

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1092/MUM/2024
Assessment Year: 2018-19**

Anvis Digital Pvt. Ltd., 314, Parvati Industrial Estate, New Sunmill Compound, Lower Parel (W), Mumbai – 400 013 (PAN : AAMCA3257A)	Vs.	Income Tax, Ward 6(1)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Ashok Mehta, CA
Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 01.08.2024
Date of Pronouncement : 28.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1061035709(1), dated 16.02.2024 passed against the assessment order by the National Faceless Assessment Centre, Delhi, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 13.08.2021 for Assessment Year 2018-19.

2. Grounds taken by the assessee are reproduced as under:

“1. The Learned Assessing Officer and the Learned CIT Appeals erred in assessing the income at Rs 69,30,088/- instead of returned income of Rs 4,51,538/- as represented by the assessee.

2. The Learned Assessing Officer and the Learned CIT Appeals erred in making an addition of Rs 64,78,550/- u/s 56(2)(x) of the Income Tax Act, 1961 being the difference between the stamp duty value and the consideration paid by the assessee.

3. The Learned Assessing Officer and the Learned CIT Appeals erred in not referring the matter to the departmental valuation officer in spite of specific request made by the assessee.

4. The Learned Assessing Officer and the Learned CIT Appeals erred in not considering the fact that the assessee had raised a objection by not accepting valuation and filling a return as per agreement and subsequently also submitted valuation report wherein the property value is lower than the consideration paid by the assessee.”

3. Brief facts are that case of the assessee was selected for scrutiny assessment on the issue relating to information received from another agency about assessee having purchased office premise for which the amount of actual consideration was stated at Rs.2,12,76,250/- and valuation for the purpose of stamp duty at Rs.2,77,54,800/- resulting into a difference of Rs.64,78,550/-. According to the ld. Assessing Officer, this difference is liable to tax u/s.56(2)(x). Assessee was called for explanation and documentary evidences in this respect for which it was stated that it had purchased an office property at ‘Gala No.315’, for an amount which was below the fair market value since it was a distress sale by the seller, seller becoming insolvent and was in immediate need of funds. Assessee furnished documents to demonstrate that the said property was auctioned by Bank of Baroda and a valuation report by a government registered valuer to substantiate its claim. Assessee also submitted that the matter may be referred to the Department Valuation Officer (DVO) to have a fair opinion on its valuation. However, ld. Assessing Officer observed that response from assessee remained non satisfactory, who did not file any documentary evidence to support its case. He thus, completed the

assessment by making an addition of Rs.64,78,550/- u/s.56(2)(x) under the head 'Income from Other Sources'.

3.1. In appeal before ld. CIT(A), assessee took an additional ground contesting that Assessing Officer erred in not referring the valuation of the subject property to the DVO which is not in compliance with proviso 3 to section 56(2)(x). Assessee submitted that it had all along disputed the stamp duty valuation, fact of which is already noted in the impugned assessment order in the submissions reproduced therein made by the assessee, specifically point no.7 at page 11 of the assessment order. According to the assessee, it satisfies the conditions laid down u/s.50C(2) for referring the matter to DVO which is mandatory on the part of ld. Assessing Officer, who did not comply with the same and is therefore is in violation of the principles of natural justice and fair assessment.

3.2. Ld. CIT(A) in his order has reproduced the observations and findings of the assessment which includes submission made by the assessee asking for referring the matter to DVO which is at page 8 of the order of ld. CIT(A). While addressing the additional ground raised by the assessee on the matter to be referred to DVO, ld.CIT(A) observed that assessee was asked to furnish relevant documentary evidence for any objection raised or application filed before the stamp valuation authority which it failed to submit. According to him, assessee had relied on valuation report issued by government approved valuer which is after the purchase of the property. From the said valuation report, ld. CIT(A) noted that in the said report, it is categorically mentioned that "*it was reportedly a distress sale on the part of the seller, who was in urgent need of money*". He thus noted that this statement itself confirms that the property was knowingly

purchased at lower price on bargain with distressed seller who was in need of funds and the assessee gained monetary benefit out of such a bargain. Ld. CIT(A) thus, supported the view taken by the Id. Assessing Officer that he has reasonably considered the stamp duty value as the fair market value of the property. According to him, though the arguments relating to referring the matter to DVO were made during the course of assessment proceedings, on the basis of facts mentioned above, the Id. Assessing Officer is justified in not considering it as a fit case u/s.50C(2) for making a reference to the DVO. He thus, confirmed the addition so made by the Id. Assessing Officer. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Id. Counsel for the assessee has placed on record a paper book containing 89 pages, which includes copy of registered sale agreement for the property purchased by the assessee as well as the valuation report by government registered valuer. In the registered deed, amount for the transaction undertaken is noted as Rs.2,12,76,250/- and the value for stamp duty purpose is noted as Rs.2,77,54,800/-. The valuation report referred above, suggests value of Rs.2,11,57,500/-.

5. The issue before us is in respect of the addition made by the Id. Assessing Officer u/s.56(2)(x) on account of difference between the actual consideration and the stamp duty value without referring to the Id. DVO for the valuation of the subject property when a specific objection was raised and request was made by the assessee for making a reference to the Id. DVO to have his fair opinion on the valuation before making the impugned addition. To delve on this issue, we take note of the relevant provisions contained in the section 56(2)(x), reproduced as under:

“(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,-

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to "[ten] per cent of the consideration:]

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed"], on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections:

Provided also that in case of property being referred to in the second proviso to sub-section (1) of section 43CA, the provisions of sub-item (ii) of item (B) shall have effect as if for the words "ten per cent", the words "twenty per cent" had been substituted].

[emphasis by us by bold]

5.1. From the above, it is noted that third proviso prescribes for making a reference to valuation officer for valuation of the property where the stamp duty value is disputed by the assessee. In the present case before us, it is an undisputed fact that assessee has at

all stages of the proceedings before the authorities below had disputed the stamp duty value on the ground that it is a distress sale by the seller. This fact is evident from the reproduction of submissions made by the assessee containing such request made by it before the authorities below.

6. Since assessee has objected on ld. Assessing Officer adopting the stamp duty value and ld. CIT(A) confirming the same, we are of the opinion that valuation by the ld. DVO as contemplated under third proviso to section 56(2)(x) r.w.s. 50C(2) is required to avoid miscarriage of justice. The ld. Assessing Officer ought to have referred for the valuation of the subject property to the ld. DVO. Accordingly, in the given set of facts and applicable law, order passed by the authorities below are set aside and the matter is remitted back to the file of ld. Assessing Officer, who shall refer the matter to the ld. DVO in accordance with law for the valuation of the subject property. After the said valuation is made, assessment be made *denovo* in accordance with the provisions of law for which reasonable opportunity of being heard be given to assessee. Accordingly, ground no.3 raised by the assessee in this respect is allowed. Since the matter is remitted back to the file of ld. Assessing Officer in the light of aforesaid observations and directions, other grounds raised by the assessee are rendered academic in nature and therefore not adjudicated upon.

6.1. For above findings we draw our force from the following decisions:

i) Sunil Kumar Agarwal vs CIT 272 CTR (Cal) 332

Even in a case where no such prayer is made the AO, discharging a quasi-judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an

option to follow the course provided by law-Matter remanded to AO for de novo assessment after making a reference to the DVO

- ii) *Appadurai Vijayaraghavan vs. JCIT 275 CTR (Mad) 565*
The AO ought to have referred the valuation of the capital asset to the Valuation Officer and remitted the matter back to the AO to work out the capital gains by invoking the provisions of s. 50C(2).

There is no dispute insofar as the decision taken by the CIT(A) or by the Tribunal that the provisions of s. 50C of the IT Act would be applicable to the transaction in question.

- iii) *S. Muthuraja vs CIT 369 ITR 483 (Mad)*
It is seen from the records filed before this Court that the assessee objected to the AO adopting the guide-line value relating to the property sold for the sale consideration of Rs. 25,60,000 as against the guide-line value adopted by the AO at Rs. 39,63,900. In the objection letter filed by the assessee on 15th Dec., 2011, the assessee specifically pointed out that the sale was more in the nature of distress sale and requested to confirm the actual sale consideration for the purpose of working out capital gains. The AO rejected 50C of the IT Act, 1961 (hereinafter called as the "Act") for the purpose of working out long term capital gains.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 28 October, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 October, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai