

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.51/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

Manohar Madanlal Paliwal C/204, Woodland heights, Chandivali Farm Road, Andheri (E), Mumbai- 400072.	बनाम/ Vs.	ITO-26(2)(1), Mumbai/NFAC New Delhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : CALPP3259F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Bhupendra Shah	
Revenue by:	Shri Anil Gupta	

सुनवाई की तारीख / Date of Hearing: 01/03/2023
घोषणा की तारीख /Date of Pronouncement: 31/03/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee individual against the order of the Ld. CIT(A)/NFAC, Delhi dated 28.11.2022 for AY. 2018-19.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the addition of Rs.21,84,330/- u/s 56(2)(vii)(b) of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts as noted by the AO is that the assessee is an individual who has filed return of income for AY. 2018-19 on 02.06.2018 declaring total business income at Rs.3,75,690/- u/s 44AD of the Act. Later, the case was selected for manual scrutiny. The AO noted that the assessee had entered into a transaction involving purchase of immovable property ("Flat No.15/D/002, Ground Floor,



ITA No.51/Mum/2023

A.Y. 2018-19

Manohar Madanlal Paliwal

Jay Hind 15/D. S.R.A Sahakarigrihanirm Ansantha Maryadit, Chandivali, Mumbai”) (hereinafter “the flat”) showing purchase consideration of Rs.19,50,000/- on which he had incurred stamp duty of Rs.2,37,980/-. The AO noted that the circle rate of the flat in question (as per the Stamp Valuation Authority) was Rs.41,34,330/-. Therefore, the AO confronted the assessee as to why the difference should not be brought to tax as per the Section 56(2)(vii)(b) of the Act. Pursuant thereto, the assessee replied that he has only parted with the agreed sale consideration of Rs.19,50,000/- and the flat was situated in a Slum Area (Slum Rehabilitation flat). And therefore, he contended that the fair market value/circle rate as determined by the Stamp Valuation Authority was unreasonably high. And therefore, he pleaded before the AO that the circle rate should not be adopted for determination of income in the hands of the assessee u/s 56(2)(vii)(b) of the Act. However, the AO did not accept the plea of the assessee. According to him, the assessee should have contested the valuation at the time of registration of the property. And since he has not done so, he cannot contest the circle rate during assessment proceedings before him. And therefore, he added the difference of Rs.21,84,330/- (Rs.41,34,330/- minus Rs.19,50,000/-) in the hands of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before this Tribunal.



ITA No.51/Mum/2023

A.Y. 2018-19

Manohar Madanlal Paliwal

4. I have heard both the parties and perused the records. The Ld. AR assailing the action of the AO brought to my notice that the property/flat in question is situated in a slum area and the flat has been constructed as a slum rehabilitation project. Therefore, according to him, the rate of flats cannot be compared with that of assessee because it is located in slum area; and even if other flats of nearby locality may fetch higher price that doesn't mean that assessee has purchased the flat in question at a higher price and therefore circle rate cannot be applied in assessee's case. And for supporting his claim, he also filed before AO the copy of the report from registered valuer of his flat which is found placed at page no. 87 to 104 of PB. From the discussion, it is noted that before the AO the assessee had objected to the AO's proposal to bring to tax (the difference between the valuation made by the Stamp Authority and the consideration paid by the assessee) and pursuant to which, the assessee had submitted along with the letter dated 25.03.2021, the Valuation report of the Departmental registered valuer (who is in the panel of the Income Tax Department) who has given report that the purchase price/purchase consideration of the flat in question was fair and reasonable, (refer page no 87-104 of PB) and the registered valuer concluded his report as under :-

“D-8 Conclusion-

On enquiring in the locality residential flats are being sold and available to purchase in the year 2018 were in the range of Rs.7,000/- to Rs.8,000/- per sq. ft. on BU area, And the instances of sales are available are also of the same range,



ITA No.51/Mum/2023
A.Y. 2018-19
Manohar Madanlal Paliwal

depending upon the location, infrastructure development, condition of building, finishes of building and flats, outgoings, Demand and supply, etc & as per consideration no. D.5 and D.6 above.

In our opinion and considering location of Premises concerned & actual sale instances available of same residential colony, Society & Configuration. Rate of Rs.80,730/- per sq.mt. on BU area (i.e. Rs.7,500/- per sq.ft), which is fair & reasonable.

Fair Market Valuation-

E.1 Fair Market Value of flat in the year 2018-

BU Area of flat premises concerned as per Para B.2 above, 25.09 Sq. Mt.

F.M.V. of Residential Flat concerned @ Rs.80,730.00 sq.Mt.

Of BU Area as per Para 'D.6' above works out to,

25.09 sq.mt. x Rs.80,730.00 per Sq. Mt.
Rs.20,25,516.00

In our opinion Fair Market Value in year 2018 of property Flat No.002, Ground Floor, Bldg No. 15/D, Jai Hind 15/D CHSL, Sangharsh Nagar Colony, Chandivali, Milind Nagar, Powai, Mumbai-400072.

Of Mr. Manohar Mandanlal Paliwal.

Works out to,

Rupees Twenty Lakhs Twenty Five Thousand Five Hundered Sixteen only. (Rs.20,25,516.00)."



ITA No.51/Mum/2023

A.Y. 2018-19

Manohar Madanlal Paliwal

5. It has been brought to my notice that the difference between the value as per the Valuation Report (supra) and the sale consideration/agreement value (Rs.19.50 Lakhs) does not exceeds 5%. In such a scenario, it was urged that, no addition warranted. After hearing both sides, I am of the opinion, that before making addition applying provision of section 56(2)(vii)(b) of the Act, in the facts and circumstance of the case, the Assessing Officer ought to have referred the matter to the Valuation Officer (DVO), since the Assessee objected for the value to be taken according to the stamp valuation authorities. In the present case, the Assessing Officer has made addition under section 56(2)(vii)(b) without making reference to the valuation officer as required by proviso under sub clause (c) of section 56(2)(vii)(b) of the Act. In this context, it is gainful to refer to the decision of the Delhi Tribunal in the case of ITO Vs. Aastha Goel, wherein addition was made under section 56(2)(vii)(b) of the Act and it was held that in the absence of the reference to the valuation officer, the addition made was deleted. Further, the ITAT also rejected the request of the Department to set aside the matter to the file of the Assessing Officer for referring the case to the Valuation Officer.

6. Further, it is noted that Hon'ble Calcutta High Court, in the case of Sunil Kumar Agarwal Vs. CIT reported in 372 ITR 83 has held that the AO who is discharging quasi-judicial function, has the bounden duty to act fairly and to follow the course provided by law, which in that case, was the reference to the valuation officer. In that case, in view of the assessee's objection and the claim before the AO that



ITA No.51/Mum/2023

A.Y. 2018-19

Manohar Madanlal Paliwal

stamp circle rate/valuation of the property sold was not its “fair market value”, according to the Hon’ble High Court it was the bounden duty of the AO to have made reference to the Valuation Officer which, for the reasons not borne on records, was not made out. And the Hon’ble Allahabad High Court in the case of CIT Vs Chandra Narain Chaudhary in ITAT No.287/2011 vide Judgment dated 29.08.2013 in a case,[though having different facts where assessee therein had filed more than one valuation Report], in the context of section 50C of the Act, held that *“whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub-section (1) of Section 50-C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessee. He may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55-A of the Act. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A of the Act as a matter of course, without considering the report of approved valuer submitted by the assessee”*. The Hon’ble High Court further held that Section 50-C of the Act is a rule of evidence in assessing the valuation of property for calculating the capital gain. The deeming provision under Section 50 C (1) of the



ITA No.51/Mum/2023

A.Y. 2018-19

Manohar Madanlal Paliwal

Act is rebuttable. And it was observed ‘ *it is well known that an immovable property may have various attributes, charges, encumbrances, limitations and conditions. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value in the condition the property is offered for sale and is purchased. He is required to value the property in accordance with the circle rates fixed by the Collector. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as its occupation by tenant, any charge or legal encumbrances.*’

7. Coming back to the fact discuss about the case in hand and judicial precedent, I am not inclined to countenance the action of the Ld. CIT(A) in confirming the addition made by the AO. And also not accept the Ld DR’s request to restore the matter back to AO for referring the valuation of flat to DVO because that will tantamount to condoning the erroneous action of AO and consequently allowing a second inning for no fault of assessee. This would tantamount to breathing fresh life to an order which on the facts on records exposes the arbitrary and whimsical action of AO and so is unsustainable in law. Therefore, the addition made by AO to the tune of Rs. 21,84,330/- u/s 56(2)(vii)(b) is directed to be deleted.



ITA No.51/Mum/2023
A.Y. 2018-19
Manohar Madanlal Paliwal

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 31/03/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/03/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai