



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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRISUNIL KUMAR SINGH, JM

ITA No.741 /MUM/2024
Mrs. Indu Pankaj Dhandharia,
(Legal heir of Mr. Pankaj
Dhandharia)
C-4302/4402, Lodha Bellissimo,
NM Joshi Marg,
Mumbai.

A.Y.2017-18
ACIT-22(1),
Mumbai.
Vs.

(Appellant)

(Respondent)

PAN

AAMPD 4577F

Assessee by

Shri Rajan Vora a/w

Shri Nikhil Tiwari

Revenue by

Shri H.M. Bhatt,
Senior (DR),

Date of hearing
Date of pronouncement

10th September, 2024
15th October, 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Late Shri Pankaj Dhandharia (assessee/appellant) for assessment year 2017 – 18 against the appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) on 7/2/2024 wherein the appeal filed by the assessee against the reassessment order passed under section 147 read with section 144B of The Income Tax Act, 1961



(The Act) on 6/11/2023 by the National Faceless Assessment Centre (the learned AO) dated 6/11/2023, was dismissed.

2. The assessee is aggrieved with the same and is in appeal before us raising following grounds.

1. On the facts and circumstances of the case the Appellant craves leave to prefer an appeal against the order under section 250 of the Act dated 7 February 2024, passed by the Commissioner of Income-Tax (Appeals) National Faceless Appeal Centre [the learned CIT(A)] in relation to the appeal filed against order under section 147 read with 144B of the Act dated & November 2023 passed by The Faceless Assessment Centre (the learned AO) on the following grounds, each of which is without prejudice to and independent of the others

2. On the facts and in circumstances of the case and in law the learned CIT(A)/learned Assessing Officer:

General

1. erred in computing the total income of the Appellant at Rs 5,53,44,602 as against the returned income of Rs.57,55,640;



Failure to provide opportunity of being heard through video conference hearing.

- 2 Failed to grant the Appellant an opportunity of being heard through video-conference hearing in spite of the Appellant requesting the same and thereby, violating the principal of natural justice.

Arguments on merits.

- 3 erred in confirming the addition made under section 50(2)(vi) of the Act amounting to Rs 4,96,31,000
4. erred is not appreciating that the entire purchase consideration has been discharged through banking channels and therefore provisions of section 56(2)(vii) of the Act being anti-abuse provisions, cannot be invoked in absence of any mala-ide intent
5. erred in not appreciating that the learned AO failed to appreciate that the purchase price of the impugned property was significantly lower than the circle ready reckoner rates due to construction of another building in front of the property in dispute, blocking as racecourse and sea view as well as affecting the ventilation.



6. amend in not considering the sale consideration paid for duplex C-4101/ C-4202 in the year 2021 without appreciating that is exact comparable transaction with the Appellants transaction (same area, flat type, same building and just below Appellant's flat) and therefore the same should be taken as benchmark for arming at market value of the property:
- 7 without prejudice to the above, failed to appreciate that the learned AO relied on the letter of the Distinct Valuation Officer (DVO) dated 22 September 2023 which had merely relied upon the valuation report dated 5 May 2022 in case of the seller i.e. M/s. Aegis Realtors and Developers Private Limited which suffers from various fallacies, which were pointed out and without independently getting a fresh valuation report and without giving any opportunity of being the and as required under section 142A of the Act.
8. without prejudice to the above, failed to appreciate that the learned AO ought to have appreciated that the valuation report of the District Valuation Officer (DVO) dated 5 May 2022 m case of the seller valued the property inclusive of the improvements made by the Appellant instead on a bare-shell basis which was the state in which the Appellant took possession during the year under consideration and thereby, the same is not comparable;



9. without prejudice to the above, erred in not appreciating that if the cost of improvement is added to the cost of the impugned property or is reduced from the stamp duty value within the +/-10% as per section 500 of the Act and therefore, no addition is warranted:

Notice under section 148 of the Act issued manually in contravention of Circular No. 19/2018 dated 14 August 2018 vitiates the entire proceedings.

- 10 failed to appreciate that the notice under section 148 of the Act dated 28 July 2022 has been manually issued which is in contravention of Circular No. 10/ 2010 dated 14 August 2019 thereby rendering the impugned order non-est and vitiating the entire re-assessment proceedings.

Invalidity of proceedings under section 147 of the Act

- 11 erred in re-opening the assessment proceedings under section 147 of the Act without appreciating that the information relied upon has no linkage with the Appellant and without any tangible material and thereby the proceedings are invalid and bad too.
- 12 erred in not taking approval of the Principal Chief Commissioner or the Chief Commissioner or the



Principal Director General or the Director General prior to issuance of notice under section 148 of the Act as contained in section 151) of the Act of more than three years have elapsed from the end of the relevant assessment year, whereas the learned AO had taken sanction under section 151) of the Act and hence for want of correct sanction, the entire assessment proceedings should be quashed,

13. erred re-opening the assessment proceedings without appreciating that proceedings are invalid and bad in law in the absence of "information" which suggests that the income chargeable to tax has escaped assessment:
14. ought to have appreciated that, basis Ashish Agarwal (444 ITR 1). Supreme Court has deemed notice issued under section 148 of the Act (under old law) as notice under section 148A(b) of the Act (under new law) and thereby time limit to complete re-assessment under section 153(2) of the Act would be computed from end of the year in which the notice under section 148 of the Act (under old law) is saved, thereby making the impugned order dated November 2023 barred by limitation and accordingly, invalid and bad in law.
15. failed to appreciate that the re-opening proceedings initiated by issue of notice under section 145 of the Act dated 30 June 2021 and which was treated under new



regime by officer post supreme court ruling in case of Ashish Agarwal (444 ITR 1), was dropped on 17 January 2023 and thereby, entire re-assessment proceedings which was on the basis of the notice dated 30 June 2021 is able to be quashed:

Levy of interest under section 234B-Rs 1,43,00,240.

- 10 erred in levying amounting to Rs 1,43,00,240 under section 234B of the Act.
3. Unfortunately, during the pendency of this appeal form number 36 was revised and legal heir of the appellant Mrs. Indu Pankaj Dhandharia , wife, was stated to be an appellant because of the demise of the assessee.
 4. Brief facts of the case shows that assessee is an individual who filed his return of income on 27 October 2017 at the total income of Rs. 5,755,640/-. This return was processed under section 143 (1) of the act and subsequently picked up for scrutiny under the limited scrutiny. The assessee was asked to submit the details of the properties held by him along with other details pertaining to incomes earned by the assessee during the period. The return of income was examined and subsequently assessment under section 143 (3) was passed on 9 December 2019 at the returned income.
 5. Subsequently the assessee was issued a notice under section 148 of the income tax act on 30/6/2021 for the reason that as per the information available on insight portal that assessee has

purchased a duplex property being flat number C4302/4402, 43rd and 44th floor, C Wing, Lodha Bellissimo, Lodha Bellissimo cooperative housing society Ltd, MM Joshi Marg, Apollo Mill compound, Mahalaxmi, Mumbai – 11 for Rs. 130,500,000/- from Agies Realtors and developers private limited [Seller] on 23 June 2016. Assessee paid a further sum of Rs. 9,006,600 as Stamp duty and Rs. 30,000 as registration fees. However, the stamp duty value of the above property was Rs. 180,131,000/-. Therefore, the provisions of section 50C, 56 (2) (viiia) (b)/43CA applies.

6. Subsequently the honourable Supreme Court decided the issue in 444 ITR 1 [Ashish Agarwal's case] pursuant to which assessee received a notice under section 148A (b) of the act on 19/05/2022 which was responded to by the assessee on 7/6/2022 . Assessee raised the contention that this issue has already been considered in assessment proceedings under section 143 (3) of the act. Subsequently notice under section 148 was issued on 28/7/2022 and further in order under section 148A (d) was issued on 28 July 2022.
7. Assessee responded by filing the return of income on 23 August 2022 and also a reply on the same date raising additional objections. Assessee was issued a notice under section 143 (2) on 8 January 2023 and further notice under section 142 (1) on 11/1/2023. Subsequently the assessee was issued a show cause notice on 9/05/2023 that why the addition should not be made of Rs. 49,631,000/- in the hands of the assessee under section 56 (2) (viiia) (b) of the act. The assessee responded on 15/5/2023 reiterating his earlier submission as well as the additional submission also raising an issue about the period of limitation. The hearing was also granted to the assessee.



8. Assessee during the course of hearing submitted on 22/05/2023 that the matter may be referred to the departmental valuation officer which was duly ascended to by the learned assessing officer and made a reference on 31 May 2023. Subsequently assessee received a notice on 26/9/2023 wherein it was informed that the departmental valuation officer has stated as per letter dated 10 August 2023 that the valuation report in case of seller Agies Realtors have already been referred by learning assessing officer of the seller and valuation report was already made on 23 June 2016 wherein the valuation of the impugned property was made at Rs. 195,050,452/- and therefore there is no reason to revalue property. Therefore, based on this, the assessee was issued further notice on 23/6/2016 stating that why the addition of Rs. 64,550,452 being the difference between the value arrived at by the district valuation officer as well as the agreed consideration should not be made against the original addition proposed of Rs. 49,631,000.
9. Assessee once again submitted his response on 10th/10/2023 and also submitted his objections to the report of the departmental valuation officer's report. The assessee objected to the methodology, timing, sale instances, ignoring the material facts in the valuation of property.
10. However, the assessing officer passed an assessment order under section 147 read with section 144B of the act on 6/11/2023 making an addition of Rs. 49,631,000/- under section 56 (2) (viiia) of the act.
11. Assessee aggrieved with the assessment order preferred an appeal before the learned CIT – A.
 - i. Assessee objected that the original notice issued under section 148 of the act on 28 July 2022 did



not mention the document identification number, this ground was dismissed holding that the learned CIT does not want to deal with this ground of the appeal as same is pending before the honourable Supreme Court.

- ii. The ground number 3 – 7 of the appeal before him was with respect to the reopening of the assessment challenging the same on the basis of mere change in the opinion and absence of live link of the material received with respect to the escapement of income, the learned CIT – A held that according to the assessing Officer the reopening was based on the information available as there was a difference between the stamp duty valuation and sale consideration of the property which was taxable under section 56 (2) (viiia) of the act and thus income had escaped the assessment. Further the assessee has neither submitted before the assessing officer nor before him that the stamp duty value taken by the assessing officer is incorrect. Accordingly, the reopening was held to be valid.
- iii. With respect to ground number 8 – 13 on the merits of the addition under section 56 (2) of ₹ 49,631,000/-, the learned CIT – A held that the property has been verified by the learned district valuation officer and notice under section 148A (d) of the act was issued on 28/7/2022 with prior approval of the principal Commissioner of income tax. The assessee was provided the opportunity



and the information and same are disposed of by speaking order. The reference was made by the assessee officer to the learned district valuation officer who held that the property was valued at ₹ 195,050,452 as per the report in case of the seller. The objection of the assessee with respect to the valuation was also dealt with thus the learned district valuation officer has taken the value of the above property at the time of sale which has been done in favour of the appellant assessee that he has taken the value as per the location, situation, size etc. which is very much correct in the eyes of the appellate authority. Therefore, no infirmity can be found in that report.

- iv. Further the objection of the assessee that valuation report of the DVO was on the basis of the inspection done in May 2022 where the flat was fully furnished with substantial expenditure incurred, the learned CIT – A held that the flat is fully furnished is nowhere mentioned in the report of the DVO who has stated that fitting and doors of the flat are of good quality. Therefore, it does not mean that the flat under consideration was fully furnished flat and this objection of the assessee is not tenable. Accordingly the learned CIT – A held that assessing officer was fair in invoking the provisions of section 56 (2) of the act and made an addition of ₹ 49,631,000 by taking the difference between the stamp duty valuation and the sale consideration in accordance with the provisions of section 50C (3) of



the act and not taking the report of the DVO as the basis of the valuation wherein the property is valued at ₹ 195,050,000/-.

12. Accordingly, he dismissed all those grounds. Thus, as per the appellate order dated 7/2/2024 the appeal of the assessee was dismissed.
13. Assessee aggrieved with the same is in appeal before us. Wherein assessee has raised several grounds of appeal on the reopening of the assessment and on the merits of the addition.
14. Ground number 16 is with respect to the levy of interest under section 234B of the act, which is consequential in nature, no arguments are advanced, therefore same is dismissed. Similarly ground number 17 of the appeal is with respect to the initiation of penalty proceedings under section 270A of the act, which is premature, does not require any adjudication at this stage, and in absence of any argument, same is dismissed.
15. This leaves us with the two substantive issues of reopening of the assessment and addition on the merits of the case.
16. The learned authorized representative submitted a paper book containing 718 pages as factual paper book and further filed a legal paper book relying on several judicial precedents from pages 719 to 919.
17. The learned authorized representative first submitted the facts of the case that assessee has purchased a property at a total consideration of Rs. 130,500,000, the stamp duty valuation of the property is Rs. 180,131,000, thus there is a difference in the valuation of the property and the agreed consideration is Rs. 49,631,000/-. The assessee purchased this property from ages Realtors private limited, in the case of the seller, this property was referred to the valuation cell for the purpose of



determination of the fair market value of consideration. The learned district valuation officer valued the property in case of seller at Rs. 195,050,452/-. Thus, the only valuation that has been made is the valuation of the property from the perspective of the seller of transacted property where assessee is a buyer. Assessee does not know anything about the valuation mechanism and the factual aspect discussed with DVO by the seller. During the course of reassessment proceedings, assessee objected about the valuation as per the stamp duty authorities and also the valuation report of the DVO. Though the assessee referred the matter to the DVO, he refused to value the property once again stating that when the property is already valued ones in case of the seller, there is no requirement of valuing the property once again. Therefore, the valuation report made by the district valuation officer in case of a seller where the value of the property was determined at Rs. 195,050,452/- was considered as the report of the DVO in case of the assessee, buyer. As the valuation report of the DVO has valued the property higher than the stamp duty rate, the learned that AO took the stamp duty rate and the agreed consideration, difference of those two values was considered for the addition under section 56 (2) (via) of the act. He submitted that the seller has also submitted a valuation report of the registered valuer wherein the property was valued at Rs. 130,694,000. Therefore, his first objection is that if the property has not been referred to the valuation cell at the request of the assessee which is a mandatory condition, the addition itself deserves to be deleted on this count. The thought of judicial precedents were also cited wherein a view has been taken that when the assessee objects the adoption of the stamp duty rate



as deemed sale consideration and valuation report of DVO is not obtained, the addition is deleted.

18. The learned authorized representative submitted that entire consideration for acquisition of the property by the assessee is based on the prevailing market rates ,has been discharged entirely through banking channels. He further stated that the assessee has purchased the property by obtaining the loan and the details of loan agreements are placed at page number 230 – 130 of the paper books. It was further stated that the property was purchased by the assessee for a consideration of Rs. 13,05,00,000 from ages Realtors and developers private limited. Rs. 9,006,600 and Rs. 30,000 were paid a stamp duty and registration fees. The reopening of the assessment was for the reason that there is a difference between the consideration and the stamp duty value of the property which was Rs. 180,131,000/-. He submits that the seller of the property ages Realtors and developers private limited has obtained the valuation report from the government approved valuer at the time of the sale which shows that the value of the property is Rs. 130,694,000 at the time of the sale. He referred to the valuation report of the registered valuer placed at page number 239 – 250 of the paper books. Thus his argument was that in absence of any mala fide , provisions of section 56 (2) of the act cannot be invoked relying on circular number 1 – 2011 dated 6 April 2011 wherein it is mentioned that the provisions of this section were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the gift tax act. He relied upon the several judicial precedents of the coordinate benches and submitted that that assessee has made a bona fide



purchase of the property and therefore as the provisions of section 56 (2) are anti-evasion provisions, same cannot be applied to a bona fide transaction.

19. further valuation report has to be made in the case of the assessee which is the primarily requirement when assessee objected to the stamp duty rate. In case of the assessee despite objection, no fresh valuation is carried out and merely the valuation made in the case of the seller of the property was reinstated as the valuation of the property in case of the buyer i.e., assessee is considered. He submits that the consideration of the buyer and the consideration of the seller while purchasing the property cannot be the same. This is also relevant because, what could be the argument of the seller before the district valuation officer may not be the same arguments of the buyer.
20. He submitted before us several pictures of the building which demonstrates that when the building was sold it has a different view and when the building was purchased by the assessee, it had blocked view and therefore there was a substantial fall in the price of the building which is not documented in the stamp duty rate. He submitted that the stamp duty rate cannot be sacrosanct and did not consider these facts. He relied upon several newspaper reports wherein this building was in news for the above stated reason with the consequence that the market value of the property has fallen substantially. He referred to the report of the economic times where it is stated that the value of the property has fallen by 30%.
21. He did not rely only on the newspaper report but also submitted the relevant sale incidents of comparable property. He submitted that on 9 March 2022 there is an auction of flat number C for 102 and 4202 on 41st and 42nd floor having identical built up



area and corporate area where the consideration paid was Rs. 117,500,000 resulting into rate per square meter of Rs. 216 9805. He submitted that assessee has purchased the property on 23 June 2016 where identical property bearing number C for 302 and 4402 at 43rd and 44th floor where the consideration paid is Rs. 130,500,000/-. This gives the rate per square meter of Rs. 302,073/-. Therefore, it was submitted that when the assessee purchased the property on 23 June 2016 rate per square meter was Rs. 302,073 whereas in 9 March 2022 in an auction property the rate of the property was Rs. 269,805/- he submitted that this property which has been auctioned is almost identical. Therefore, his claim that there is a substantial fall in the price of the property clearly justifies that stamp duty valuation is not correct.

22. He further submitted that that the report of the DVO stating that the sale instances taken by the learned DVO are irrelevant. He submitted that the learned DVO has taken the comparable sale instances of B wing, the property of the assessee is situated in C wing . The property situated in B wing are in different wing which are smaller in size. He further submitted that during financial year 2021 – 22 which also shows that the valuation of the property has gone down.
23. He submitted that even if the valuation of the learned district valuation officer is considered, the sale instances provided by him clearly provides the per square meter rates in the range of Rs. 341,668 – Rs. 366,977 which are only marginally higher than the appellant's valuation of Rs. 302,073 per square meter considering the tolerance band limit of 10%. The learned district valuation officer without any reason has considered the rate of Rs. 451,490 per square meter. He referred to the report of the



DVO it is mentioned that by adjusting the sale instances of the properties with reference to time lag, size, floor, location and situation, the average effective rate considered reasonable for valuation of the said property was taken at Rs. 451,490 per square meter as on the date of 23/6/2016. He submitted that there is no basis in the report of the DVO that how this rate has been arrived at. He therefore submitted that the DVO report not to be considered as it is devoid of any cogent reasoning and without any reasonable basis to consider what is fair market value.

24. He submitted that the district valuation officer has rejected the assessee's valuation without giving any cogent reason and without considering the impact on market valuation of ground realities of the property.
25. The learned authorized representative further referred to the fact that when the learned district valuation officer inspected the property it was fully furnished, with additional expenses incurred by the assessee whereas the assessee has purchased bear shell property. Subsequently the assessee has incurred significant cost of Rs. 4.39 crores in relation to the structural work such as flooring, bathroom, electrical work, waterproofing, windows and door fitting etc. of approximately Rs. 3.16 crores on improvements and further furnishing of the fact of Rs. 1.23 crores which is reflected in the annual accounts of the assessee, wherein the learned district valuation officer inspected the property, the flat was added with above cost, in the valuation report no such adjustment was granted. To support the amount of expenditure incurred and payment made to the vendor's, assessee submitted his bank statement showing that the payments were made to the vendors of the above sum along



with the copy of the invoices placed at page number 434 – 679 the paper book. Therefore, the learned authorized representative was that if this cost is granted as deduction to the assessee, the whole of the addition does not stand. He further stated that above expenditure is required to be reduced from the stamp duty value of the flat and thereafter the difference falls within the tolerance band. Regarding the issue of applicability of tolerance band, he relied upon several judicial precedents of the coordinate benches.

26. On the issue of the reopening of the assessment he submitted that sanction of the principal Commissioner of income tax has been taken under section 151 (I) of the act. Instead of that the approval should have been taken of the principal chief Commissioner of income tax in terms of section 151 (IIA) of the act. He submitted that the learned assessing officer specifically mentioned that the approval of principal Commissioner of income tax – 20, Mumbai has been obtained prior to issuing a notice under section 148A (d) of the act. He referred to the provisions of section 151 and submitted that the approval is wrongly taken and therefore he relied upon the decision of the honourable Bombay High Court in case of Siemens financial services (P) Ltd (2023) 154 taxmann.com 159 (Bombay) and submitted that such an approval is invalid and renders the reassessment proceedings also invalid. He further relied upon the decision of the honourable Bombay High Court in case of RuthSunil Mantri dated 17 October 2023 and several other decisions of the honourable jurisdictional High Court. Accordingly, it was stated that that the impugned reassessment proceedings where sanction to issue notice under section 148 of the act and order under section 148A (d) of the act has been



obtained under section 151 (i) of the act instead of 151 (ii) of the acts was to the root of the matter and the reassessment proceedings deserves to be quashed.

27. Notice under section 148 has been issued by the jurisdictional assessing officer[JAO], which should have been issued by the faceless assessing officer. He referred to the notice and submitted that such a notice issued by the learned jurisdictional assessing officer is not valid. He relied on the decision of the honourable Bombay High Court in case of Hexaware technologies Ltd versus assistant Commissioner of income tax (2024) 464 ITR 430 (Bombay) dated 3/5/2024. Thus, he submitted that the notice issued is invalid and reassessment order needs to be quashed.
28. He further submitted that that there is merely a change of opinion and without any live linkage of the impugned material with the escapement of income, the reopening has been initiated he submits that the original assessment has been framed under section 143 (3) of the act on 9 December 2019 wherein all these details have been enquired by the learned assessing Ofc including the fair market value of the property as per notice issued under section 142 (1) of that act dated 1 November 2019 wherein the assessee duly responded and submitted the complete information on 28 November 2019. Thus, when the information was examined, the learned assessing officer applied his mind to the fact, and agreed and accepted the explanation of the assessee, reopening on the same material makes the reassessment invalid as it is initiated upon a mere change of opinion. He referred to page number 186 – 188 – 191 of the paper books and also the assessment order placed at page number 736 – 738 of the paper books to support his case. He



further relied upon the decision of the honourable Bombay High Court in case of Siemens financial services private limited and Knight Riders sports private limited. He further relied upon the several judicial precedents of the various high courts to put forth a case that the impugned reassessment proceedings based on mere change of opinion is bad in law and liable to be quashed.

29. He further submitted that there is no live linkage of the information relied upon by the learned assessing officer and the reopening has been made without appreciating that there is not new tangible material coming into the possession of the assessing officer as the learned assessing officer did not specify the nature of information which is that that the income chargeable to tax has escaped assessment that wish year's the reassessment proceedings.
30. He further submitted that the reassessment proceedings cannot be initiated in the absence of information which suggests that the income chargeable to tax has escaped assessment in view of the civility instruction dated 10 December 2021 where information is defined. The learned assessing officer has not provided what exact information has been received.
31. He further submitted that that reassessment proceedings under section 147 of the act cannot be initiated merely on the ground that the learned assessing officer has lost sight of the statutory provisions like 50C, 43CA and section 56 (2) of the act. For this proposition he relied upon the decision of the honourable Bombay High Court in case of in ICOR Ltd dated 23 July 2018.
32. He further submitted that that the assessment order is barred by limitation for the reason that according to section 153 (2) of the act the assessment proceedings was supposed to be completed within 12 months from the end of the financial year in which



notice under section 148 was issued. The notice under section 148 was issued on 30 June 2021 under the old regime for reopening of the assessment proceedings. Subsequently to the decision of the honourable Supreme Court in case of assessee were well, the proceedings were converted into a new regime in order under section 148A of the act was passed on 28 July 2022 and notice under section 148 of the act was also issued on the said date. He therefore submitted that notice under section 148 was issued on 28/7/2022 was only on account of applicability of the new regime was the decision of the honourable Supreme Court but that did not extend the time limit for completion of reassessment is which will commence from the date of the first notice issued on 30 June 2021. Accordingly, the time limit to complete the reassessment proceedings would be time but within 12 months from the end of the financial year in which notice has been issued i.e., 12 months from 31st of March 2022. The learned assessing officer has not completed the assessment proceedings before 31st of March 2023 and therefore the reassessment order is barred by the limitation. Therefore it was submitted that the period of limitation ought to be taken from the date of the original notice under section 148 of the act which was issued on 30 June 2021 as per which the proceedings ought to have been concluded by 31st of March 2023 and since the same was concluded only on 6 November 2023, the proceedings are time-barred, invalid and liable to be quashed.

33. It was further submitted that the since the notice issued under section 148 of the act has been issued in contravention to the CBDT circular number 19/2019 dated 14 August 2019 it will be deemed to have never been issued and therefore vitiating the entire reassessment proceedings. He is referred to the decision



of the honourable Bombay High Court in case of Ashok commercial enterprises dated 21 July 2023 and several decisions of the coordinate benches and the honourable High Court's wherein similar view has been adopted. He submits that the learned assessing officer has issued a notice under section 148 of the act on 28 July 2022 which did not have the document identification number and not mention is the fact that the order was passed manually without mentioning the document identification number. The intimation letter dated 28 July 2022 mention is that in. The learned authorized representative referred to civility circular number 19/2019 dated 14 August 2019 and submitted that the impugned notice issued without any document identification number be deemed never to have been issued and consequently all the proceedings are bad in law and liable to be quashed.

34. learned authorized representative submitted a comparative chart determining the rate per square meter after accounting for the difference in the comparable considered by the district valuation officer. He submitted that the rate per square meter of the property transacted is Rs. 302,073 whereas as per sale instances number 2 the value of the property determined by that DVO shows the rate per square meter of Rs. 348,675, the lowest sale instances shown by the learned district valuation officer shows the value of the rate per square feet at Rs. 366,977 and third instances of the learned district valuation officer shows the rate per square meter of Rs. 341,668. If average of all three sale instances are taken, then the averages rate per square meter comes to Rs. 352,440. He further submitted that the sale instances taken by the learned district valuation officer are of single flats [not duplex] whereas the flat



of the assessee is duplex and if a discount of at least 7.5% is granted coupled with a further discount of 7.5% on account of obstruction in the view than the average sale of the sale instances taken by the learned DVO comes to rate of Rs. 299,574 which is far less than the actual sale consideration of the assessee of Rs. 302,073 per square meter.

35. He submitted that if the price of the auction is considered, which is the price which should be considered after considering all the adjustments, the addition does not result deserves to be upheld. For this proposition he relied on the decision of the honourable Bombay High Court in case of 135 ITR 177 wherein it has been held that that auction price cannot be found to be tainted at all as it is most transparent price. He further relied upon the decision of the coordinate bench in ITA number 1304/M/2023 dated 27/7/2023 wherein in paragraph number 6 the public auction price was considered as the correct fair market value. Several other decisions of the coordinate benches on this issue were also pointed out.
36. Accordingly, the argument of the learned authorized representative is that no addition can be made on the merits of the case and further the reopening proceedings are bad in law on several fronts.
37. The learned departmental representative vehemently supported the order of the learned lower authorities. It was submitted that the reopening is valid for the reason that there is a tangible material coming into the information of the learned assessing officer pursuant to the order passed which shows that the property purchased by the assessee is having higher stamp duty value than consideration and therefore the provisions of section 56 (2) are attracted. He referred to the order of the learned CIT



- A stated that the learned CIT – A has held that the reopening is valid.
38. He submitted on the merits of the case that when the same property has been valued by the district valuation officer at the instance of the seller, there is no requirement of valuing the same private property for the same transaction at the instance of the buyer. Therefore, there is no infirmity in the order of the learned assessing officer accepting the valuation of the district valuation officer made in the case of the seller applicable to the buyer also. He otherwise submitted that the addition has not been made on the basis of the valuation report but on the basis of the stamp duty valuation. He submitted that in this case the stamp duty value is lower than the valuation of the district valuation officer. He further submitted that that the instances that has been stated by the learned authorized representative of decrease in the value of the asset as well as the several instances of comparable sale prices are not applicable as the learned this trick valuation officer is applied his mind to the facts and has made a valuation report which is binding of the learned assessing officer. In view of the above facts, he vehemently relied upon the order of the learned lower authorities and submitted that the addition made by the learned lower authorities deserves to be confirmed.
39. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Facts are not reiterated.
40. Ground number 1 of the appeal is general in nature, no separate arguments were advanced, therefore it is dismissed.
41. Ground number 2 of the appeal is with respect to the failure to provide opportunity of being heard, as assessee has been



- granted an opportunity of being heard, no separate arguments were advanced, therefore, same is dismissed.
42. Ground number 3 – 9 are on the merits of the addition. Assessee has purchased a property at a consideration of Rs. 130,500,000, the stamp duty value of the same is Rs. 183,100,000, the valuation made by the district valuation officer in case of seller of the property was Rs. 195,000,542. The assessee objected to the valuation report prepared by the district valuation officer as well as the stamp duty rate. Assessee objected and requested the learned AO to refer the matter to the district valuation officer, but the district valuation officer reiterated the valuation made in case of seller of the property stating that there is no point in making once again the reference of the same property which was subject matter of transaction.
 43. In case of seller, ages Realtors and developers private limited, report of the registered valuer dated 30/6/2016 was obtained wherein the property was valued at Rs. 130,694,000 as the property was mortgaged.
 44. In the case of the seller the reference was made under section 142A by the AO of the seller on 26/3/2022 to the valuation cell, submitted the valuation report on 5/5/2022 which was inspected and observations were made at paragraph number 2 .4 and on the basis of information provided by the seller Agies Realtors and development private limited, the valuation of the property was made taking the rate of Per square meter of Rs. 451,490/- for the duplex and same were taken for car parking [0.25%] also, consequently the property was valued at Rs. 195,050,000.
 45. As in the case of the buyer, assessee, the stamp duty value is lower than the valuation by DVO, the learned assessing officer



has made the addition to the extent of difference between stamp duty value and consideration as per purchase deed.

46. According to the provisions of section 50 C, if the assessee objects to the adoption of deemed sale consideration or deemed purchase consideration of any immovable property wherein the agreed consideration is compared with the stamp duty rate, the learned assessing officer is duty-bound to refer to the district valuation officer to make the valuation of the property. In this case though the learned assessing officer referred the matter to the district valuation officer for making a fresh valuation report, which was not adhered to by the learned district valuation officer and reiterated the valuation made by him in case of a seller. If the learned assessing officer does not obtain the valuation report, then the addition deserves to be deleted if the difference between the actual consideration and the stamp duty value is made in the hands of the assessee based on Asstt. CIT v. Tarun Agarwal [2018] 97 taxmann.com 346/173 ITD 107 (Agra - Trib.) , ITO v. Aditya Narain Verma (HUF) [2017] 88 taxmann.com 840 (Delhi - Trib.) , ITO v. Ramesh Chandra Kulshresth & Brothers HUF [IT Appeal No. 228 (Agra) of 2018, dated 10-10-2018]&2024] 165 taxmann.com 45 (Delhi - Trib.). It cannot be said that the valuation made in the case of the seller would also be applicable in case of a buyer, this is so because if the seller does not represent anything before the learned district valuation officer, it will go against the buyer which is not permitted. Therefore, if the two parties to the same transaction, objects to the valuation, there perspective and reasons may be different than the others. Even otherwise if a perspective of either bur or seller is not considered it hampers the rights of that assessee. Section 50 C/ 56 (2) (viiia) and



Section 43 CA does not provide that valuation made by the DVIO is qua the property, in fact it is qua the assessee. Thus, on this ground itself, when the Id. AO fails to obtain the Report of DVO of the impugned property after giving assessee opportunity of representing before DVO, addition so made is to be deleted.

47. Even otherwise, the valuation report itself says that as on the date of inspection, the premises has partly Italian marble and partly wooden flooring, plastic paint, marble, designer painting and finishing on the walls and marbles on the walls of the toilet and bath, designer false ceiling, doors are of TW/door with lamination, fully glazed vendors with aluminum frames, modular kitchen with granite platform and stainless steel sink and sanitary fittings are of good quality. Naturally, the seller would not have provided this information but only when it is claimed that buyer has made this fitting after purchasing the flat in a bare shell condition. Therefore, if the buyer has incurred this cost, which is duly recorded for in the books of account of the buyer, naturally, same cannot be considered in the valuation of the property, if valued at the instances of seller.
48. Before the assessing officer assessee has produced evidence that the appellant has incurred cost of Rs. 4.39 crores in relation to structural work like flooring, bath works, electric work, waterproofing, Windows and door fittings of Rs. 3.16 crores and furnishing of the flat of Rs. 1.23 crores. Details of these expenses were also provided showing that payments are made to the vendors by account payee cheque duly reflected in the bank statement of the assessee along with the copies of the invoices, therefore, to that extent even valuation made by the learned district valuation officer is required to be reduced.



However, the moot point is that the valuation made by the district valuation officer did not give any deduction with respect to the above sum despite agreeing to the fact of improvement in the property. This fact also proves that the valuation report of obtaining the case of a seller cannot be always relevant also in case of the buyer. For this reason, also the addition cannot be made on the basis of the valuation report in case of a seller. It results into a failure of the learned assessing officer to obtain the valuation report in case of a buyer.

49. Further, the learned that district valuation officer has given the sale instances on the date of valuation i.e., 23/6/2016 wherein he has taken the sale instances of simple flats against impugned property of the duplex flats. Further the rate adopted of three sale instances were found to be amounting to Rs. 348,675/-, 366,977/- and 341,668/-. Despite this the learned district valuation officer took power square meter value of the property sold/purchased at Rs. 451,490/- per square meter. There is no justification of the same in the whole of the valuation report. Thus, it is apparent that DVO has taken inspected property for valuation not the bear shell property transacted .
50. Even another property sold by the assessee in subsequent year also did not get the prize which is stated by the learned district valuation officer. Thus, the average of all three sale instances noted by the learned district valuation officer would give rate of Rs. 352,440/- per square meter. Compared to this, the assessee submitted a comparable sale on 9 March 2022 wherein identical duplex flat one floor below was sold for Rs. 117,500,000 where the rate per square meter was Rs. 269,805/-. This was an auction by HSBC bank. When there is an auction by a bank, it is more transparent and acceptable. The honourable Bombay High



Court hold this as well as the decision of the coordinate benches. Even the reserve price fixed by the bank for auction of the above property was only Rs. 12.42 crores which was sold for a consideration of Rs. 11.65 crores, i.e., which was even less than the auction reserve price fixed by the bank. The sale price per square meter in the same block i.e., Tower C, was only Rs 271,982 per square meter. Therefore, it is a good comparable. Further, it is after six years after the date of the transaction of the impugned property, and in the same block i.e., Tower C. It is stated by the assessee by producing the photographs also that there is a significant downfall in the price of the impugned property i.e., precisely tower C, which is reported in the various newspapers as well as the other property sites because of blockage of the view on account of construction of Lokhandwala Minerva in front of the same tower. The assessee has categorically stated that the value of the property suffered due to the construction of an 82 story building barely 30 m away from the impugned property which blocked the racecourse and Seaview of the impugned property and also affected severely its ventilation. This fact was also mentioned in the valuation report of the registered valuer obtained by the seller, which was also coupled with the newspaper reports, but not commented by the district valuation officer. In fact it was shown to us that Economic Times dated 21 June 2013 categorically state so where 30% of the value of the impugned property went down. This is also confirmed by the real estate website on 17 April 2016 wherein it is stated that 'BMC cancels the racecourse lease, God save the buyers of Bellissimo, Minerva, planet Godrej and Vivaria'. This is not disputed by revenue also. Due to this the stamp duty valuation was not reduced by the government of Maharashtra,



therefore it is apparent that the stamp duty valuation rate in these specific circumstances were not showing the fair market value of the property.

51. Further as per letter dated 10 August 2023 the learned district valuation officer has merely relied on the valuation made by the learned district valuation officer in case of seller and refuse to carry out the fresh valuation. Thus, in the case of the seller the valuation adopted by the district valuation officer was automatically made applicable in the case of buyer. This report was also given by the assessing officer to the assessee prior to making a reference where the assessee raised an objection, when the valuation officer refuse to consider those objections, does not make the fresh valuation, naturally the report of the district valuation officer, cannot be used for making an addition in the hands of the assessee. This is in clear violation of provisions of section 142A (4) of the act.
52. Thus if we consider the various chart submitted before us, and if we adjust the discount of the obstruction due to Lokhandwala Minerva construction where the property website and economic on the basis of reports shows 30% down fall in the price, if we consider only 7.5% downfall in the average sale price considered by the learned District valuation officer in its report of Rs. 352,440/- per square meter, the average square meter rates would be Rs. 325,000 per square meter. If the assessee is granted benefit of the 10% of the tolerance limit of the sale consideration which will come to Rs. 332,280 per square meter, no addition could be made in the hands of the assessee despite many infirmities in the procedure as well as on factual aspects.
53. Accordingly on the merits, we direct the learned assessing officer to delete the addition of Rs. 4,96,31,000/- on account of



provisions of section 56 (2) (vii) of the act. Accordingly ground number 3 – 9 of the appeal are allowed.

54. The ground number 10 challenges the issue of notice under section 148 of the act dated 20 July 2022 which has been issued manually in contravention of circular number 19 of 2019 dated 14 August 2019, which was not adjudicated by the learned CIT – A, and also the learned parties requested to keep it open as the issue is pending before the honourable Supreme Court.
55. Ground number 11 of the appeal shows that the information relied upon by the learned assessing officer does not have any linkage with the appellant and without any tangible material and therefore the reopening of the assessment is invalid. This is also linked to ground number 13 of the appeal wherein the challenges that the reopening is made in absence of information which suggest that the income chargeable to tax has escaped assessment. The argument of the learned authorized representative is that under the new regime, explanation 1 to section 148 of the act restricts the meaning of information which suggest that the income chargeable to tax has escaped assessment. It was stated that the AO has failed to specify the nature of information we suggest that the income chargeable to tax has escaped assessment. We find that in view of the decision of the honourable Supreme Court in case of Union of India versus Rajeev Bansal, the above issue does not remain for contention. Further there is a tangible material which shows that the report indicates that there is a difference between the consideration of the property and the stamp duty value of the property. Accordingly ground number 11 and 13 are dismissed.
56. Now we come to the issues challenging the validity of reopened assessment proceedings. We find that notice u/s 148 of the Act



has been issued by JAO instead of FAo. This issues is covered in favour of the assessee by the decision of the Honourable Bombay high court in case of Pravina Jagdish Patel[2024] 164 taxmann.com 659 (Bombay) and Hexaware [464 ITR 430] where it is held that for a notice to be validly issued for reassessment under section 148, the revenue would need to be compliant with section 151A, which has been interpreted and analyzed in detail by in the case of Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bombay)'. Thus, on this issue reopening of assessment is quashed.

57. As per the notice issued under section 148 of the act on 28 July 2022, the sanction was obtained from the principal Commissioner of income tax – 20, Mumbai prior to issuing the order under section 148A (d) of the act. According to the provisions of section 151 of the act if the reopening proceedings are beyond three years from the relevant assessment year, the sanction should have been given by the principal Commissioner of income tax,/principal director general of income tax, chief Commissioner of income tax/director general of income tax and not by principal Commissioner of income tax as obtained in the case of the assessee. This issue is squarely covered in favour of the assessee by the decision of the honourable Bombay High Court in case of Siemens financial services private limited (2023) 154 taxmann.com 159 (Bombay) wherein it has been held that when the approval is required to be taken by a prescribed authority, it has to be done in the same manner. However, in view of the decision of the **honourable Supreme Court in case of Union of India and Ors. (UOI) Vs. Rajeev Bansal : MANU/SC/1078/2024** the above decision of the honourable



Bombay High Court has been reversed; therefore, ground number 12 of appeal is dismissed.

58. Further, ground number 14 and ground number 15 are also with respect to the reopening of the assessment in old regime versus New regime which has now been settled by the above decision of the honourable Supreme Court therefore both these at serial number 14 and 15 are dismissed.

59. In view of the above facts, appeal of the assessee is partly allowed.

Order pronounced in the open court on 15/10/2024.

Sd/-

(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:15.10.2024

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai