

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 400/Srt/2019 (Assessment Year 2015-16)
(Physical hearing)

Sanjay A. Jivani, Plot No. 1, Block No. 69, Hotel Sahyog, Kim Mandvi Road, Karanj, Surat. PAN No. ABSPJ 7521 N	Vs.	I.T.O., Ward 3(1)(5), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Miss Chaitali Shah, C.A.
Department represented by	Shri Vinod Kumar Sr. DR
Date of hearing	17/05/2023
Date of pronouncement	31/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3 (in short, the Id. CIT(A)) dated 11/06/2019 for the Assessment Year (AY) 2015-16. The assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case as well as law, the learned CIT(Appeals) has erred in partly confirming the action of Assessing Officer by adopting cost of construction of the property at Rs. 9,490/- per sq. meter being average rate of cost of construction as per DVO of Rs. 13,600/- and as per the registered valuer of Rs. 5,380/-.*
- 2. It is, therefore, prayed that the above assessment framed u/s 143(3) of the Act and/or addition made by Assessing Officer and confirmed by learned Commissioner of Income Tax (Appeals) may please be deleted.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of grey cloths, filed his return of income for A.Y. 2015-

16 on 23/09/2015 declaring income of Rs. 7,61,003/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has purchased immovable property at plot No. 4/B, Karanj, Surat having 1/4th share and plot No. G-1, Karanj for a consideration of Rs. 25.11 lacs having 100% share. The aggregate consideration of both the properties were Rs. 50.22 lacs. In order to ascertain the value as per stamp duty authority, the Assessing Officer issued notice under Section 133(6) of the Income Tax Act, 1961 (in short, the Act) to Sub-Registrar Office, Mandvi. In response to such notice, Sub-Registrar Mandvi furnished copy of purchase deeds of both properties alongwith valuation sheet of Jantri value determined. On perusal of such details, the Assessing Officer found that the Stamp Valuation authority assessed the value of property higher than the value shown by assessee in the purchase deed. For No. 4/B, the value was determined at Rs. 46,60,500/- and for plot No. G-1, the value was determined at Rs. 45,15,200/-. On the basis of such details, the Assessing Officer worked out the difference of Rs. 21,49,500/- and Rs. 20,04,200/- respectively in respect of both the properties. On confronting such fact, the assessee requested the Assessing Officer to refer the case for valuation to DVO in term of Proviso to Section 56(2)(vii) of the Act. The Assessing Officer accordingly made a reference to the DVO. The Assessing Officer recorded that report of DVO was not

received till finalization of assessment order. The matter was going to be time barring, accordingly, the Assessing Officer made addition of Rs. 25,41,575/- under the head "income from other sources".

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee besides challenging the addition on merit, also raised specific ground that the assessee purchased very old buildings in a damaged condition. Such fact was not appreciated by the Assessing Officer and not allowing depreciation while consideration the value of property. The assessee also filed detailed written submissions. The submission of assessee is recorded in para 5 of order of Id. CIT(A). The assessee in its submission submitted that the assessee purchased the property which was 15 to 20 years old. The assessed value of these properties as per record of local authority is Rs. 25.00 lacs and Rs. 15.00 lacs only. The assessee further stated that the construction of work of industrial property, a maximum cost of construction is Rs. 500/- per square fit thereby Rs. 5,380/- per square meter. However, the Jantri rate is Rs. 11,200/- per square meter which is absolutely on higher side in case of industrial property. The assessee submitted that he has submitted valuation of properties by the Government Approved Valuer. The assessee also stated that due to inadvertence mistake, the Advocate (deed writer) has not calculated depreciation on old property at the time of registration of sale deed. The

Jantri price is the guidelines of Government but in some cases, negotiation between the seller and purchaser are made as per prevailing conditions and other factor effecting the cost of property. The assessee purchased old property in a dilapidated condition. The assessee also objected against valuation adopted by the DVO and submitted that the DVO has taken base of sale instances of open plots instead of factory building so the basis of valuation is completely erroneous, illegal, invalid and hence *void ab initio*. The valuation as per DVO is Rs. 13,600/- per square meter and no comparable instance of construction of cost is given. Value of cost of construction is unjustified and invalid and without evidence. No single instances of comparables were given. Report of DVO is not based on evidence. The location of assessee's properties at site are totally different. The assessee also objected against the instances of comparables of open plots referred by DVO in his report.

4. The Id. CIT(A) after considering the submission of assessee, report of DVO and the report of Government Approved Valuer furnished by assessee, noted that during the assessment, the Assessing Officer noted that the assessee purchased immovable properties in which he had 25% share of Rs. 50.22 lacs. The Assessing Officer on the basis of report of Stamp Valuation Authority, found difference in valuation of Rs. 21,49,500/- and Rs. 20,04,200/-. The plot No. 4/B was valued at Rs. 46,60,500/- and plot No. G/1 valued at Rs. 45,14,200/- by Stamp

Valuation Authority. The matter was referred to DVO and report of DVO was not received till passing assessment order, accordingly, the assessing officer made addition of Rs. 25,41,575/- as per shares of assessee. The DVO valued the property No. G/1 at Rs. 54,08,000/- and property No. 4/B at Rs. 55,24,000/-. The valuation suggested by DVO is objected by assessee on the ground that the DVO has taken instances of open plots instead of factory building. The DVO has taken a value of industrial structure @ Rs. 13,600/- per square meter against the value of registered valuer of Rs. 5,380/- per square meter. The Id. CIT(A) on perusal of details of DVO's report dated 19/01/2018, recorded that he has taken four sale instances at fair market value of Rs. 626/- per square meter of plot No. G-1 and Rs. 594/- per square meter for plot No. 4/B. The area of plot No. G-1 is 768.50 square meter and plot NO/ 4/B is 870.50 square meter. The DVO has taken a comparable instances of having area of 97.58 square meter, 84.58 square meter and 171.10 square meter. The Id. CIT(A) was of the view that there is a vast difference in the size of plots comparable to the plots of assessee.

5. The Id. CIT(A) also considered the report of registered valuer and noted that same is not based on sale instances but on general observation and he adopted rate of Rs. 5,000/- per square meter for plot No. G-1 and Rs. 4300/- per square meter for plot No. 4/B without any comparable instances (including cost of construction). Hence, the report of registered

valuer was also not accepted. However, the Id. CIT(A) find that the assessee has objected the report of DVO @ Rs. 13,600/- per square meter for 20 years old building is on higher side and he has shown the value on the basis of registered valuer at Rs. 5,380/- per square meter. Accordingly, the Id. CIT(A) adopted the average of both the valuation reports and adopted value @ Rs. 9,490/- per square meter and directed to recalculate the fair market value thereby granted partial relief to the assessee. Further aggrieved, the assessee has filed present appeal before the Tribunal.

6. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that DVO has not considered the guidelines of Government of Gujarat issued by Inspector General of Registration and Superintendent of Stamp, wherein the rate of Industrial shed is fixed (determined) at the rate of Rs. 11,200/- per square meter in rural area. The land of the assessee falls in rural area. Further, the construction over the plots were more than 20 years old, thus, the assessee was also eligible for depreciable value. In the same guideline the depreciation value construction is determined @1.2% per year up to 50 years and above 51 years 60% of the construction value. The Id AR for the assessee furnished the working of cost after considering the age of construction

of 19 years old and taking 225 % of depreciation and worked out value of construction as of Rs. 8646/ per square meter. The registered valuer suggested the rate @ Rs.53,80/- thereby average arrived at Rs. 7013/- per square meter ($8646 + 5380 = 14026/2 = 7012$). On the basis of such working the Id AR for the assessee submits that if depreciable value of construction is considered and the assessee is allowed repaired and maintenance cost of Rs. 675,030/- incurred by assessee, no addition will survive.

7. To support her various submissions, the Id AR for the assessee relied on the following decisions;

- CIT Vs Khoobsurat Resorts (P) Limited (2013) 256 CTR 371 (Delhi),
- ITO Vs Santosh Kumar Dalmia (1994) 208 ITR 337 (Cal),
- Lovy Ranka Vs DCIT (ITA No.2107/Amd/2007),
- Ravi Kant Vs ITO (ITA No. 3671 /Del/2006) (Delhi-Trib),
- Vimla Devi Samariya vs ITO (ITA No. 348/ JP/2018) (Jaipur-Trib)

8. On the other hand, the Id Sr DR for the revenue supported the orders of the lower authorities. The Id Sr DR for the revenue submits that all the submissions of the assessee was considered by the Id CIT(A) in his order. The Id CIT(A) fairly and reasonably adopted the average value of the cost of construction suggested by DVO and the registered valuer. The Id AR for the assessee in her submissions has relied on hypothetical proposition which is not supported with any evidences available on record.

9. I have considered the rival submissions of the parties and have gone through the orders of the lower authorities, including the valuation reports of Government Approved valuer and report of DVO, carefully. I have also deliberated on the various case laws relied by the Id AR for the assessee. The assessing officer made addition of Rs. 25,41,575/- being difference in value adopted by stamp valuation and the value shown on the sale deeds, by taking view that he has made reference to DVO, at the instance of assessee and that the report of DVO is not received and the matter was going to be time barred, accordingly he made addition of differential amount of Rs. 25,41,575/- under section 56(2) (vii) (b) in the head 'other sources'. Before Id CIT(A) the assessee raised various plea by filing detailed written submission as recorded above. The assessee also furnished valuation report prepared by Government approved valuer. I find that the report of DVO was also received by that time of hearing in first appeal / Id CIT(A). The Id CIT(A) instead of considering various details and the comparable stances narrated by Government registered valuer and the basis of report of DVO and comparable mentioned therein, took the average of both the valuation and directed the assessing officer to recalculate the fair market value for additions under section 56(2)(vii)(b) and granted partial relief to the assessee. I find that the finding of Id CIT(A) is not based on good reasoning, therefore, the same is set aside/ quashed. The Id CIT(A) ought to have

considered the basic details of comparable stances narrated by DVO in his report, whether such comparable are good comparable vis-a vis the location, size, quality of construction or not. Further if the value suggested by the DVO is more than the value adopted by the stamp valuation authority, whichever is less is to be considered. Hon'ble Delhi Court in CIT Vs Khoobsurat Resorts (P) Limited (supra) also held that without considering the real market price, additions cannot be made merely on the basis on higher consideration was declared for the purpose of stamp duty.

10. I have perused the report of the DVO. The Id DVO in his report has accepted that the assessee filed objection before him vide letter dated 15.01.2018. However, the contents of the objection is not recorded/ mentioned in his report. The DVO suggested his report as per his proposed estimation and valued plot No. G-1 at Rs. 54,08,000/- and valued plot No. 4-B at Rs. 55,71,000/-, which is certainly on the higher to the value adopted the stamp valuation authority. I further find that the assessee right from the beginning has taken a stand that at the time of registration of the sale deeds of both the plots the depreciation value of constructed portion was not taken into consideration. I find merit in the submissions of the assessee that when the plot alongwith the constructed structure was transferred, the depreciation value of structure (s) should be taken in to account while estimating cost of such

construction. The Id AR for the assessee has placed on record the notification of Inspector General of Registration and Superintendent of Stamp, according to which the assessee is eligible for depreciation @ 1.2% per year. The structure/ constructed on both the plots were 19 years old, thus, the assessee is eligible for requisite depreciation. Further, the Juntri rate of Industrial shed in rural area is Rs. 11,200/- per square meter. Hence, I direct the assessing officer to recalculate the value of industrial shed/ constructed portion @ 8646/- per square meter (depreciation for 19 ys @1.2 % i.e. 22.80% of Rs. 11,200/-). And to take the value of land of plot No. 4/B @ 580/ per square meter and for plot No. G-1 @ 600/-per square meter as there is no mush variation in the rate of land in the report of DVO and Government approved valuer. In the result, the grounds of appeal raised by the assessee are partly allowed.

11. In the result, the grounds of appeal raised by the assessee is partly allowed.

Order announced in open court on 31st July, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 31/07/2023
**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat