

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 926/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2014-15)

Dipikaben Ashwinbhai Shah 2488 Navo Vas, Nr. Swaminarayan Temple, Kalupur, Ahmedabad, Gujarat 380001	बनाम/ Vs.	The Income Tax Officer Ward-1(2)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADKPS6235N		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Nirav Malkan, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri B. P. Makwana, Sr. DR

Date of Hearing	05/02/2024
Date of Pronouncement	14/02/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 25.07.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 10.11.2016 passed by the ITO, Ward-1(2)(1), Ahmedabad, under Section 143(3) of the Act for Assessment Year 2014-15.

2. The appellant, an individual, filed her return of income on 29.11.2014 declaring total income at Rs.4,92,770/-. Upon selection of case for limited scrutiny under CASS, notice under Section 143(2) of the Act dated 03.09.2015 followed by notice under Section 142(1) of the Act alongwith questionnaire dated 02.06.2016 was issued. The disputed fact is this that the appellant purchased a house property being Residential Tenement No. 17 at Shree Sundarvan Co.Op. Ho. So. Ltd., Jawahar Nagar, Vasna, Ahmedabad on 05.08.2013 jointly with the co-owner for a consideration of Rs.85 Lakhs. As per Stamp Duty Act the property is valued at Rs.1,53,06,122/-. In terms of provision of Section 56(2)(vii)(b) of the Act, the difference of the two has been taken as income from other sources and the following show cause notice to that effect was issued on the appellant on 08.08.2016:

"Please refer to the assessment proceedings in progress in your case for A.Y. 2014-15 and the submissions filed by you till date.

2. *In this connection, on verification of the details filed, it is seen that you have in joint ownership purchased a house situated of TP. No 312 in the sub-plot No 17 of Shree Sundarvan Co Op. Housing Society Ltd. Vasna by executing deed of Rs.85 lacs on which stamp duty has been paid of Rs.7,50,000/-. On the basis of the stamp duty paid it is teen that the value of the said land as determined by the Sub Registrar is Rs.1,53,06,122/-. Therefore, in view of the Sec. 56(2)(vii) of Income-Tax Act the value of the said land for a consideration shown by you in the deed executed which is less than the stamp duty value of the property as determined on the basis of the stamp duty paid, the stamp duty value of such properly as exceeds such consideration is chargeable to income-tax under the head "Income from Other Sources"*

3. *As per the details filed, it is seen that you owns 50% share in the said property. Therefore, on the basis of the stamp duty paid and the value determined at Rs.1,53,06,122/-. Your share is worked out as under:*

*50% share on the basis of the value determined at
Rs.1,53,06,122/-
Value of land shown by you*

*Rs.76,53,061/-
Rs.42,50,000/-
-----*

Difference Rs.34,03,061/-

4. In view of above, the difference of value of the said land is chargeable to income-tax under the head "Income from Other Sources. You are, therefore, requested to show cause as to why the difference of Rs.34,03,061/- should not be added in your total income under the head "Income from Other Sources" u/s 56(2) (vii) of the I.T. Act.

5. You are requested to furnish the details/evidences/explanation in this regard on the next date of hearing fixed on 22.08.2016 at 04.00 PM without fail. Please note that no further opportunity shall be granted. In case of non-compliance, the assessment shall be finalized on the basis of the details available on record and on merits and the penalty proceedings u/s.271(1)(b) of the I.T. Act shall be initiated against you for each non-compliance.

6. Please treat this letter as notice u/s 142(1) of the IT. Act 61.”

3. In response to the above show cause, on 01.11.2016, the following reply was filed by the appellant:

“Under the instruction of my above referred client we have to state as under.

In response to above referred notice it is to state that the assessee has paid true and fair market value to purchase the property at Rs.42,50,000. The total Jantri value is higher at Rs.15306122, the reason for this difference is that Jantri value is decided by the authorities on general basis and not case to case. Assessee has obtained Valuation Report of Govt. Registered Valuer. Copy enclosed herewith.

The property purchased by assessee is just beside the slum area and other surrounding facts are such that the market value cannot be considered in general and routine manner and not even at Jantri value.

The construction was very old and not of use. Additional cost incurred to demolish the old structure.

If your good self is not satisfied with the purchase value of assessee than it is requested to refer the matter to D.V.O. for valuation of the property.

Please consider the above submission and oblige.”

4. The appellant further requested the matter to be referred to District Valuation Officer for valuation of the property in view of

this particular fact that the property lying beside a slum area and the valuation of the property as per Stamp Act has, therefore, been disputed. The basic contention before us by the Ld. Counsel appearing for the appellant is this that though it is the duty incumbent upon the AO to refer the matter before the District Valuation Officer for ascertaining the actual value of the property in question, the same has been failed to be done. Secondly, the property was purchased by her alongwith her husband and return of income filed by the appellant's husband was duly accepted. Neither any reopening of assessment was issued under Section 147 of the Act in the case of the husband of the assessee being the co-owner of the property so purchased alongwith the appellant before us. Further that, the appellant had also obtained a valuation report from the Government Registered Valuer and the same was submitted before the authorities below on 08.11.2016, a copy whereof is annexed with the paper book filed before us.

5. However, finally as the stamp duty value of such property exceeds such consideration has been found to be chargeable to the income tax under the head 'income from other sources' and as per details made available to the Ld. AO 50% of assessee's shares to that property on the basis of the stamp duty paid and value determined at Rs.76,53,061/- has been added to the total income of the appellant by the Ld.AO under Section 56(2)(vii) of the Act which was further confirmed by the First Appellate Authority. The Ld. DR, however, has been failed to controvert the contention made by the appellant as to why no reference has been made to the DVO by the Ld. AO during assessment proceeding and further that when

the facts of acceptance of this particular valuation mentioned in the deed of sale of Rs.85 Lakhs by the Revenue authorities in case of appellant's husband was brought to the notice of the Revenue authorities why different treatment has been made in the case of the appellant by not accepting the same valuation and addition made. In that view of the matter, the Ld. DR failed to justify the addition made in the case of the appellant and taking into consideration the entire aspect of the matter, we, therefore, find the impugned addition in view of this particular fact narrated above is not sustainable in the eye of law and, therefore, deleted.

6. In the result, the appeal preferred by the appellant is allowed

This Order pronounced on 14/02/2024

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 14/02/2024

S. K. SINHA

True Copy

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad