

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.887/M/2024  
Assessment Year: 2018-19**

<b>Shri Vivek Kumar Agrawal,</b> 3A 703, Om Elegance, Chincholi, Malad West, Mumbai – 400 064 Maharashtra <b>PAN: ACVPA7200P</b>	Vs.	<b>Income Tax Officer,</b> Ward-16(3)(1), Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400 020 Maharashtra
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vivek Agrawal, A.R.  
Revenue by : Shri R.R. Makwana, Sr. D.R.

Date of Hearing : 22 . 08 .2024  
Date of Pronouncement : 17.09.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 28.12.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2018-19.

**2.** In the instant case, the Assessing Officer (AO) vide assessment order dated 19.04.2021 has made the addition of Rs.7,58,039/- on account of difference between the amount of consideration for purchase of immovable property shown by the Assessee to the tune of Rs.18,00,000/- as against the DLC value taken by the Sub Registrar for the purpose of stamp duty to the tune of Rs.25,80,039/- and treated the

said differential amount being income from other sources u/s 56(2)(vii)(b) of the Act.

**3.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and claimed that the property purchased by the Assessee is located in basement, where almost all the shops are completely vacant for the last 17 years. OC of the property was not received by the mall at the time of purchase of property by the Assessee whereas the same was ready and vacant for the last 10-15 years but somehow the mall has received only part OC due to which further disputable reasons for selling or purchasing the shops are arisen. During rainy season there is a problem of water logging in the basement where the property of the Assessee is situated hence no one is interested in buying the property. The seller even was trying to sell it for the last 10 years but could not fetch the rate prevailing in the market, hence in distress he sold the property which was far below the ready reckoner rate. Further the shop size is also very small and is located in basement in deep corner, which is not even easily visible to the people and also mobile network is not available at the shop. The Assessee further stated that during the assessment proceedings the Assessee's wife was tested covid positive and the Assessee was also quarantined till 15.02.2021 by the local authorities. Even the son of Assessee's brother-in-law was diagnosed with cancer and he was staying at the Assessee's house for treatment and also tested positive, therefore the Assessee remained quite busy attending to the medical needs of his family and could not attend to his own case before the AO. The Assessee had made a request to the AO for appointment of an independent valuer to get the valuation report of the property, but the same was ignored by the AO which led to the addition of Rs.7,58,039/- by invoking the provisions of section 56(2)(vii)(b) of the Act. The Assessee further claimed that before the Ld. Commissioner he also placed a copy of index-2 of one similar property situated in the same mall in order to prove the genuineness of his claim. The Ld. Commissioner

though considered and reproduced the contention of the Assessee in the impugned order, however rejected the claim of the Assessee to the effect that the Assessee had requested to the AO for independent valuation of the property, by observing *that this fact is not mentioned in the assessment order. Further, the Assessee has submitted a copy of valuation of similar property to prove his case for valuation, however, this does not prove that the property of the Assessee is also of the lower value. Sale value of the property also depends on the location and direction of the property*" and ultimately affirmed the aforesaid addition by holding that there is no irregularity in the addition made by the AO. The Assessee being aggrieved is in appeal before us.

**3.** We have given thoughtful considerations to the peculiar facts and circumstances of the case and are of the considered view that once the Assessee has raised the issue qua valuation of the property and/or challenged the value taken by the AO and/or requested the AO for appointing of the DVO then it become essential to determine the value of the property through DVO for consideration of the claim of the Assessee. Hence, without going into the controversy as raised by the Ld. Commissioner to the effect that the Assessee has not requested to the AO for independent valuation of the property, we, for the just decision of the case and substantial justice, are inclined to remand the instant case to the file of the JAO for consideration of the claim of the Assessee and/or referring the valuation of the property to the DVO and on receiving report, recompute the liability accordingly, suffice to say by affording reasonable opportunity of being heard to the Assessee.

The Assessee has also prayed before us that he intends to avail the benefits of the Vivad Se Vishwas Scheme (VSVS) recently proposed in the Financial Bill No.2(2024) which is yet to be notified. Thus, the liberty is granted to the Assessee to avail the benefit of the VSVS 2024 during the appellate proceedings before the Id. Commissioner, if he desires so.

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

**Order pronounced in the open court on 17.09.2024.**

**Sd/-  
(OMKARESHWAR CHIDARA)  
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.