

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1304/Mum./2023
(Assessment Year : 2020-21)

Income Tax Officer
Ward-25(2)(1), Mumbai

..... Appellant

v/s

Mahavir Enterprises
Shop no.05, Surya Mahal Building
Burjoji Bharucha Marg
Fort, Mumbai 400 001
PAN – ABLFM6841M

..... Respondent

Assessee by : Shri Satyaprakash Singh
Revenue by : Smt. Mahita Nair

Date of Hearing – 11/07/2023

Date of Order – 27/07/2023

ORDER

The present appeal has been filed by the Revenue challenging the impugned order dated 20/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*] for the assessment year 2020-21.

2. In its appeal, the Revenue has raised the following grounds:–

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made by the Assessing Officer, without appreciating that the said addition was made following provisions of the Section 56(2)(x) of the Act?"

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made by the Assessing Officer, without appreciating that the assessee had not challenged the value of property adopted for auction before the stamp duty authorities and paid the stamp duty on value adopted by the stamp duty authorities?

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made by the Assessing Officer, without appreciating that the valuation of the property determined by the liquidator to set the bid price was not done an independent valuer and by any Government appointed valuer?

4.The appellant craves leave to amend or alter or add a new ground which may be necessary."

3. The only dispute raised by the Revenue is against the deletion of addition under section 56(2)(x) of the Act on account of the difference in stamp duty value and the consideration paid by the assessee as the highest bidder.

4. The facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a firm with three partners. During the year under consideration, the assessee purchased a property in the auction from Jai Hind Co-operative Bank Ltd for Rs.3,53,70,000. Whereas, the fair market value as per the records of the municipal authority was Rs.5,84,99,000. Accordingly, during the assessment proceedings, the assessee was asked to show cause as to why the amount of Rs. 2,31,29,000 being the difference in the fair market value of Rs.5,84,99,000 and the consideration of Rs.3,53,70,000 be not considered as income from other sources under section 56(2)(x) of the Act. In response thereto, the assessee submitted that the property was purchased from the aforesaid bank after duly participating in the e-tender, as the aforesaid bank went into liquidation. The assessee further submitted that the bidding and auction was administered by the Hon'ble Commissioner of Co-

operation and Registrar, Maharashtra State, Pune. Therefore, the true fair market value of the property was only Rs.3,53,70,000 only and the stamp duty value is unduly high as it has not considered the actual condition and various factors affecting the property. The Assessing Officer ("AO") vide order dated 16/09/2022 passed under section 143(3) read with section 144B of the Act did not agree with the submissions of the assessee and held that the fair market value as per the records available is Rs.5,84,99,000, therefore the difference of Rs.2,31,29,000 being the difference in the fair market value and the consideration of Rs.3,53,70,000 was brought to tax under section 56(2)(x) of the Act.

5. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee by placing reliance upon the circular dated 30/06/2005 issued by the Government of Maharashtra and judicial pronouncements. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as under:-

"4.5 Hon'ble Supreme Court of India in Civil Appeal No.8281 of 2022 [Arising out of SLP (C) No. 21405 Of 2010] in the case of Registrar of Assurances & Anr appellants Versus ASL Vyapar Private Ltd & Anr Respondents with Civil Appeal No. 8282 Of 2022 Arising out of SLP(C) No. 22197 of 2010, held that:

"28. In the company matter, repeated auctions were held and it is in the negotiated bid that the higher price was obtained. It was court monitored. There would be no occasion for the court to accept the bid if it was not satisfied with the process and the valuation. A correct value of a property is the one where there is a purchaser and a seller ad idem on the price (the actual price). The market value is, thus, the value which the highest bidder is willing to pay in the facts and prevailing circumstances and not a notional price." (emphasis and italics applied)

In another Para of the same order, Hon'ble Supreme Court has laid down that.

"31. We are, thus, of the view that this reference is required to be answered by opining that in case of a public auction monitored by the court, the discretion would not be available to the Registering Authority under Section 47A of the Act." (emphasis and italics applied)"

The appellant in his submission has placed reliance on the above judgment of the Supreme Court.

4.6 In view of the foregoing discussion it can be safely and judicially deduced, for the purpose of the case in hand that the value determined by the stamp valuation authority becomes untenable vis a vis value of the property fetched in an open public auction in the facts and circumstances of this specific case Also, respectfully following the ratio decidendi emanating from the decision of Hon'ble Supreme Court in the case of Registrar of Assurances & Anr. appellants Versus ASL Vyapar Private Ltd. & Anr. Respondents (Supra); and also decisions of Hon'ble ITAT, Pune Bench in the case of Krishi Utpanna Bajar Samiti vs. DCIT (Supra) and Hon'ble ITAT Hyderabad bench in the case of Income-tax Officer, Ward 3(3), Hyderabad Vs. Southern Steel Ltd., Hyderabad (supra) allow the Ground No. 1 and 2 in the instant case. The addition made u/s 56(2)(x) may be therefore deleted Ground No. 3 is general in nature and may not warrant decision."

Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. It is discernible from the record that the property under consideration was kept on auction due to the liquidation of Jai Hind Co-operative Bank Ltd. From the copy of the advertisement in the local newspaper, on page 11 of the paper book, it is evident that the first e-tender was invited by the bank on 05/04/2019 by keeping the reserved value of the property at Rs. 5,81,00,000. Since no bidder came forward to buy at this price, the bid price for the property was revised to Rs. 3,51,00,000 pursuant to the valuation report dated 01/06/2019, and a second e-tender was invited on 29/06/2019, as evident from the copy of the advertisement forming part of the paper book on page no.10. From the perusal of valuation report, forming part of the paper book from pages 12-45, it is evident that the valuer valued the property at Rs. 3,51,00,000 after considering the distressed value of the property since it was about 111 years old. As per the assessee, as it was the highest bidder with a price of Rs.3,53,70,000, it purchased the property being

the successful bidder. In the present case, it cannot be disputed that the process of bidding was carried out under the supervision of a senior-level government functionary acting as a liquidator, and the property under consideration was purchased only pursuant to the e-tender floated by the aforesaid bank, which was also published in the local newspaper. Further, the assessee purchased the property at a price higher than the reserved price of Rs.3,51,00,000 mentioned in the second e-tender notice dated 29/06/2019. However, the AO disregarded all the aforesaid factual aspects and considered the stamp duty value of Rs.5,84,99,000 as the fair market value for computation of addition under section 56(2)(x) of the Act. In support of its submission, the assessee has placed reliance upon the circular dated 30/06/2005 issued by the Government of Maharashtra, wherein it has been provided that while registering the document in respect of sale conducted by government/non-government organisation by public auction, the highest price as certified in the sale certificate or other order issued by such authority should be considered as the fair market value for the purposes of stamp duty and in such cases the price as per ready reckoner should not be considered.

7. We find that the coordinate bench of the Tribunal in *Krishi Utpanna Bazar Samittee v/s DCIT*, in ITA No. 2043/PN/2012, vide order dated 20/03/2014, after considering the aforesaid circular issued by the Government of Maharashtra held that the consideration stated in the sale deed pursuant to the public auction is to be accepted as the fair market value. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

"10. In the present case, assessee before us is a statutory body and the sale of properties in question has been made through the route of Public auction, which is not in dispute. The CIT(A) has also reproduced the submissions of the assessee before him which inter-alia contain averments that the sale of the properties was conducted in Public auction, after seeking necessary permissions from the Director of Panan of Maharashtra State. Factually speaking, in our considered opinion, the impugned transfers effected by the assessee by way of public auction fall within the purview of the Circular issued by Government of Maharashtra dated 30.06.2005 (supra) for the purposes of payment of stamp duty. In terms of the said Circular, the highest price in the sale auction is considered to be the fair market value for the purposes of payment of stamp duty. This would mean that the consideration stated in the sale-deed is to be accepted as the fair market value for the purposes of payment of stamp duty in the present case and not the prices worked out as per the ready reckonor. Ostensibly, in such a situation the invoking section 50C of the Act for the purposes of substituting the full value of consideration in order to compute the capital gain would fail since there would not be any differential between the stated consideration and the Value to be considered by the stamp valuation authority of the state government for the payment of stamp duty. However, it has been pointed out by the Revenue that the buyers of the properties have paid stamp duty at the value determined on the basis of rates prescribed in the ready reckonor, which are higher than stated consideration. In our considered opinion, the aforesaid factum would not make any difference to the rationale of invoking section 50C of the Act, which has to be decided on the basis of the prevailing legal position, and not on the basis of the position taken by a party. Pertinently, the purchaser of the properties are liable to bear expenses of stamp duty and it was not within the domain of the assessee and therefore assessee cannot be put to a jeopardy of invoking of section 50C of the Act merely because of the fault of the buyers of the properties."

8. Therefore, in view of the above, we are of the considered opinion that the consideration paid by the assessee, being the higher/successful bidder, of the e-tender floated by the aforesaid bank is the fair market value of the property in the facts and circumstances of the present case. Thus, we find no infirmity in the impugned order passed by the learned CIT(A), and accordingly, the same is upheld. As a result, grounds raised by the Revenue are dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 27/07/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai