

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1921/MUM/2022 (A.Y: 2018-19)

Elvis Zepherin Crasto Gorai Village, Jui Pada Gorai Essel World Road Borivali (W), Mumbai - 400091 PAN: ASGPC6280N	v.	Income Tax Officer International Taxation Ward – 2(1)(1) Room No. 1724, 17 th Floor Air India Building Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Assessee Represented by	:	Ms. Priyanka Jain
Department Represented by	:	Ms. Mahita Nair
Date of Conclusion of Hearing	:	30.06.2023
Date of Pronouncement	:	23.08.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (DRP-1), Mumbai – 3 [hereinafter in short "Ld. DRP"] dated 12.05.2022 for the A.Y.2018-19 passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, assessee is a Non-Resident of individual based in Dubai, UAE with his family. Assessee filed his return of income for the A.Y. 2018-19 on 28.08.2018 declaring total income of ₹.2,20,630/-. The case of the assessee was selected for compulsory / manual scrutiny assessment under e-assessment scheme 2019. The main reason for selection of scrutiny was to examine the evasion of tax in purchase of high value immovable property during the year under consideration. Accordingly, notices u/s. 143(2) and 142(1) were issued and served on the assessee.

3. The Assessing Officer noticed that assessee has purchased an immovable property on 08.09.2017 for total consideration of ₹.46,00,000/-. However, the stamp duty value adopted by the Stamp Duty Authorities in respect of the above said property for stamp duty purpose was ₹.2,53,56,000/-, hence there is a difference of ₹.2,07,56,500/- in value as per the agreement value and the stamp duty valuation. The assessee was asked to provide necessary explanation along with documentary evidences to justify the difference between agreement value and the stamp duty valuation and why the provisions of section 56(2) of the Act should not be invoked.

4. In response assessee filed the explanation on 27.02.2021 and in which assessee has informed that assessee has purchased the above property jointly with his wife Mrs. Jane Elvis Crasto and purchased the above said agricultural vacant land vide agreement dated 09.08.2017 for a consideration of ₹.46,00,000/-. It was submitted that the above said land falls under no development zone and situated at Survey No. 189, Hissa No. 19, CGTS No. 1743, Hissa No. 29, CTS No. 1748, Hissa No. 2, CTS No. 1680, Village Gorai, Taluka Borivali, Mumbai. It was also submitted that the above said plots of land are far away from main D.P. Road, and there is no easy access to reach these plots from main DP Road. It was informed that the above said reasons are also incorporated in the purchase agreement in clause No. (b) at Page No. 6 and 7. Further, it was submitted that assessee has invested in the above said land from the income earned in Dubai. The assessee also submitted that if the market value is higher as per stamp duty valuation, it does not mean that the higher amount was paid or received by the parties while carrying out the transaction purchased or sale. He also strongly objected for invocation of provisions of section 56(2) of the Act in his case. Further, he has also shown willingness to submit valuation report from Government valuer in respect of above land.

5. After considering the submissions of the assessee, Assessing Officer rejected the same and was of the view that the plot of land in question are in Mumbai suburban and the stamp duty is paid by the assessee on the value of ₹.2,53,56,000/- as adopted by the Stamp Duty Authorities and also assessee has not challenged the above valuation in any legal forum. Accordingly, he justified the invoking of provisions of section 56(2) of the Act, are mandatory and required to be applied in cases where the stamp duty value is more than the agreement value.

6. Further, Assessing Officer observed that in the present circumstances, the amount of ₹.2,07,56,500/- being the difference between agreement value and the stamp duty valuation is hereby treated as unexplained u/s. 69 of the Act r.w.s. 115BBE of the Act and added to the total income of the assessee under the head "income from other sources" u/s. 56(2) of the Act. Accordingly, passed draft Assessment Order.

7. Aggrieved with the above order, assessee filed objection before Ld.DRP and filed various objections and also filed a detailed note, for the sake of clarity it is reproduced below: -

Sr. No.	Modification of facts not agreed	Reasons for disagreement
1	The AO did not accept the reasons for lower agreement value paid by the assessee, such as location of the land, topographical factors. etc., i.e. Rs. 46,00,000, and adopted the value of Rs. 2,53,56,000/- as determined by Stamp Authorities.	<p>The Ld. AO has ignored the facts and reasons for lower agreement value as mentioned by the assessee in his letter dated 27.02.2021.</p> <p>The assessee is attaching herewith the following documentary evidence in support of the above grounds of objection against the proposed addition:</p> <ol style="list-style-type: none"> 1. Deed of Conveyance ("Exhibit A") 2. Letter to ITO dated 27.02.2021 ("Exhibit B") 3. Copy of the Mumbai ITAT order in the case of Wenceslaus Joseph D'souza vs. Income Tax Officer (1)(2) ITA No. 4732/Mum/2017 ("Exhibit C") 4. MMRDA Development Control Regulations - 2012 for Manori Gorai Uttan Notified Area ("Exhibit D") 5. Valuation Report by the registered valuer viz. SNA Architects ("Exhibit E")
2.	The AO incorrectly determined the valuation considering the FSI of 1, ignoring the fact that the property is situated in the "Green No Development Zone."	<p>2. It is pertinent to note that the Valuation of the entire land has been done by them considering the FSI of 1. While valuing the same, the main and the most important factor which has been ignored is that the land falls in the "Green No Development Zone" and the FSI is 0.1 and not 1 as considered by them. Hence the Valuation will be only Rs. 22,45,000 as against the Valuation of Rs, 2,53,56,000 done by them,</p> <p>3. As per the DP remark, the said property is situated in the "Green No Development Zone" land and therefore the FSI applicable is 0.1 only. However, the FSI of 1 has been incorrectly considered during the valuation. Hence, the actual value of the said property shall be [2483.30 sq. mtrs. (land rate 9040 0.1 FSI)]= Rs. 22,45,000/-.</p> <p>The said property falls in Gorai-Manori-Uttan Recreation and Tourism Development Zone (RTDZ) for which Development Plan was sanctioned by the Govt. MMRDA is the Special Planning Authority for this RTDZ. The RTDZ covers area of 43.13 Sq Km. of 8 villages. Manori</p>

Sr. No.	Modification of facts not agreed	Reasons for disagreement
		<p>and Gorai with an area of about 19.52 sq. km. fall under the administrative jurisdiction of Municipal Corporation of Greater Mumbai (MCGM). According to MMRDA RTDZ plan the land falls in Green Zone which would not be permitted to have construction. Maximum FSI permitted according to the Development Control Regulation No 4(2) Table 5 is of 0.1. It is noted that this plan overrides the provisions of the DP of Mumbai wherein the land was in NDZ. INCOM</p> <p>However, the Id. AO has not considered the same while determining the valuation of the property. The final rate of land must be calculated by considering FSI as 0.10 as per the MMRDA DCR 2012 for Manori Gorai Uttan Notified TDZ Sanctioned on 13/05/2013 and amendment on 03/06/2016 and that since the area falls in Green Zone (No Development) the rate is further reduced to 40% as per Government Valuation guideline rule no 17/c. The final rate of land under reference that should be considered for valuation is therefore equal to Rs 22600 X 0.1 X 0.4 = Rs 904/- per Sq. Mt., this has been confirmed by the valuation report of the Registered Valuer.</p> <p>1. In support of the contention, the assessee also encloses herewith Valuation Report from a Registered Valuer viz. SNA Architects. The valuation arrived at by them is only Rs. 22,45,000 and hence, the stated difference should not be added to the assessee's total Income.</p>
3.	The AO did not consider the topographical factors affecting the market value of the land while calculating the property value.	<p>The Valuation done by the Stamp Authorities is exorbitantly high as they have not considered the following factors which are peculiar to the land purchased by the assessee, such as -</p> <p>Location:</p> <p>1. Property is situated far away from the main road. 2. The property is a land locked property. There is no direct access as the property is surrounded by TA other land owner's and has to pass through their property after obtaining verbal permission.</p> <p>3. At the time of purchase the land was barren, weeds and bushes grown by the monsoon rains</p>

Sr. No.	Modification of facts not agreed	Reasons for disagreement
		<p>and not suitable for agriculture unless it was filled and leveled in parts by adding extra soil. 4. Ploughing with bulls is the only option.</p> <p>5. The property is situated in "No Development Zone".</p> <p>Topography:</p> <p>1. During monsoons water from higher land flows through this property which causes soil erosion 2. The soil is also not fertile and cracks during summer.</p> <p>3. The ground water in this property is also saline hence no well or bore well can be dug and there are no chances of agriculture except during monsoons.</p> <p>Demand for land/maintenance:</p> <p>1. Since the property is surrounded by other landowners' property with no direct access, there is no demand for resale</p> <p>2. Maintenance costs are too high annually</p>
4.	The AO erroneously considered the difference in the SDV and the consideration u/s 56(2) as "unexplained investment in property."	Section 56(2)(x) provides that the difference between the SDV and agreement value will be deemed to be income from other sources and taxed accordingly. However, the AO has proposed to treat the same as unexplained investment u/s 69 without any cogent evidence.

8. After considering the above submissions of the assessee, Ld. DRP briefly narrated the various arguments raised by the assessee vide letter dated 27.02.2021, for the sake of clarity it is reproduced below: -

"The Assessee had submitted following arguments vide his letter dated 27.02.2021. the same are narrated below:

1. The said Land is Agricultural Vacant Land (No Development Zone) situated at Survey no. 189, Hissa No.19 vide CTS No.1743, Hissa No.29 CTS No.1748, Hissa No.2 CTS No.1680, Village Gorai, Taluka Borivali Mumbai Suburban, was purchased by the assessee & his wife, Mrs. Jane Elvis Crasto, from Mrs. Joan Claude Murzello and

Mrs. Meena Jairaj Haldankar for a total consideration for Rs.46,00,000 for which Agreement was executed/Registered on 09/08/2017.

2. In Survey No.189, Hissa No.19 vide CTS No. 1743, Hissa No.29 CTS No.1748, Hissa No.2 CTS No.1680, Village Gorai, Taluka Borivali, Mumbai Suburban, market prices of Agriculture Land is lower as compared to Govt. Stamp Valuation as the same is valuing at Ready Reckoner Rate. The said Land purchase price was Rs.46,00,000/- and there is no other money is involved in the said transaction.

3. The reason for market value of said Land is lower is mentioned In Agreement Clause No. (p) Page No.6 & 7, reproduced here "That the market value of the said property (ie. the said first and second property) is higher as per Government Ready Reckoner, however, the said property is barren land and also falls under No Development Zone and further same is situated far away from the main D. P. Road and having no direct access to main D. P. Road and furthermore, the said property is to be levied (ie. bhami to be done) and furthermore the actual rate in the market is lower than the Government Rate as per Ready Reckoner in respect of the said property. However, looking to the aforesaid circumstances, the purchasers have agreed to purchase and/or acquire the said property provided the purchasers shall level and/or fill up the said property and further to survey and demarcate the same and also get it protected from the trespasser and encroachers at his/her/their own costs and expenses and same shall be adjusted and deemed to be the extra consideration and the purchasers shall not pay the same to the Vendors/Owners herein and the said costs and charges to be borne and paid by the purchasers on behalf of the Vendors/Owners shall be treated and/or deemed as extra consideration payable to the Vendors herein and therefore the Vendors/Owners have agreed to sell and/or transfer their said property at lower consideration than the market value. In support of this, the assessee has attached the following documents etc.-

2. Agreement/Deed of Conveyance dated 09/08/2017.

3. Bank Account Statement for the period 01/04/2017 to 31/03/2018.

4. Statement of Valuation.

1. *The Govt. Stamp Valuation is just on pre-determined ready reckoner rates that always does not means that the properties have been bought and sold at those prices and the Id. AO cannot tax the assessee by taking shelter of Section 50CA and Section 56(2) of the IT Act. The assessee was not having such a huge cash Rs.2,07,56,500 for investing in the said Land and question of evading tax does not arise. The assessee doing his job at Dubai and it's his hard earned money saved which the assessee. has deployed in the said Land.*

2. *In view of the above, the assessee stated that the additional Income of Rs.2,07,56,500 to be assessed u/s.56(2) of the IT Act under the head Income From Other Sources is not justified and levying Penalty u/s.271AAC does not arise.*

"5....The reasons for low agreement value quoted by the assessee are not found justifiable. The plots of land in question are in Mumbai Suburbs and the stamp duty is paid by the assessee on the value of Rs. 2,53,56,000/- as adopted by Stamp Duty Authorities. It is important to mention that the said stamp duty valuation has not been challenged by the assessee on any legal forum. Therefore, the reasons mentioned by the assessee for lower agreement value are not found tenable. Further, it may be stated that the provision laid down under section 56(2) of the Income Tax Act are mandatory and required be applied in the cases where Stamp duty value is more than agreement value

1.6. Under the circumstances, the amount of Rs. 2,07.56,500/- being a difference between Agreement and value and as per Stamp duty valuation is hereby treated as unexplained investment u/s. 69 read with section 115BBE of the I. T Act and added to the total income of the assessee under the head "income from other sources" u/s. 56(2) of the Income Tax Act. The penalty provisions u/s.271AAC of the Act are also initiated separately towards unexplained investments."

1. The Learned Assessing Officer (AO) erred in proposing an addition of Rs. 2,07,56,500/- as "unexplained investment in property on account of difference in the consideration and the Stamp Duty Value (SDV) of the land jointly purchased by the assessee and his wife at Gorai, Borivali.

2. The Id. AO failed to appreciate that the SDV was worked out based on the standard rate stated in the Ready Reckoner for properties situated in Gorai in "No Development Zone" without appreciating the

fact that the land falls in the Green No Development Zone" and hence the same is to be valued differently..

3. The Id. AO erred in not appreciating the fact that the valuation of the entire land has been done by the Stamp Authorities considering the FSI of 1(one).

Whereas, the FSI is 0.1 as the land falls in the "Green Zone" and not 1 (one) as considered by the Stamp Authorities.

As per the DP remark, the said property is situated in the "Green No Development Zone" land and therefore the FSI applicable is 0.1 only. However, the FSI of 1 has been incorrectly considered during the valuation. Hence, the actual value of the said property shall be [2483.30 sq. mtrs. (land rate 9040 0.1 FSI)]= Rs. 22,45,000/-. Hence, the actual valuation should be only Rs. 22,45,000 instead of the Valuation of Rs, 2,53,56,000 done by the Stamp Authorities.*

1. The Valuation Report from the Registered Valuer viz. SNA Architects have determined a valuation of Rs. 22,45,000 for the said property and hence, the assessee states that the stated difference should not be added to his total income.

1. The Id. AO failed to appreciate that the Valuation done by the Stamp Authorities is exorbitantly high as they have not considered the following factors which are peculiar to the land purchased by the assessee, such as:

Location:

1. Property is situated far away from the main road.

2. There is no direct access as the property is surrounded by other land owner's and has to pass through their property after obtaining verbal permission.

3. At the time of purchase the land was barren, weeds and bushes grown by the monsoon rains and not suitable for agriculture unless it was filled and leveled in parts by adding extra soil.

4. Ploughing with bulls is the only option.

5. The property is situated in "No Development Zone".

Topography:

- 1. During monsoons water from higher land flows through this property which causes soil erosion*
- 2. The soil is also not fertile and cracks during summer.*
- 3. The ground water in this property is also saline hence no well or bore well can be dug and there are no chances of agriculture except during monsoons.*

Demand for land/maintenance:

- 1. Since the property is surrounded by other landowners' property with no direct*

access, there is no demand for resale

- 2. Maintenance costs are too high annually.*

1. The assessee submit that recently the Hon'ble Mumbai ITAT, in the case of Wenceslaus Joseph D'souza vs. Income Tax Officer (1)(2), has held that no addition can be made for difference in the "Agreement Value" and "Market Value" and the Valuation as worked out by the Registered Valuer is to be adopted and accepted.

2. Without prejudice to above, since the valuation done by Stamp authority is incorrect and exorbitantly high, the assessee requests to refer the matter to the Department Valuation Officer for proper valuation, as provided in the proviso to sec 56(2)(x).

For your reference, the proviso to sec 56(2)(x) is reproduced below:

"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:

(Provided also that in case of property being referred to in the second proviso to sub section (1) of sec 43 CA, the provisions of the sub-item (ii) of item (B) shall have effect as if for the words, "ten percent", the word "twenty percent" had been substituted.)

1. Without prejudice to the above, the assessee also submits that the Id. AO has proposed to add the difference of Rs. 2,07,56,500/- U/s 56(2)(x) as unexplained investment and U/s 69 read with section 115BBE. The assessee contends that that the addition cannot be made under both the Sections simultaneously. Section 56(2) is a deeming fiction. There is no evidence on record to establish that the assessee has made unexplained investment. Merely on the basis of difference in the "Agreement Value" and "Market Value" no addition can be made U/s 69 without any evidence for the same.

2. Without prejudice to the above, the Id. AO erred in not appreciating the fact that the land is jointly purchased by the Assessee and his wife, Mrs. Jane Elvis Crasto. Hence, the entire addition of Rs. 2,07,56,500/-, being a difference between the agreement value and Stamp duty valuation, cannot be made in the hands of the Assessee.

3. The Appellant craves leave to add, amend, delete, alter, modify, or substitute any or all the above ground(s) of appeals.

3.2 All the grounds from 1 to 10 are related, therefore, all the grounds discussed together."

9. After considering the submissions of the assessee, Ld. DRP rejected the same by observing as under: -

"3.3 Findings of DRP on Ground No.1 to 10:

The Assessee is a Non-Resident individual based in Dubai, UAE. with his family. The assessee and his wife, Mrs. Jane Elvis Crasto, had jointly purchased Agricultural Land vide Agreement dt. 09/08/2017 from the assessee's cousins, Mrs. Joan Claude Murzello and Mrs. Meena Jairaj Haldankar, for a total consideration for Rs.46,00,000/- . During the assessment proceedings, the AO/TPO has observed the stamp duty valued adopted by stamp duty authority in respect of the property for the stamp duty purpose was at Rs.2,53,53,000/- Hence, there was a difference of Rs.2,07,56,500/- in value as per the agreement value and as per the stamp duty valuation. The assessing officer has issued show cause notice to the assessee to explain as to why the difference Rs.2,07,56,500/- between agreement value and stamp value should not added to his total income towards income

from other sources u/s.56(2) of the Income Tax Act. The assessee has submitted detail explanation and stated that the reasons for lesser agreement value than stamp duty valuation in respect of above mentioned land is mainly as the plots of land are far away from main D P. Road, and there is no easy access to reach these plots from main DP. road. These reasons are also incorporated in the purchase agreement in clause No. (b) page No. 6 & 7. The assessee has contested that if the Market value is higher as per Stamp Duty Valuation, it does not mean that the higher amount was paid or received by the parties while carrying out the transaction of purchase /sale. The assessee has strongly objected for application of provisions u/s.56(2) of the Act in his case as it is claimed that actual payments made in purchasing of said land was Rs.46,00,000/- only. The AO did not accept the reasons for lower agreement value paid by the assessee, such as location of the land and adopted the value of Rs. 2,53,56,000/- as determined by Stamp Authorities.

We have considered the submissions of the assessee and observation of AO/TPO. Income Tax Act has broadly defined taxability of income under five heads of Income. One of them is Capital Gain, where gains arising out of the sale of capital assets are taxable in the hands of the seller of the capital asset. However, entering into an agreement with the buyer, where the sale value declared by the seller is less than the actual sale consideration. This led to the loss of tax to the government, and thus to avoid this, section 50C and Section 56 (2)(x) were introduced as two sides of a coin. Section 50C states the taxability of such cases in the hands of the seller while Section 56 (2)(x) specifies the taxability of such transactions in the hands of the buyer. Section 56(2)(vii)(b) of Income Tax Act provides that where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 any immovable property-

1. Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property:

2. 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 shall be chargeable to income tax under the head "Income from Other Sources".

In the instant case, the assessee has entered into purchase transaction in respect of immovable property where the Stamp duty valuation is much higher than the Agreement value entered into by the assessee. Section 56 2(x) is applicable where any assessee (buyer) receives any immovable property at consideration which is lower than the stamp duty value of such property. In the case assessee receives the property in lower value of consideration, then such stamp duty value shall be considered as deemed income of the assessee and shall be taxable in the hands of the receiver of the property as income from other sources. In this case the assessee has purchases land at a consideration which is lower than the stamp duty value of such property, then the difference between the stamp duty value and the sale consideration shall be considered as income from other sources.

In view of the above discussion, the reason mentioned by the assessee for lower agreement value is not found tenable. The proposed addition of Rs.20756500/- as unexplained investment in property by the assessing officer is justified. We uphold the action of the AO. The grounds of objection no. 1 to 10 raised by the assessee are, accordingly, rejected."

10. Aggrieved with the above order assessee is in appeal before us raising following grounds in its appeal: -

"1. The Learned Assessing Officer (AO)/ Dispute Resolution Panel (DRP) erred in computing the Total Income of the Appellant at Rs. 2,09,77,130/-.

2. The Id. Assessing Officer (AO)/ Dispute Resolution Panel (DRP) erred in not following the provisions of proviso to sec. 56(2)(x) by referring the matter to the Department Valuation Officer for proper valuation, despite specific requests and grounds raised by the Appellant.

3. The Learned Assessing Officer (AO)/Dispute Resolution Panel (DRP) erred in making an addition of Rs. 2,07,56,500/- as "unexplained investment in property" on account of the difference in the consideration and the Stamp Duty Value (SDV) of the land jointly purchased by the Appellant and his wife at Gorai, Borivali u/s 69.

4. *The Id. Assessing Officer (AO)/Dispute Resolution Panel (DRP) erred in not appreciating the fact that the addition cannot be made under Section 69 as Section 56(2) (x) is a deeming fiction.*

5. *The Id. Assessing Officer (AO)/Dispute Resolution Panel (DRP) erred in not appreciating a fact that the land purchased was falling under "Green No Development Zone", not eligible for development, and it was wrongly valued at the rate of "No Development Zone".*

6. *The Id. Assessing Officer (AO)/ Dispute Resolution Panel (DRP) erred in not appreciating the fact that while valuing the land, the stamp authorities wrongly considered the permissible Floor Space Index (FSI) as 1.00 instead of 0.10. The land valuation of the entire land has been done by the Stamp Authorities considering the FSI of 1 (one), resulting in a 10 times higher valuation.*

7. *The Id. Assessing Officer (AO) Dispute Resolution Panel (DRP) erred in not accepting the correct value of the land as ₹ 22,45,000 as valued by the Government approved Registered Valuer viz. SNA Architects.*

8. *The Id. Assessing Officer (AO)/Dispute Resolution Panel (DRP) erred in not appreciating the fact that the Valuation done by the Stamp Authorities is exorbitantly high as they have not considered many factors such as topography and no direct access etc. which are peculiar to the land purchased by the Appellant.*

9. *The Id. Assessing Officer (AO)/ Dispute Resolution Panel (DRP) erred in not following the ratio laid down by the jurisdictional tribunal, Hon'ble Mumbai ITAT, in the case of Wenceslaus Joseph D'souza vs. Income Tax Officer (1)(2), (ITA No. 4732/Mum/2017) where the facts of the case are identical. The action of the AO/DRP is in violation of the judicial discipline of our country.*

10. *Without Prejudice - The Id. Assessing Officer (AO)/ Dispute Resolution Panel (DRP) erred in treating the difference of Rs. 2,07,56,500/- in the Agreement Value and SDV as unexplained investment U/s 69 read with section 115BBE, without any cogent evidence.*

11. *Without Prejudice - The Id. Assessing Officer (AO)/ Dispute Resolution Panel (DRP) erred in making the entire addition of Rs. 2,07,56,500/-, being a difference between the Agreement Value and Stamp duty value (SDV), only in the hands of the Appellant without appreciating the fact that the land is jointly purchased by the Appellant and his and his wife, Mrs. Jane Elvis Crasto."*

11. At the time of hearing, Ld. AR of the assessee raised several grounds of appeal, however, she has submitted its written submissions on merits which are under: -

"THE VALUATION REPORT OF LAND AS PER REGISTERED VALUER DATED 05.10.2021"

A valuation report of Land bearing CTS No. 1680,1743 and 1748 situated in Village Gorai, Borivali (West), Mumbai - 400 091, was done by Registered valuer Shri S. V. Nargundkar, having Registration No. Cat 1= 257 of 1988. (Copy attached)

<i>Sr. No.</i>	<i>Date</i>	<i>Event</i>
<i>1</i>	<i>01.10.2021</i>	<i>Date of Visit by Registered valuer</i>
<i>2.</i>	<i>05.10.2021</i>	<i>Valuation Report Prepared</i>

Remarks of the Valuer as per the valuation Report ;

1) The lands under reference are vacant lands which are agricultural lands, this can be noted from Page No. 2, Item No. 5 in the valuation Report. The extract of the same is reproduced below for your perusal:-

5 Brief Description of the property *The lands under reference are Vacant lands which are agricultural Lands bearing CTS No. 1680 (S No 187/2), 1743 (S No187/19) & 1748 S no 189/29 of Village Gorai, Borivali (W).*

Besides 7/12 also shows that the land is being cultivated for agricultural purpose, Bhat crop.

2) The said property is situated in Green Zone and is vacant area, this can be noted from Page No. 3, Item No. 8 in the valuation Report. The extract of the same is reproduced below for your perusal:-

8 Is the property situated in residential *Green Zone commercial/mixed area /industrial area?*

3) The said land falls in Gorai-Manori-Uttan Recreation and Tourism Development Zone (RTDZ) this can be noted from Page No. 4, Item No. 18 in the valuation Report. The extract of the same is reproduced below for your perusal:-

18 Does the land fall in an area included in: Gorai-Manori-Uttan Recreation and Tourism any Town Planning Scheme or any DevDevelopment Zone (RTDZ) for which Plan of Government or any statutory Development Plan was sanctioned by the Govt in body? If so, give particulars. 2016.

The said plan has been enclosed. (RTDZ Plan extract of MMRDA attached)

4) The permissible FSI as per MMRDA DCR Table No. 4(2) Table 5 is 0.1, this can be noted from Page No. 5, Item No. 26 in the Valuation Report.

The extract of the same is reproduced below for your perusal:-

26	What is the Floor Space Index permissible :	0.1 as per MMRDA DCR no 4(2) Table 5 and percentage actually utilized?
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Copy of Table 5 Attached.

5) The value of the land was calculated by considering FSI as 0.1, as the land falls in Green Zone, this can be noted from Page No. 6, Item No. 39 in the Valuation Report. The extract of the same is reproduced below for your perusal:-

39	Land rate adopted in this valuation	: Calculated from ASR Rate for Land at Rs 22600/- per Sq mt at FSI 1, by considering FSI as 0.10 and that since the area falls in of Green Zone (No Development Valuation guideline rule no 17/c) further corrected to 40% of the rate
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Question of allocating FSI will only come after the land is converted into Non- agricultural land. Presently Assesse has not applied for conversion of this land into Non-agricultural land.

CALCULATIONS OF VALUATION-

The Date of Valuation is 02/08/2017.

• Combined Land area of CTS Nos 1680, 1743 and 1748 is 2483.30 Sqmt as per PRC. The same is adopted for the valuation purposes

The Ready reckoner Rate of 2017, Zone 32/360-Rx 22600/- per Sq Mt. for land. From ASR Rate for Land at Rs 22600/- per Sq mt at FSI 1 as a basic rate, final rate is calculated by considering FSI 0.10 MMRDA DCR 2012 for Manori Gorai Uttan Nonified TDZ Sanctioned on 13/05/2013 and amendment on 03/06/2016, and that since the area falls in of Valuation guideline rule no 17,

Green Zone (No Development) the rate is further reduced to 40% as per Government The final rate of land under reference considered for valuation is therefore equal to

Rs 22600 X 0.4 = Rs 904/- per Sq. Mt

The Valuation is as under

Property	Land Area in Sq.mt	Rate (₹/sq.mt)	Value (₹)
Land bearing CTS No. 1680, 1743 & 1748 Village Gorai, Borivali (W), Mumbai -400 091	2483.3	904	22,44,903/-

Say Rs 22,45,000/-

Thus, the Registered valuer has calculated the value of vacant agricultural land as per above calculation as the land is situated in Green Zone and FSI applicable is 0.1 which has not been considered by the stamp duty authorities and they have calculated the value of land taking FSI 1.

Without Prejudice to above,

1. According to 7/12 extract as per Government records the subject lands are being cultivated for agricultural purposes. 7/12 extracts evidences that the land is being cultivated for taking Bhat crop.

2. Assesse or the vendor have not applied for conversion of agricultural land to non agricultural land till date, thus, the land remains agricultural land.

3. The land is held by Assesse throughout the period and has taken Bhat crop as per 7/12 extract.

4. Therefore, this being agricultural land as per 7/12 extract question of applying FSI rules and regulations does not arise.

5. This is a family settlement where the possession of land was all throughout with the Assesse which was fraudulently transferred in vendors name and the price is only for transfer of title and not for parting with the possession. (pg. no. 12 of Paper Book (f) para.)."

12. On the other hand, Ld. DR relied on the orders of the lower authorities.

13. Considered the rival submissions and material placed on record, we observe that assessee is a Non-Resident Individual purchased a property jointly with his wife an agricultural land vide agreement dated 09.08.2017 from the assessee's cousins for a total consideration of ₹.46,00,000/-. The case of the assessee was selected for scrutiny based on the information that the stamp duty valuation adopted for this transaction was of ₹.2,53,56,000/- as against the declared purchase consideration of ₹.46,00,000/- hence there was a difference of ₹.2,07,56,500/-. We observe from the record that the plots purchased by the assessee which are agricultural lands and situated in green zone and also a vacant land. The above said lands fall in Gorai-Manori-Uttan Recreation and Tourism Development Zone and these informations are recorded by the Registered Valuer SNA Architects, having the Registration No. Cat I - 257 of 1988,

while submitting the valuation report. Further, we observe from the valuation report that valuer has adopted 0.1 of FSI for the above said lands as per the Government Notification No.TPB – 4312/323/CR-23/2013/UD dated 03.06.2016. We noticed from Table -5 for adoption of maximum permissible FSI for various categories, for the sake of clarity it is reproduced below: -

Zone	Maximum Permissible base FSI	Whether consumption of TDR/Premium FSI permissible	maximum permissible FSI with TDR/ Premium FSI
No Development Zone	0	No	--
Green Zone	0.10	Yes	0.20
Fishing & Allied Activities Zone	0.10	No	--
Development Zone 1	0.30	yes	0.50
Tourism Development zone	0.30	No	--
Development Zone 2	1.00	No	--

14. The Registered Valuer has considered the above facts and applied the ready reckoner rate of 2017 and adopted the above said FSI to value the property at ₹.22,45,000/-. However, the stamp duty officer has considered the FSI of 1.00 applied for the Development Zone.

15. All these facts were submitted before Ld. DRP and also we observe from the record that even before the Assessing Officer assessee has expressed his willingness to file the Registered valuation report for the same and the authorities below have not considered the above

submissions and however, they merely observed that since the land is situated in the outskirts of Mumbai and assessee has not raised any objection of the stamp duty valuation, hence, they have proceeded to make the addition.

16. Further, we observe that authorities below, have equated the provisions of section 56(2) and 50C of the Act and both these sections are to control the evasion of tax adopted by the buyer and seller respectively. Authorities below have ignored the fact that both these sections are exactly similar and if they are not convinced with the submissions made by the assessee and not happy with the valuation report submitted by the assessee, they could have atleast referred the matter to Department Valuation Officer, without considering the merits on record they have rejected the submissions of the assessee and even not bothered to refer the same to the Department Valuation Officer.

17. After considering the submissions of the assessee, we observe that there is substantial merit in this case that the land is situated in Green Zone and also vacant. As per the Table – 5 of Government Notification the plot of land is situated in Green Zone, the relevant FSI applicable is 0.10 whereas the stamp duty valuation was based on the FSI 1.00 which

is clearly visible apparent on record. Just because assessee has not preferred to challenge the same before proper authorities, however, assessee has brought on record various issues and deficiencies on the land purchased by the assessee. Further, we observe that the Registered Valuer has considered all the above facts, deficiencies on record and valued the same at ₹.22,45,000/- against the sale consideration of ₹.46,00,000/-, which justifies the claim made by the assessee.

18. Ld. DRP has rejected the various submissions highlighted by the assessee and merely proceeded to sustain the addition made by the Assessing Officer based on the fact that stamp duty valuation is more than the sale consideration without going on actual merits of the case. Further, they have also ignored the fact that assessee is an NRI and all the remittances for making the payments of purchase consideration is from Dubai, the source of income is outside India and they have brought nothing on record to show that assessee has made any actual remittances from the sources in India and merely adopted to make the addition based on presumption and suspicion. The authorities could have made further investigation to determine the actual valuation of land by refereing to the Department Valuation Officer which they have failed. Since the facts on record shows that there is considerable merit in the submissions of the

assessee, Accordingly, we are inclined to allow the grounds raised by the assessee on merit. Accordingly, appeal filed by the assessee is allowed and we direct the Assessing Officer to adopt the purchase consideration declared by the assessee.

19. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 23rd August, 2023

SD/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 23.08.2023
Giridhar, Sr.PS

SD/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum