आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.179/Ahd/2022
Assessment Year : 2018-19

Shri Dilip Manibhai Prajapati 1, Shitalnath Society Opp: Aath Gam Patel Wadi, Saroda Road Kalikund Dhoka 382 225 PAN : ACSPP 9801 C	Vs.	The ITO, Ward-3(2)(1) Ahmedabad.

Assessee by :	Shri S.N. Divatia, AR, and Shri Samir Vora, AR
Revenue by :	Shri Sushil Kumar Katiar, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 04/04/2024**
घोषणा की तारीख /**Date of Pronouncement: 28/06/2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (in short referred to as "ld.CIT(A)") dated 15.03.2022 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2018-19.

2. At the outset, it was stated that the grievance of the assessee in the present appeal was on solitary issue, pertaining to the addition made to its income by invoking provisions of section 56(2)(x) of the Act. It was pointed out that in terms of provisions of the said section, if the purchase consideration of an immovable property fell short of

its stamp duty value, the difference was to be added to the income of the purchaser, and finding the fact in the present case to be so, the addition under the said section had been made to the income of the assessee. Our attention was drawn to the grounds raised accordingly, which read as under:

> *"1.1 The order passed by U/s.250 passed on 15.03.2022 by NFAC, Delhi upholding the invocation of the provisions of sec.56(2)(x) and consequential addition of Rs.62,52,900/- towards purchase of immovable property is wholly illegal, unlawful and against the principles of natural justice.*
>
> *2.1 The Id. NFAC has grievously erred in law and or on facts in upholding the invocation of the provisions of sec.56(2)(x) and consequential addition of Rs.62,52,900/- towards purchase of immovable property.*
>
> *2.2 That the in the facts and circumstances of the ld. NFAC ought not to have upheld the invocation of the provisions of sec.56(2)(x) and consequential addition of Rs.62,52,900/-towards purchase of immovable property.*
>
> *3.1 That in the facts and circumstances of the case as well as the law, both the lower authorities ought to have referred the matter to DVO for determination of fair market value as on 29/05/2017 and examine the applicability of sec.56(2)(x) in respect of the valuation so made by DVO.*

3. Ground no.1, it was stated to be general, and therefore, is not being adjudicated by us.

Ground No.2.1 and 2.2 and 3.1 pertain to the merits of the case, and arguments accordingly were made on the grounds so raised.

4. Brief facts leading to the addition are that during the impugned year the assessee had purchased a land along with two other co-owners, with his share in it being 47.5%, for a purchase consideration of Rs.2.01 crores. The sale deed was executed on 3.5.2017 and stamp duty value of the said land was Rs.3,32,64,000/-. It was this difference of Rs.1,31,64,000/- between the stamp value and purchase consideration of the land which was treated by the Revenue authorities as liable to be taxed in the hands of the purchasers and accordingly to the extent of assessee's shares in the land being 47.5%,

the difference was taxed amounting to Rs.65,54,400/- in terms of provisions of section 56(2)(x) of the Act. The same was confirmed by the ld.CIT(A).

5. The contention of the ld.counsel for the assessee was that the stamp duty valuation of Rs.3,32,64,000/- pertained to that of Non Agricultural Land, which was not be considered since the assessee had purchased an agricultural land whose stamp duty valuation was Rs. 55,07,040/- which was far less than the consideration for which land was purchased for Rs. 2.01 Crs, and therefore no case for invoking section 56(2)(x) of the Act.

Elaborating and explaining the above facts, Ld. Counsel for the assessee contended that it had been pointed out to the lower authorities that the assessee had initially entered into agreement to purchase (*banakhat*), an agricultural land on 31.8.2016,and had in fact purchased an agricultural land only vide agreement dated 3.5.2017; that in the intervening period, the vendor had applied for conversion of the land usage to non-agriculture which had been approved by the Collector on 15.2.2017, and therefore, subsequently when the sale deed for purchase of the land was entered on 3.5.2017, the stamp value of the land was taken treating it as non-agriculture land amounting to Rs.3,32,64,000/-. He contended that the assessee had not purchased non-agricultural land, but in fact had purchased an agricultural land alone, and therefore, the stamp duty valuation of the agriculture land, which was Rs.55,07,040/- ought to have been considered as the stamp duty value for the purpose of section 56(2)(x) of the Act.

6. To buttress his contention that the land which he purchased was an agricultural land, he drew our attention to the copy of the sale

deed (translated version of which was placed before us) pointing out that – (i) the property sold was consistently described as agricultural land, and nowhere mentioned the property as non-agricultural land, and (ii) he drew our attention to the approval granted by the Collector on 15.2.2017 for conversion of the land into non-agriculture land and pointed out that certain conditions were mentioned therein, which were to be fulfilled by the user of the land, subject to which the land would be treated as non-agriculture land. He drew our attention to the judgement of Hon'ble jurisdictional High Court in the case of Kishorbhai Harjibhai Patel vs Income Tax Officer (2014) 417 ITR 547 pointing out therefrom that the Hon'ble Court had categorically stated that when permission is granted by authorities concerned for sale of agricultural land to non-agriculturist, the land does not cease to be agricultural land merely because of such permission being granted; that if the conditions of the permission are not complied with, the land in respect of which permission was granted would revert to its original character of agricultural land. In this regard, our attention was drawn to para-38 of the order of the Hon'ble High Court.

7. Besides it was pointed out that the order of the District Collector for conversion of the land to non-agricultural land was made on 28.8.2017, i.e after the sale deed for purchase of land was executed on 3.5.2017; that therefore the character of the land on the date of purchase was agricultural land.

The ld.counsel for the assessee, also contended that since he had been consistently challenging the stamp duty value of the land, therefore, in terms of provisions of section 56(2)(x) of the Act, the AO/ld.CIT(A) ought to have referred the valuation of the land to the DVO. He pointed out that this exercise had been carried out during the assessment of the third co-purchaser of the land, who held 5%

share in the said land i.e. Shri Piyush Jashubhai Patel and fair market value of this piece of land was found by the DVO to be Rs.2,25,46,000/- as opposed to the actual price for which it was purchased being Rs.2,01,00,000/-. He contended that since this matter had already been considered by the DVO in the case of third co- purchaser of the property, finding no material difference in the actual consideration for which the property was purchased, and its fair market value, the authorities below had erred in considering the stamp duty value of the land for the purposes of making addition u/s 56(2)(x) of the Act in the present case.

8. The ld.DR, however, stated that the ld.CIT(A) had dealt with all arguments raised by the assessee as above, except the contention now raised by the assessee that the AO ought to have referred the matter of valuation of market value of the land purchased to the DVO. He contended that the assessee was raising this aspect for the first time before us, and the same therefore need not be entertained.

9. Having heard contentions of both the parties, we shall now proceed to adjudicate the issue before us, which is, whether the provisions of section 56(2)(x) of the Act have been rightly invoked in the case of the assessee for making addition on account of difference in the stamp duty value and actual purchase consideration of immovable property purchased by the assessee - the addition, resulting as a consequence is of Rs.65,54,400/-. We shall first bring out the fact relating to the issue culled out from the orders of the authorities below before us.

10. The assessee had entered into a *bhanakhat* dated 31.8.2016 to purchase land. At the time of the agreement entered into, no payment had been made to the seller of the land. The land said to be purchased

at the time of entering to *bhanakhat* was an agricultural land. Subsequently, on 3.5.2017, the assessee executed the sale deed for the purchase of the impugned land for consideration of Rs.2.01 crores. The stamp duty value of the same was Rs.3,32,64,000/- for non-agricultural residential use purpose. The assessee's share in the impugned property was 47.5%.

11. An application for the conversion of the said land from agricultural to non-agricultural land was made by the vendor, which was approved by the District Collector vide his order dated 15.2.2017. Thus, chronology of events is that -

- on 31.8.2016 the assessee entered into a *bhanakhat* for purchase of agricultural land;
- on 15.2.2017 the agricultural land was converted into non-agricultural land vide order of the Collector;
- on 3.5.2017, the land was ultimately purchased for a consideration of Rs.2.01 crores and stamp duty levied thereon was for the purpose of non-agricultural residential use amounting to Rs.3,32,64,000/-.

12. We shall first deal with the contention of the assessee that he had objected to the stamp duty valuation of the said property at Rs.3.32 crores, and therefore, in terms of provisions of section 50C(2) read with section 56(2)(x) of the Act, the AO ought to have referred the valuation to the DVO. And this exercise of reference to the DVO having already been done in the case of one of the co-purchasers ,having 5% share in the property wherein the valuation by the AO found no major difference between purchase consideration and his valuation, there was no case for making any addition in the hands of the assessee on account of any purported difference between the stamp duty value and actual purchase consideration of the property.

Ld.DR has objected to adjudicating this ground raised by the assessee, since this contention has been never raised before the authorities below and has been raised for the first time before us.

13. We find no merit in the contention of the Ld.DR. It is clear that the assessee has not raised any fresh factual contention before us. On the contrary he has raised a legal contention and there is no dispute that the facts for dealing with the same are all borne on record. There is no need for any investigation of facts for dealing with the contention raised by the assessee. This contention of the assessee is therefore being entertained for adjudication.

14. For dealing with the same, the relevant provisions in this regard need to be gone into, and for the said purpose, we reproduce section 56(2)(x) of the Act, particularly third proviso, as under:

> *56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.*
>
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*
>
> *…. …. …. …. …..*
>
> *(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*
>
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
>
> *(b) any immovable property,—*
>
> *(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*
>
> *(B) 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 the following amounts, namely:—*
>
> *(i) the amount of fifty thousand rupees; and*
>
> *(ii) the amount equal to ten per cent of the consideration:*

…. …. …. …. …..

Provided also that 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 sections:

15. It is evident from bare perusal of the above that in terms of provisions of section 56(2)(x) of the Act, wherein any person receives an immovable property for purchase consideration which is less than the stamp duty value the difference is liable to be taxed in his hands subject to the condition that the difference does not exceed Rs.50,000/- or 10% of the consideration whichever is more.

The third proviso to the section clearly provides that where the stamp duty value of the immovable property is disputed by the assessee on grounds mentioned in section 50C(2), the AO may refer its valuation to the Valuation Officer. Therefore, we find merit in the contention of the ld.counsel for the assessee that where the stamp duty value of the property is disputed, the AO has to make a reference to the DVO for the purpose or valuing the same.

16. Now, taking note of the provision of section 50C(2) of the Act, the same reads as under:

50C. (1) …. …. ….. ….. ….. …..

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

It is evident from the above, as per the provisions of the said section, where the assessee disputes stamp valuation of a property, the AO has to make a reference of the same to the DVO.

17. Having noted so, we find in the facts of the present case that the assessee has consistently stated to the authorities below that the stamp duty valuation of the land purchased by him by treating it as non-agricultural land for residential use purpose was not acceptable for the reason that the assessee had purchased agricultural land. He had pointed out this fact of the land purchased being agricultural from the sale deed of the property clearly referring to the land purchased as agricultural land and also mentioning the fact that land be used for agriculture purposes after sale. The assessee had contended that the approval for its non-agriculture use had been taken from the Collector, as a matter of convenience only so that the assessee could easily use it for non-agriculture purpose, if required, but the land had been purchased as agriculture land and for agriculture purpose only; That therefore, the stamp duty valuation of the land as non-agricultural residential use was always disputed. These facts were brought out before us through the relevant sale deed, and through the contentions made to the authorities below, and which have not been disputed/controverted by the ld.DR also. Therefore, it is evident that the assessee had disputed the stamp duty valuation of the land.

In terms of provisions of section 56(2)(x) read with section 50C(2) of the Act, therefore, there is no doubt that the AO ought to have referred the valuation of the property to the AO. We find merit in this contention of the ld.counsel for the assesse.

18. Going forward from here, the ld.counsel for the assessee has also pointed out to us that in the case of one of the co-purchaser of the property having 5% share in the property, the AO during the assessment proceedings, while making inquiry with respect to the purchase of this impugned property, had referred the valuation of the land to the DVO, and the DVO in his report had submitted that there was no material difference between the purchase consideration of the property and its fair market value. In this regard, copy of the assessment order in the case of Piyushbhai Jashubhai Patel 5% co-owner of the property purchased was placed before us dated 24.4.2021. The order passed was under section 143(3) read with section 144B of the Act. Para-6 of the said order, it was pointed out, mentioned the fact of reference made to the DVO to check correctness of the valuation made by the registered valuer and also noted that after receiving the valuation report from the DVO necessary rectification would be made in the order passed by the AO. The para-6 of the order is reproduced hereunder:

> 6. To verification of actual valuation of the privilege rate of area where immovable property situated and check the correctness of the valuation made by the registered valuer, a reference has been made to District Valuation Officer for property valuation as per location to protect the revenue loss. After receiving of the valuation report of immovable property form the District Valuation Officer for property valuation as per location, necessary modification/rectification will be made accordingly.

19. Copy of the valuation report of the DVO was also placed before us, in consequence to this reference made in the case of Piyushbhai Jashubhai Patel at PB Page no.152 to 157 and it was pointed out

from the same that the DVO had valued the fair market value of the property/land at Rs.2,25,46,000/- as opposed to declared value of Rs.2.01 crores, the date of valuation being 29.5.2017 while property was purchased on 3.5.2017. The relevant extract of the valuation from the DVO's report reads as under:

14.0 VALUATION - Having considered the evidence produced by the Assessee and having taken into consideration all relevant material gathered by me, I estimate the Fair Market Value of the property as under -

Property Address	*Declared Value* (in Rs.)	*Fair Market Value* (in Rs.)	*As on*
Khata No. 4031, Survey/ Block No. 224, Village- Dholka, Taluka- Dholka, District- Ahmedabad,	Rs. 2,01,00,000/-	Rs. 2,25,46,000/-	29.05.2017

The above determined Fair Market Value does not include the following –

1) Cost incurred on Stamp duty, addl.Stamp duty,, Registration charges, legal charges &other Charges/Taxes paid.
2) Cost of any addition/alteration done after date of sale/inspection.
3) Cost of brokerage paid etc.
4) Assesee's share in the property may be got verified by the Assessing Officer.

(Er. K.R.Jihor)
Valuation Officer-I
Income Tax Deptt., Ahmedabad

20. In view of the above facts, since on a valid reference made to the DVO for the valuation of the fair market value of the impugned property/land in terms of provisions of law in this regard, the FMV has been found to be in excess of approximately of Rs.20 lakhs only, i.e within 10% range of the purchase consideration of Rs.2.01 crores, there is no material difference between the FMV of the property and the purchase consideration for which it was purchased.

21. Further in the light of the fact that the DVO has found the FMV of the land to be far less than its stamp duty value being Rs.2.23 Crs as opposed to its stamp duty value of Rs.3.32 crs, there is no case with the Revenue for considering the stamp duty value of the land for

computing the addition to be made to the income of the assessee in terms of section 56(2)(x) of the Act. At the most, the FMV could be taken for the purpose of determining the excess between the FMV and the purchase consideration, but since the difference is only to the tune of Rs.20 lakhs, which is approximately 10% of the purchase consideration of the property of Rs.2 .01 Crs, it is not a material difference. Therefore, there is no occasion for making any addition in the hands of the assessee for receiving immovable property for consideration which is less than its stamp duty value/FMV for the above reasons. We direct the AO to delete the addition made in the hands of the assessee under section 56(2)(x) of the Act amounting to Rs.62,52,900/-.

Ground No.3.1 is allowed

22. Having directed the deletion of addition made for the above reasons, we do not consider it necessary to deal with other arguments of the assessee that the stamp duty valuation of the land ought to have been taken as that of agricultural land and not non-agricultural land. Ground No.2.1 and 2.2 are not, therefore, not being dealt with by us.

23. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the Court on 28th June, 2024 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 28/06/2024