

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

BEFORE SHRI PRASHANT MAHARISHI, AM

AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 2703/MUM/2023

(Assessment Year: 2018-19)

West End investment and finance consultancy Ltd 38, second floor, Bombay mutual building, Dr D N Road Fort, Mumbai - 001		The Deputy Commissioner of income tax, Central Circle - 1 (4), (room number 902, ninth floor, Pratishtha Bhavan, old CGO and, Chicago road, Mumbai - 20
(Appellant)		(Respondent)
PAN No. AAACW 0973H		

Assessee by : Shri Deepak Tralshawala

Revenue by : Shri Kishor Dhule CIT DR

Date of hearing:	12 December 2023
Date of pronouncement :	26.02.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the appellate order passed by the Commissioner of income tax (appeals) - 47, Mumbai dated 19/05/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) read with section

144B of the income tax act dated 22/4/2021 by the deputy Commissioner of income tax, Central Circle – 1 (4), Mumbai (the learned AO) for assessment year 2018 – 19 was partly allowed.

02. The assessee is aggrieved with the same and has preferred this appeal raising following grounds of appeal:

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" on the facts and in law

- 1) the learned and CIT – A erred in confirming the addition of ₹ 25,886,000/- on account of difference in property value determined by TPO and property value taken by the appellant under section 56 (2) (x).
- 2) The CIT – A erred in confirming the addition on the ground that property value determined by the view of ideas order under section 50 C read with section 56 (2) (x) (b) dated 10/3/2023 wherein he has determined the value of the said property at ₹ 193,886,000/- instead of the declared value taken by the appellant of ₹ 168,000,000.
- 3) The CIT (A) was not justified in simply relying on the findings of the DVO in confirming the addition without giving sufficient opportunity to the appellant to prove its case
- 4) the learned CIT – A order in confirming the addition on the basis of only DVO report and without giving emphasis to the government

valuer reports submitted by the appellant thereby denying the appellant natural justice

5) the learned CIT – A has not considered the submission made to him vide letter dated 27/3/2023, wherein it is explained in detail that how the valuer property determined by DVO was not in consensus with the actual state of the property

6) As no proper and sufficient opportunity of hearing is given to the appellant to the true value of the property, the appellant request for the admission of additional evidence if any, required in support of any of the grounds of appeal mentioned above.

03. The facts of the case are that assessee is registered non-banking financial company and its main activities comprises of lending and borrowing of funds besides the business of management consultancy. During the year, the assessee has earned income under head income under the head profits and gains of business and profession and income from other sources. Assessee filed return of income on 29/9/2018 at total income of ₹ 216,825,670/-. It was selected for scrutiny by issue of notice under section 143 (2), draft order was passed on 20/4/2021. The learned assessing officer has made an addition of ₹ 115,505,907/- under section 56 (2) (x) (b) of the act. This is only the dispute between the parties before us.

04. The fact shows that



- i. Assessee purchased office premises for consideration of ₹ 168,000,000 being suite no B, Ground floor, Block III, Bakhtawar Commercial society, Plot no 229, Backbay Reclamation Scheme, Nariman point, Mumbai 21 on 16/12/2017 admeasuring 5350 sq Ft. ,
- ii. Stamp Duty valuer of The property is Rs 28,35,05,907/- ,
- iii. Property is valued by Registered valuer S D Thakre Associates on 25/08/2017 at Rs. 16,88,50,000/- , [submitted as additional evidence before Id CIT (A)]
- iv. On remand to LD AO, It is valued by District valuation officer as per valuation Report dated 10/3/2023 at Rs. 19,36.86.000/-. [obtained in remand proceedings by the Id CIT (A)]
- v. It resulted in to addition u/s 56 (2) (x) (b) of The Act of Rs. 11,55.05,907/- [Rs 283505907/- (Stamp Duty value) - Rs 16,80,00,000/-(Actual Consideration)] by the Id AO . In the assessment order passed under section 143 (3) read with section 144B of the income tax act 1961 dated 22/4/2021 the total income of the assessee was determined at ₹ 3,743,607,673 wherein the above addition of ₹ 115,505,907/- was made.
- vi. Property is valued by Registered valuer S D Thakre Associates on 25/08/2017 at Rs. 16,88,50,000/- ,



[submitted as additional evidence before Id CIT (A)].

- vii. The rationale of the valuation by Registered valuer was that during the recent years the commercial hub of Nariman point region and congested areas of south Bombay has shifted to BKC area at Bandra and worldy area and Birla land areas that the other and Parel very huge designed multi-facility office complexities at a cheaper rates of about Rs. 20,000/- to Rs. 22,000 is per square feet on sellable built up area and availability of good the choicest new ready offices in huge quantities than demand were available. This resulted in sharp drop of sales in Nariman point and for all of and south Bombay region. This fact of sharp drop-off actual sale rate is not reflected in government ready reckoner stamp duty or positive publish the rates by Maharashtra government may be in the interest of levying higher stamp duty on transfer/transaction to generate higher revenue for government. Many court matters are filed against Maharashtra government stamp duty registrar against this wrong and higher public stamp duty rates with request to reduce the same. It was further stated that the government rate of Rs. 518,000/- per square meter is too high considering the actual average sale rate of about Rs. 31,000 per square feet considered for this valuation of office in this old building of 1974. Accordingly the learned that government valuer Mr. SD Thackeray and associates valued the property at Rs.



16,88,50,000 as per valuation report dated 25/8/2017.

- viii. On remand to LD AO, It is valued by District valuation officer as per valuation Report dated 10/3/2023 at Rs. 19,36.86.000/-. [obtained in remand proceedings by the Id CIT (A)]
- ix. The learned and CIT - A on receipt of the application of the additional evidence admission by the assessee referred the matter to the learned that assessing officer for submission of the remand report on admission of the additional evidence.
- x. The learned AO In remand report dated 23/1/2023 has categorically stated that the assessee has already submitted the valuation report at the time of the assessment and the learned faceless assessing officer did not refer the matter to the district valuation officer for valuation in terms of clause 2 of section 50 C, then He referred matter to the DVO.
- xi. On receipt of Report of DVO, addition reduced by the Id CIT (A) based on Report of DVO at RS. 2,58,86,000/- [Valuation of DVO at Rs 19,38,86,000/- less Actual Consideration of Rs 16,80,000/-]

05. Against this appellate Order, assessee is in appeal. At first instance, the learned authorized representative submitted that there is a delay of 14 days in filing of the appeal by the assessee. He submitted the fact that

appellate order was passed on 18th/7/2023 however, the physical copy of the order was received by the assessee on 1/8/2023 consequent to that appeal was electronically filed on 18/7/2023 however, physical copies were submitted on 1/8/2023 and therefore the delay in filing of the appeal may be condoned.

06. The learned departmental representative objected to the same.
07. We have carefully considered the rival contention and find that there is a delay in filing of the appeal by 14 days as reported by the registry as per intimation dated 1/11/2023 given to the assessee. The delay has been caused for the reason that the assessee has filed physical copies late. We do not find any reason to not to condone the delay when the appeal as been electronically filed in time. Accordingly, we hold that there is no delay in filing of the appeal. Therefore, the appeal of the assessee is admitted.
08. On the merits of the case, The learned authorized representative has filed a paper book containing 127 pages wherein along with the assessment order passed under section 143 (3) dated 22/4/2021, he submitted the valuation report of the government registered valuer, the letter of the CIT – A asking for the comment of the assessing officer on remand report and report of the view dated 21/3/2023, the assessee's reply to the CIT – A dated 27/3/2023 and the order of the first appellate authority. He further referred to the judicial precedent in 338 ITR 485 (Delhi), 328 ITR 604 (Delhi) and 357 ITR

671 (Delhi). The main argument of the learned authorized representative is that there should be an allegation/evidence of on money payment without which the addition under section 56 (2) (x) cannot be made. He further relied on the decision of the honourable Supreme Court in case of 131 ITR 597. This decision was not considered by the learned CIT – A. It is further the claim of the learned authorized representative that the learned CIT – A has not considered the content of the registered valuer wherein there is a discussion about why the property does not have market value as per ready reckoner. He further stated that the blind acceptance of the debuts report is incorrect.

09. The learned departmental representative vehemently supported the order of the lower authorities and read the provisions of the law. It is stated that it is the anti avoidance provision where the assessee himself has to prove that why the property is transacted at the value less than the stamp duty value of the value determined by the district valuation officer. The mandate of law has been followed by the lower authorities. It was further submitted that the report of the district valuation officer is an expert report, which binds the assessing officer as per mandate of the law. Therefore, the argument that it is blindly accepted by the revenue authorities is beyond any comprehension is not sustainable. He further submitted that the decision of the honourable Supreme Court does not have any bearing on the issue when there is an anti-avoidance law enacted under section 56 (2) of the act. It was submitted that there is no infirmity in the order passed by the learned lower authorities. With

respect to the decision cited by the learned authorized representative. It was submitted that the decision of Lahasa constructions private limited (357 ITR 671); Puneet Shabarwal 330 ITR 485 and Smt Suraj Devi 328 ITR 604 (Delhi) are not on the provision of law, which has resulted into the addition.

010. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact has already been narrated which shows that assessee has purchased the property at an agreed consideration of ₹ 168,000,000/-, which has the stamp duty value of Rs. 28,35,05,907/-, valued by Registered valuer at Rs. 16,88,50,000/-, by the DVO at Rs. 19,38,86,000/- resulted in to an addition of Rs. 2,86,50,000/- u/s 56(2) (X)(b)(b) of The Act .

011. According to Section 56(2)(x)(b) of The Act In particular, and without prejudice to the generality of the provisions of sub-section (1), income shall be chargeable to income-tax under the head "Income from other sources", where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017, any immovable property, for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of Rs 50,000/-. Subsequently 10 % of the consideration. Further where the stamp duty value of immovable property 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 this sub-clause as they apply for valuation of capital asset under those section.

012. Thus in the present case, undisputedly the assessee has purchased the property to stamp duty value is higher than the value of the consideration shown by the assessee, when the assessee submitted the additional evidence in the form of the registered valuer's report before the learned CIT – A, the valuation was referred to the district valuation officer, whatever valuation has been made by the district valuation officer was accepted by the revenue authorities and the difference between the valuation adopted by the district valuation officer and actual consideration has been added into the hands of the assessee.
013. There is no provision in the act that before invoking the provisions of section 56 (2), the AO or the learned CIT – A should prove with evidence that there is a transaction of on money and then only addition can be made. It is an anti avoidance provision. Therefore, such argument deserves to be rejected.
014. So far the argument of the learned authorized representative that various observation made by the learned registered valuer were not at all considered by the lower authorities i.e. CIT – A, we find that the reference was made to the district valuation officer. The district valuation officer issued notice to the assessee on



7/2/2023 asking for the several information. Assessee submitted such details, which are mentioned at final valuation report paragraph number 1.4. As per paragraph number 2.4 inspections was carried out on 17th/2/2023 along with the representative of the assessee. It is also considered that the demand for office premises in that locality is reduced. It is also noted that as per annexure I, the district valuation officer considered six instances of sales of nearby properties and in the nearby timelines. According to the six instances, the average rate per square meter is approximately ₹ 3 lakhs per square meter. The view adopted 3,17,176/- rate per square meter. While valuing, he considered the report of the valuer and stated that the valuer has not considered any sale instances of nearby properties and does not have any basis for valuation. Therefore, report of registered valuer was rejected. Instead of that, the district valuation officer considered the sale instances of the same building in the same time. The preliminary valuation report was also submitted to the assessee and an opportunity was given for submitting the objection. Assessee submitted objection and it were considered by the learned DVO. Thus in view of the independent sale instances of similar sale consideration, it cannot be said that the report of the learned DVO suffers from any infirmity. As nothing was pointed out before the learned CIT – A that the valuation report prepared by the learned TPO suffers from any infirmity, it cannot be said that the learned CIT – A has blindly accepted the report of DVO. We have considered the submission made by the assessee on 27/3/2023 to the CIT – A placed at page number 48 – 67 of the paper



book to reach at this conclusion. In view of the above facts, we do not find any infirmity in the order of the learned CIT – A in making the addition to the total income of the assessee being the difference between the actual consideration and the valuation determined by the learned district valuation officer.

015. Several judicial precedents cited by the learned authorized representative are not after introduction of section 56 (2) (x) of the act and therefore those are do not apply for the impugned assessment year.
016. Thus we, uphold the orders of the learned CIT – A in confirming the addition under section 56 (2) (x) (b) (b) of the act as the assessee has purchased the property for a consideration which is less than the value determined by the learned departmental valuation officer in accordance with the provisions of section 50 C of the act.
017. In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 26.02. 2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.02. 2024

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Copy of the Order forwarded to:

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



BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai