

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3826/M/2023
Assessment Year: 2014-15**

Shri Subhash N Jain, 722, Bldg. No.2, Akshay Girikunj, Paliram Road, Andheri (W), Mumbai, Maharashtra-400 058 PAN: AAEPJ3069L	Vs.	Income Tax Officer-Ward 25(1)(3), 4 th Floor, Building-C-10, Room No.404, Pratyaksh Kar Bhavan, Bandra Kurla Complex, Mumbai, Maharashtra – 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jose Pulikkoden, A.R.
Revenue by : Smt. Sujatha P. Iyengar, Sr. A.R.

Date of Hearing : 05 . 09 .2024
Date of Pronouncement : 16 . 09. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 20.09.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 r.w.s. 254 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15.

2. In the instant case the case of the Assessee was selected for scrutiny mainly for the reason "large investment in property". It

was observed by the Assessing Officer (AO) that during the year under consideration the Assessee has purchased a land/plot jointly along with Mr. Nutan Pravin Karnavat on 19.12.2013 for a consideration of Rs.58,00,000/- however, the market value of the same was Rs.1,17,00,000/- and therefore the Assessee vide noting dated 21.11.2016 was show caused as to why the difference of purchase cost and market value be not treated as income from other sources u/s 56(2)(vii)(b)(ii) of the Act. The Assessee on 21.11.2016 objected to the show cause and requested the AO to refer the matter to the valuation cell for valuation. Accordingly, the AO on 21.11.2016 referred the matter to the Valuation Officer for valuation purpose. However, the report of the departmental Valuation Officer has not been received by the AO till the date of passing the impugned order on 28.12.2016 and from the information gathered from the office of valuation cell, it was revealed that the valuation report would be available somewhere in the January 2017. The AO therefore finding no alternative but to complete the assessment on the basis of material available, ultimately framed the assessment by observing *"that the Assessee has purchased jointly the property under consideration along with Mr. Nutan Pravin Karnavat, whereby both of them have paid Rs.29,00,000/- each so that the tax implication in the case of Assessee is 50%"*, added the amount of Rs.29,50,000/- (market value at Rs.58,50,000/- - cost of property as paid by the Assessee at Rs.29,00,000/-). The AO highlighting also recorded in the assessment order that without prejudice what is held in above para, since the property has been referred to the valuation officer for ascertaining market value, the income of the Assessee in the above head, may be rectified after obtaining the valuation report of the Departmental Valuer.

3. The Assessee, being aggrieved, challenged the aforesaid addition before the Ld. Commissioner. During the appellate proceedings before the Ld. Commissioner, the DVO filed the Valuation Report dated 27.09.2017 of the property under consideration, whereby the value was determined at Rs.87,08,000/- . The Assessee before the Ld. Commissioner claimed that he has made the distress sale and thus price paid was on the lower side. The land was in no development zone and it was on a hill slope and accessing the property was difficult.

The Ld. Commissioner though considered the contentions of the Assessee, however, observed that the Assessee has not filed any concrete reason for not accepting the DVO's report nor filed any evidence against his claim and now since fair valuation as per DVO is available and the same may be considered as yardstick to determine the fair market value of the underlined plot. The Ld. Commissioner ultimately on the basis of DVO's report wherein fair market value was determined at Rs.87,08,000/-, accordingly directed the AO to restrict the addition considering 50% of the share of the Assessee.

4. The Assessee, being aggrieved, is in appeal before us and submitted that during the appeal proceedings before the Ld. Commissioner he has submitted two submissions which were made a part of the paper book as submitted to the Hon'ble Tribunal on 10.04.2024. The submission dated 10.08.2023 contained a detailed submission filed before the Ld. Commissioner citing the impediments on the said property and the reasons for a reduced potential that was adversely impacting the market value of the alleged property under consideration. The Assessee had also submitted concrete reasons for not accepting the DVO's report in

the form of documentary evidence being a valuation report of a Government Approved Valuer M/s. Mitti Mitra Consultants, who had valued an adjacent property during the same period, however, the same was not considered while adjudicating upon the appeal of the Assessee. Further looking into the complexity of the matter involved the Assessee had specifically sought a video conferencing facility before the matter was decided, to explain the facts orally to the Ld. Commissioner, however, the mandatory facility provided under rule 12 of "the faceless appeal scheme, 2021" was not acceded to, resulting into a miscarriage of justice. Hence, the appeal of the Assessee may be accepted and the assessment order may be quashed.

5. On the contrary the Ld. D.R. refuted the claim of the Assessee.

6. We have given thoughtful considerations to the peculiar facts and circumstances of the case. Admittedly, the submissions made by the Assessee before the Ld. Commissioner though have been reproduced in the impugned order, however, nothing appears from the impugned order whether the same were considered or not. Considering the peculiar facts and circumstances in totality, in our considered view justice would be met by giving one opportunity to the Assessee to substantiate his claim again before the Ld. Commissioner by producing the relevant submissions and documents in support of his claim. Consequently, for the ends of substantial justice and just decision of the case, the case is remanded to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity to the Assessee to substantiate his claim.

7. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 16.09.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.