

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND

SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA no.811/Mum./2024

(Assessment Year : 2017-18)

Mahesh Vasant Ghare

1402, Neptune Co-operative Housing
Society Ltd, JP Nagar/Link Road,
Andheri West, Mumbai-400053
PAN – AAIPG7089F

..... Appellant

v/s

**Income Tax Officer, Ward
24(2)(1)**

Piramal Chamber, Lal Baug
Mumbai-400012

..... Respondent

Assessee by : Shri Reepal Tralshwala

Revenue by : Shri Himanshu Sharma, CIT- DR

Date of Hearing –01/07/2024

Date of Order – 01/07/2024

ORDER

PER NARENDRA KUMAR BILLAIYA, A.M.

This appeal by the assessee is preferred against the order dated 19/01/2024 by National Faceless Appeal Centre, Delhi pertaining to A.Y.2017-18.

2. The solitatory grievance of the assessee is that the learned CIT(A) erred in confirming the addition of Rs.24,34,500/- being the difference between Stamp Duty Valuation (SDV) and purchase consideration.

3. Briefly stated the facts of the case are that the return of income of the assessee was selected for scrutiny assessment through CASS on the information that during the year under consideration the assessee has purchased immovable property of Rs.81,00,000/- whereas the stamp duty paid was of Rs.1,29,69,000/-. The notice u/s 142(1) of the Act was issued to the assessee who was asked to explain the difference amount of Rs.48.69 lakhs in the stamp duty valuation and the purchase consideration and why the same should not be taken as income from other sources u/s 56(2)(vii)(b) of the Act. On receiving no plausible reply, and on finding that the said property was purchased by the assessee jointly with his wife and the share of the assessee being 50%, the AO made the addition of Rs.24,34,500/- being 50% of the impugned difference.

4. The assessee agitated before the learned CIT(A) but without any success. The contention of the assessee was that the matter should have been referred to the DVO. The learned CIT(A) did not accept this contention of the assessee as the request for the reference to the DVO was never made before the AO. Though, the request was made before the learned CIT(A) but the CIT(A) did not refer the matter to the DVO but confirmed the assessment. Before us, the counsel for the assessee pointed out that the matter was referred to the DVO in the case of wife of the assessee but since the assessment was getting barred by limitation, the AO did not wait for the report and made the impugned addition.

5. After giving thoughtful consideration to the orders of the authorities below, we are of the considered view that once the matter has been referred to

the DVO even if it is in the case of the wife of the assessee and the impugned property is common, therefore, the AO should adopt the DVO report after confronting the same to the assessee. Therefore, we deem it fit to restore the entire issue to the file of the AO. The AO is directed to consider the report of the DVO and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee. And after confronting the report of the DVO.

6. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01/07/2024

Sd/-
RAHUL CHAUDHARY
JUDICIAL MEMBER

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

MUMBAI, DATED: 01/07/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar
ITAT, Mumbai