities and submissions of the ld. DR, we observe that in this case there is a difference in the value adopted by the stamp valuation authority and purchase amount shown by the assessee. As per assessment order, there is a difference of Rs.89,50,000/-, which has not been offered to tax u/s 56(2)(vii)(b) of the Act. There is no dispute that if there is a difference in the purchase value and stamp duty value, the addition should be made in the hands of the purchaser. For the sake of convenience, we reproduce section 56(2)(vii)(b) of the Act, which is as under:

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“56(2)(vii)(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;]

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections.”

5.1 As per the above section, during the course of assessment proceedings, if it was noticed that there is a difference in the value shown by the assessee in his books, which is less than the stamp duty value, then the matter should be referred to the DVO for determination of the correct value of the disputed income as per section 50C(2) of the Act. It is not necessary on the part of the assessee for requesting the AO for reference to the DVO. The AO should suo motu refer the matter to the DVO for determination of the correct value of the property in the hands of the purchaser. Even if the AO did not do his work as provided in section 50C(2) of the Act,

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the Id. CIT(A) has co-terminus power and he can exercise all the power of the AO for determination of the correct tax as per law on the disputed issue by invoking section 251 of the Act, he could have referred the matter to the DVO as per section 50C of the Act. In support of our decision, we are relying on the following judgements:-

- a) Judgement of Hon'ble Supreme Court in the case of Jute Corporation of India Ltd. Vs. CIT reported in (1991) 187 ITR 688 (SC)
- b) Judgement of Hon'ble High Court of Calcutta in the case of Sunil Kumar Agarwal Vs. CIT Siliguri reported in (2015) 372 ITR 83 (Calcutta)
- c) Judgement of Hon'ble Supreme Court in the case of CIT Vs. Nirbheram Deluram reported in (1997) 224 ITR 610 (SC)

5.2 Respectfully following the above judgements cited above, we refer this matter to the AO for determination of the correct value as on the date of purchase of the property as contemplated in section 50C(2) r.w.s. 56(2)(vii)(b) of the Act. The AO is directed to decide the issue per law.

5.3 Further, in regard to addition for loan creditors of Rs.1,25,50,000/-, we notice from the order of both the lower authorities that they have examined the issue in details and assessee also submitted detailed reply. However, we noted from the order of the Id. CIT(A) at para 6.3 that the assessee before the CIT(A) contended that the loan creditors Rs.1,25,50,000/- has been carried forward from the previous financial year but the Id. CIT(A) noticed that no details and evidence has been brought on record to substantiate this claim. We further noted from the order of the AO that the assessee submitted balance sheet for the financial year 2015-16. This could have been verified from the financial statement

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submitted by the assessee as well as the individual copy of ledger accounts and he may ask the assessee for necessary details. But this aspect has not been examined by any of the authorities below. If it is found that the amounts have been carried forward from the previous financial year, then no addition can be made in the impugned assessment year. and our view has been upheld in favor of the assessee in the following judgement:

- a) Judgement of Hon'ble Gujarat High Court in the case of CIT Gandhinagar Vs. Jagarkumar Satishbhai Patel reported in (2014) 45 taxmann.com 441 (Gujarat)

5.4 Accordingly, this issue is remitted back to the AO for verification in the light of above judgement (supra) If the AO finds otherwise, the CIT(A)'s order will stand.

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

Order pronounced in the open court on 8th Feb, 2023

Sd/-
(George George K.)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 8th Feb, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.