

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

BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.2669/Mum/2024  
(Assessment Year: 2018-19)

<b>Anwar M. Shaikh</b> 1601, Cosmic Height, Sector IV, Bhakti Park, Wadala (East), Mumbai-400 031 <b>PAN: ANQPS2594G</b>	vs	<b>Dy.Commissioner of Income-tax,</b> <b>Circle-20(1), Mumbai</b> Piramal Chamber, Lalbaug
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Prakash Jhunjunwala  
Respondent by : Shri Manoj Kumar Sinha (SRDR)  
  
Date of hearing : 15/07/2024  
Date of pronouncement : 01/ 08/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, date of order 12.04.2024. The impugned order was emanated from the order of the Learned National Faceless Assessment Centre (in short, 'the A.O.') passed under section 143(3) read with section 144B of the Act, date of order 27/09/2021.

2. The assessee has taken the following grounds of appeal:-

*“The appellant prefers an appeal against an appeal order passed by Ld. Commissioner Of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi dated 12/04/2024 on following grounds each of which are without to any other :-*

*On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.56(2)(x) of Rs. 1,66,99,0007-, on considering the value of property as on date of registration dated 28/04/2017, on ignoring the Proviso to Sec.56(2)(x), wherein the value as on date of agreement viz. 28/10/2016 is to be considered for determining the value of the property;*

*2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the addition u/s 56(2)(x) of Rs.1,66,99,000/- on merely adopting the value of the property determined by the District Valuation officer (DVO). without considering the errors and variation in facts;*

*3.0 The Ld. CM (A), before confirming the addition u/s.56(2)(x) of Rs. 1.66.99.000 of difference in agreement value of the property vis-a-vis value determined by DVO, erred in not considering the understated vital facts, being;*

*a) The property was under serious litigation, mortgaged with financial institution and subject to auction and the appellant had acquired the property under distress sale as per consent terms approved by Hon'ble High Court of Bombay;*

*b) The report of the district valuation officer (DVO) comprises of various errors subject to modification.*

*c) The property has locational disadvantages, since situated in lower basement of the building with no access to light, water and basic amenities.*

*The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing.”*

2. The brief facts of the case are that the assessee is individual capacity filed the return and is engaged in investment in properties. Return of income for A.Y. 2018-19 was filed on 28/08/2018 by declaring the total income of Rs.30,64,860/-. The case of the assessee was selected for 'complete scrutiny' assessment under the E-assessment Scheme, 2019 on the issue of –

(a) Investment in immovable properties; and

(b) Capital gains / Income from sale of property.

Accordingly, notice u/s 143(2) of the Act was issued by the Id. AO on dated 22.09.2019. In response to the same, the assessee filed submission on various dates. It was observed from the submission of the assessee that an immovable property was purchased by the assessee during F.Y. 2017-18 relevant to the A.Y. 2018-19 at a consideration amount of Rs.6,50,00,000/- which was registered on 28.04.2017 but the market value as per Stamp Duty Authorities (in short SDA) on the said property was Rs.13,83,34,000/-. During the course of assessment proceedings, the difference in purchase consideration and value of SDA was asked for contravening Section 56(2)(x) of the Act. In response to the same, the assessee has objected to the application u/s 56(2)(x) of the Act on the said difference and also requested the Id. AO to make reference to the DVO. Accordingly, the Id. AO has made a reference to the Valuation Officer on 25.02.2021. In the meantime, the Id. AO has passed the assessment order by adopting the value as determined by SDA, subject to the receipt of valuation report from the Valuation Officer. Accordingly, an addition of Rs.7,33,34,000/- [Rs.1388,34,000/- (-) Rs.6,50,00,000/] was made to the total income of the assessee under the head 'Income from Other Sources'. Subsequent to the receipt of valuation report from the DVO, a

rectification order u/s 154 was passed by the Id. AO by taking Fair Market Value of the said property as per Valuation Report dated 20.12.2021 amount to Rs.8,16,99,000/- and made an addition of Rs.1,66,99,000/- [Rs.8,16,99,000/- (-) Rs.6,50,00,000/-] to the total income of the assessee under the head 'Income from Other Sources'. The aggrieved assessee filed an appeal before the Id. CIT(A) and the Id.CIT(A) partly allowed the appeal by upholding the addition of Rs.1,66,99,000/- made in the order passed U/s 154 of the Act. Further, being aggrieved on appeal order, the assessee filed the appeal before us.

3. The Ld.AR submitted written submission which is kept in the record (in short APB). The Ld.AR pressed that the addition was made for difference of value by DVO amount to Rs.8,16,99,000/- and the value adopted by the assessee during the time of purchase of property amount to Rs.6,50,00,000/-. The Ld.AR placed that the property itself is a disputed property and the relevant part of the correspondence and the order of the Hon'ble High Court of Judicature at Bombay bearing Commercial Suit No.268 of 2016, date of order 28/04/2017 is annexed in APB pages 9 to 16. The Ld.AR argued that the reason for lower purchase value is due to the property itself a disputed property and the litigation was continuing. The Ld.AR further mentioned that the DVO has made the wrong valuation without considering the proper area of the property. The assessee placed the documents where the property is situated in lower ground floor (Basement 1) towards 90 feet roadside measuring 185 sq.mtr., carpet area and storage 458 sq.mtr (carpet) area with twenty adjacent car parking on the lower ground floor which was allowed to purchaser (APB page 46). But in the valuation report, the DVO has mentioned 20 car parking and the shop No. LG-18, lower ground floor (Basement-

1) area 771.7 sq.mtr. and considering the area and car parking, the total valuation was Rs.8,16,99,239/-. The Ld.AR in argument placed that considering the storage and the shop, the total area is 643 sq.mtr whereas the DVO has taken 771.7 sq.mtr, so the error occurred in the valuation and accordingly, the valuation is higher than the assessee's set forth value.

4. The Ld.AR relied on the order of Hon'ble **High Court of Delhi** in the case of **CIT vs Lahsa Construction (2014) 42 taxmann.com 549 (Del)** held –

*“8. Whether an addition can be made solely and on the basis of the report of the Departmental Valuation Officer, is no longer res integra and is covered by the decision of this court in CIT v. S.K. Construction Co. [2008] 167 Taxman 171, CIT v.Navin Gera [2010] 328 ITR 516 / [2011] 198 Taxman 93 (Delhi), CIT v.Smt. Suraj Devi [2010] 328 ITR 604 / [2011] 197 Taxman 173 (Delhi)(Mag.), and CIT v. Bajrang Lalal Bansal [2011] 335 ITR 572 / 200 Taxman 188 (Mag.)/12 taxmann.com 88 (Delhi). It has been repeatedly held that addition cannot be justified solely relying upon the valuation report. Decision of the Supreme Court in the case of K.P. Varghese v. ITO [1981] 131 ITR 597 / 7 Taxman 13 has been followed.”*

Hon'ble **High Court of Madras** in the caser of **CIT, Chennai vs VummudiAmarendran (2020) 120 Taxman 171 (Madras)**, held as under: -

*“12. The Hon'ble Supreme Court in Kolkata Export Company took note of the earlier decisions on the same issue in the case of Allied Motors Private Limited Vs. CIT [1997 (224) ITR 677 (SC)], Whirlpool of India Limited Vs. CIT, New Delhi [2000 (245) ITR 3], CIT Vs. Amrid Banaspati Company Limited [2002 (255) ITR 114] and CIT vs. Alom Enterprises [2009 (319) ITR 306] and held that the new proviso should be given retrospective effect from the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious*

*omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. Thus by taking note of the above decisions, we have no hesitation to hold that the proviso to Section 50C(1) of <http://www.judis.nic.in> in the Act should be taken to be retrospective from the date when the proviso exists. The CIT(A) while allowing the assessee's appeal vide order dated 25.07.2019, took note of the submissions made by the assessee wherein they placed reliance on the decision of the Ahmadabad Bench of the Tribunal in the case of Dharamshi bhai Sonani Vs. ACIT [2016 75 taxmann.com 141 (Ahmedabad- Trib)]; order of the Delhi Bench of the ITAT in the case of Income Tax officer Vs. Modipon Limited [2015 (57) taxmann.com 360 (Delhi Tribunal)]."*

5. The Ld.DR argued and placed that the DVO's order is a final fact-finding authority related to valuation of the property. The Ld.DR relied on the appeal order. The relevant paragraphs are reproduced as below:-

*"4.6 The above submission of the appellant has been considered and it is observed from the valuation report of DVO dated 20.12.2021 that, DVO has considered of the documents submitted by the appellant during the process of the valuation with reference to all pending litigations on the said property. The details of the document submitted by the appellant have been mentioned in para no. 1.4 (page 3 of the valuation report). The details of the document submitted by the appellant, which was considered by the DVO as per valuation report is reproduced as under for better clarity:*

"1.4 Details / documents submitted by the assessee: The assessee has submitted the following documents vide letter dated 10.03.2021:

- Purchase agreement dated 28.04.2017.
- Copy of Lower Ground Floor (Basement-1) plan.
- Copy of booking memo 28.10.2016 when the property was under litigation.
- Copy of occupation certificate.

- Letter of Vistara ITCL dated 28.04.2017 for the consent for sale and entering into agreement to sale as per the condition given by the Hon. High Court order • dated 28.04.2017.
- Copy of various orders given by the Hon. High Court of Jurisdiction at Mumbai issued by Hon. Judge S. J. Kathawalla dated 05.12.2016, 14.12.2016, 20.12.2016 and 28.04.2017.
- Copy of partial order of Hon. High Court of Jurisdiction at Mumbai commercial suit no. 268 of 2016 issued by Hon. Judge S.J. Kathawalla dated 28.04.2017.
- Copy of written submission filed before Hon. High Court by Mighty Construction Pvt. Ltd. on 17.04.2017.
- Petition filed before Hon. High Court by the petitioner against Mighty Construction Pvt. Ltd. for recovery of principal amount of Rs.45 Crores plus interest."

*4.7 In view of the above, it is clear that, the DVO has considered the submission of those documents and the pending litigation related to the said property and finally arrived the valuation by way of reducing the substantial value determined by the Stamp Duty Authorities to the extent of Rs.5,71,35,000/-. Accordingly, I am of the considered opinion that, the DVO has considered all the submission of the appellant with reference to pending litigation on the said property while making valuation. Hence, the submission of the appellant, in this regard, is not acceptable.*

*4.8 In this regard, the reliance is also placed on the decision of Hon. ITAT Delhi Bench in the case of Ms. Sudha Garg (vs.) /TO, Ward - 2(3), Ghaziabad pronounced in ITA No. 141/DEU2018 A.Y. 2009-10 dated 14.08.2018, wherein the similar issues have been dealt and the relevant portion of the said decision is reproduced as below:*

*"However, if the assesses claims before the Assessing Officer that the value adopted or assessed by the Stamp Valuation Authority exceeds the fair market value of the property as on the date of the transfer then the Ld. Assessing Officer may refer the valuation of the capital asset to the valuation officer. Further, where the valuation ascertained by the district valuation officer exceeds the value adopted or assessed by the stamp valuation authority then the valuation of the stamp duty authorities shall be considered as a deemed sale consideration.*

*Further, when the stamp duty value adopted by the stamp duty authorities is more than the fair market value determined by the Department of valuation*

*officer, then such valuation made by the departmental valuation officer is taken as the MI value of consideration. "*

*4.9 In view of the above, since, the value determined by the DVO as per the valuation report has been already considered by the Assessing Officer and passed a rectification order u/s 154 of the Act vide dated 28.04.2023. Accordingly, the addition of Rs.7,33,34,000/- which was made in the original assessment order passed u/s 143(3) of the Act vide dated 27.09.2021 was re-computed and revised as Rs.1,66,99,000/-, the other grounds of appeal no. 1, 2 & 4 are not allowed and hereby dismissed.*

5. *In the end result, the appeal of the appellant is hereby **partly allowed.**"*

5.1. The Id. DR further relied on the order of the Coordinate bench of ITAT-Mumbai in the case of **Arif Akhtar Hussain v. ITO 12(2)(1) (2011) 9 taxmann.com 90 (Mumbai)**. Held where further since DVO had already taken into account all aspects while making valuation of property and assessee had participated in proceedings before DVO accordingly, there was no error or illegality in valuation made by the DVO which was much less to valuation made by Stamp Valuation Authority.

6. We heard the rival submission and considered the documents available in the record. Considering the above discussion, the difference between set forth value and value adopted by the DVO amount to Rs.1,66,99,000/-. The difference is exactly 25% higher than the set forth value of the assessee. The two conditions are not considered by the DVO in the valuation report. The property itself litigated property and error in measurement 771.7 sq mtr instead of 643 sq mtr. The report of DVO is no more res integra as covered by the order of the case **Lahsa Construction**(supra). The report of DVO itself erroneous. We respectfully relied on the order of the **Vummudi Amarendran**(supra). The Id. DR was not able

to bring any contrary fact against the submission of the Id. AR. The case relied upon by the Id. DR is distinguishable. So, the set forth value of the assessee amount to Rs. 6.50 crore is accepted. The addition U/s 56 (2)(x) of the Act amounts to Rs. 1,66,99,000/- is quashed.

7. In the result, the appeal of the assessee in **ITA No.2669/Mum/2024** is allowed.

Order pronounced in the open court on 01<sup>st</sup> day of August, 2024.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 01/08/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai