

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 421/Mum/2024
(Assessment Year: 2018-19)**

Gayatri Developer MIDC, Shirgaon Sai Prasad Tower, Near Ration Shop Kulgaon, Badlapur, Maharashtra-421503. PAN : AAHFG3237G	Vs.	ITO-2(1)/NFAC, Room No. 12, A Wing, 6 th Floor, Ashar IT Park, Wagale Indl. Estate, Road No. 16Z, Thane (W)-400604.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Vipul Jain, CA
Revenue/Respondent by : Shri G. Santosh Kumar, Sr. DR

Date of Hearing : 10.06.2024
Date of Pronouncement : 11.06.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of assessment passed by the Commissioner of Income Tax/ National Faceless Appeal Centre, Delhi [for short 'CIT(A)] dated 04.12.2023 for the AY 2018-19. The assessee has raised the following grounds of appeal:

“1. THAT, the impugned order dated 04/12/2023 issued u/s. 250 is passed against the basic principle of natural justice and audi alteram partem, since NFAC has rejected appeal without dealing merits of the matter.

2. THAT, in consequence of impugned order dated 04/12/2023 intrinsically following additions were upheld by Ld. NFAC made by National Faceless assessment centre vide assessment order dated 30/04/2021.

a. Addition on account of treating purchase of TDR as capital asset instead of business asset as recognised by appellant in books of account.

b. Addition u/s. 56(2) being difference between stamp duty value and consideration amounting Rs.57.42.000/1. to Rs.57,42,000/- (Rs.1.18.20.000/-)

3. THAT, in consequence of impugned order dated 04/12/2023, if the addition is sustained u/s 56(2) the appropriated cost may be allowed to the assessee being the business asset.

4. THAT, above mentioned grounds are without prejudice to each other and appellant craves leaves to add, amend, alter, delete, and modify any of the grounds as mentioned above.”

2. The assessee is a partnership firm engaged in the business of development of properties. The assessee filed a return of income for AY 2018-19 on 05.08.2018 declaring a total income of Rs. 1,66,84,360/-. The case is selected for scrutiny for the reason that "purchase value of property less than value as per stamp authority" and statutory notices were duly served on the assessee. The AO issued as how— cause notice to the assessee in this regard. The relevant extract of the show-cause notice is given below:

“Please note that your case for Assessment Year 2018-19 is pending for disposal. In reference to your compliances earlier as well as data available, it was revealed that Land S.N. 103/3b at Badlapur was purchased on 28.12.2017.

From your earlier submissions it has been claimed that the above mentioned land was under Land Surrendered Reservation against which TDR utilised of which the total area is 847.08 sq. mt. Reckener Rate Rs. 6,490/- per sq. mt. But, as per the Development Right Certificate furnished by you which was issued by Kulgaon Badlapur Municipal Council under the 'Details of land surrendered the area of land surrendered is depicted as "847.08 X 2.15 = 1821.22 Sq. Mt.".

In view of the above, you are hereby requested to clarify the above mentioned discrepancy as per your statement and as per the above mentioned certificate issued by Kulgaon Badlapur Municipal Council as well as to furnish evidential proof regarding computation of cost of such property defining the basis of such computation along with the evidence of stamp duty value in case of TDR of such property. You are also requested to clarify the FSI of such property which should be incorporated in the certificate issued by Kulgaon Badlapur Municipal Council.

In the above mentioned circumstances, you are requested kindly to show cause as to why the difference between the value as paid by you for acquiring the property S.N. 103/3b at Badlapur of Rs. 60,78,000/- and the stamp duty value of such property as derived by adopting the value as furnished by you, i.e., Rs. 6,490/- per Sq. Mt. thus arriving at Rs. 1,18,20,000/- for 1821.22 Sq. Mt., i.e. Rs. 57,42,000 will not be added back u/s 56(2) of the Income Tax Act, 1961 to arrive at your assessed total income.

You are requested to comply within the stipulated time allowed as mentioned in the notice to facilitate completion of the e-assessment.”

3. Since the assessee did not respond to the notice issued, the AO passed an order under section 143(3) r.w.s. section 144B by making an addition of Rs. 57,42,000/- under the head "Income from Other Sources". Aggrieved the assessee filed the appeal before the CIT(A). Before the CIT(A) the assessee filed the Development Right Certificate dated 16.12.2017 to substantiate that the Transferable Development Rights (TDR) was acquired for the purpose of development and therefore, the transaction does not attract the provisions of section 56(2) of the Act. The assessee accordingly prayed before the CIT(A) that

the addition made by the AO be deleted. The assessee submitted the above certificate as additional evidence under Rule 46A of the Income Tax Rules. The CIT(A) rejected the additional evidence submitted by the assessee stating that the assessee did not produce sufficient cause for non-submission of the said documentary evidence before the AO. The CIT(A) further held that the assessee did not produce any document before the AO such as the financial statement to evidence that the property was not treated as a capital asset but as stock-in-trade. Accordingly the CIT(A) confirmed the addition made by the AO.

4. The Id. AR submitted that the assessee is in the business of property development and the TDR was upheld for developing property. The Id. AR further submitted that certificate of development right which was submitted before the CIT(A) goes to the root of the issue to support the claim of the assessee that the TDR was upheld for development purposes. The Id. AR also submitted that the CIT(A) did not admit the additional ground and dismissed the appeal confirming the addition made by the AO. Therefore, the Id. AR prayed that the issue may go back to the CIT(A) with a direction to admit the additional evidence and adjudicate the appeal on merits.

5. The Id. DR on the other hand submitted that the assessee was given ample opportunity by the AO and that the assessee failed to submit any details. The Id. DR further submitted that even before the CIT(A) the assessee did not bring any sufficient cause to justify the admission of additional evidence under the Rule 46A. Therefore, the Id. DR argued that the CIT(A) has correctly upheld the addition.

6. We have heard the parties and perused the material available on record. The assessee's case was selected for scrutiny under CASS for the reason that the

purchase value of property was less than the stamp duty value. The AO issued a show-cause notice to the assessee calling for details to substantiate why the difference could not be added under section 56(2) of the Act. We noticed that the assessee failed to submit the details within the time stipulated under the show-cause notice and therefore, the AO proceeded to make addition under section 56(2) of the Act treating the difference between purchase value and the stamp duty value as income under the head "Income from Other Sources". Before the CIT(A) the assessee submitted the Development Right Certificate dated 16.12.2017 issued by Kulgaon, Badlapur Municipal Council as additional evidence under Rule 46A in order to support the claim that the TDR was purchased for the purpose of development of property therefore, the transaction does not attract the provisions of section 56(2) of the Act. The CIT(A) dismissed the appeal without admitting the additional evidence and also for the reason that the assessee did not produce any document before the AO such as the financial statement to evidence that the treatment of the property in the books of account. From the facts as stated above, it is clear that the lower authorities have not considered the issue on merits and have made the addition without examining the evidences on record. We also noticed that additional documents to evidence the treatment of the impugned property in the books of account were also not called for and not submitted by the assessee. In view of this discussion, in the interest of natural justice and fair play we are inclined to given one more opportunity to the assessee. Accordingly, we remit the issue back to the CIT(A) for consideration of the issue afresh. The CIT(A) is directed to admit the additional evidence submitted by the assessee and also call for any further details as may be required to adjudicate the issue on merits. The assessee is directed to submit the details as may be called for by the CIT(A) without seeking any adjournments. It is ordered accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11-06-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai