

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI. OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.4223/Mum/2024
(Assessment Year: 2017-18)

Deepchand Khetmal Jain Office No. 36, 2 nd Floor, 526m Duncan Road, Ladi Bazar, Girgoan, Mumbai – 400004.	Vs.	National Faceless Appeal Centre (NFAC) Delhi
PAN/GIR No.ACYPJ4931B		
(Assessee)	:	(Respondent)

Assessee by	:	Shri. Vimal Punmiya
Respondent by	:	Shri. R. R. Makwana, Sr. DR.

Date of Hearing	:	17.10.2024
Date of Pronouncement	:	29.11.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has raised the following grounds of appeal:

- “1. On the facts and Circumstances of the case the NFAC erred in confirming the addition of Rs.79,00,000/- under section 56(2) (vii) of the Income Tax Act 1961 and thereby erred in confirming and treating the difference between purchase value of immovable property and stamp duty value of the immovable property as income from other sources without appreciating the facts, submission made before the NFAC.*
- 2. The Ld CIT(A) erred in initiating interest u/s 234A,234B and 234C of the Income Tax Act 1961.*
- 3. The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 270A of the Income Tax Act 1961.*

4. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee is an individual and has filed his return of income dated 15.11.2017 declaring total income at Rs. 2,08,04,286/-. The assessee's case was reopened vide notice u/s. 148 dated 30.06.2021 for the reason that the assessee has purchased the immovable property for a sale of consideration of Rs. 36,00,000/- which was less than the stamp duty value determined by the Stamp Duty Authority. The learned Assessing Officer (ld. A.O. for short) then passed the assessment order u/s. 147 r.w.s. 144B of the Act dated 26.05.2023 determining total income at Rs. 2,85,19,290/- after making an addition of Rs. 79,00,000/- u/s. 56(2)(vii) of the Act being the difference in the value of consideration as that of the value as per stamp duty.
4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 04.07.2024 upheld the addition made by the learned Assessing Officer (ld. A.O. for short) for the reason that the assessee has not furnished any supporting documentary evidence to controvert the valuation adopted by the Stamp Valuation Authority which was in turn relied upon by the ld. AO.
5. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).
6. The learned Authorised Representative (ld. AR for short) for the assessee contended that the lower authorities have not considered the assessee's submissions which has stated that the said property is a tenanted property and is also a non-cess property which has no scope of redevelopment as no FSI was available to the assessee. The ld. AR further contended that the ld. AO has computed the value considering the property

to be capable of redevelopment and has wrongly considered the benefit of FSI as being available to the assessee. The Id. AR stated that the value determined as per Stamp Duty Authority is exorbitant. The Id. AR also brought our attention to the fact that the Id. AO has not referred this to the Department Valuation Officer (DVO) for determining to stamp duty value inspite of specific request from the assessee. The Id. AR further stated that the Id. AO has also failed to consider the valuation report furnished by the assessee.

7. The learned Departmental Representative (Id. DR for short) on the other hand controverted the said fact and stated that the assessee has not furnished any details or document to substantiate the difference of value of the property. The Id. DR stated that in the absence of the same, the Id. AO's determination is justified. The Id. DR relied on the orders of the lower authorities.
8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee vide letter dated 13.05.2023 enclosed in paper book page no. 47 to 49 has filed his written submission before the learned Assessing Officer (Id. A.O. for short) stating the nature of the property purchased by the assessee that the same is a tenanted and a non-cess property having no FSI which will have a bearing in the determination of the value of the property. Further, from the assessment order it is evident that the assessee has requested the Id. AO during the assessment proceeding for reference to the DVO which was rejected by the Id. AO and proceeded to make an addition u/s. 56(2)(vii) of the Act on the deemed market value as per Stamp Duty Authority. The Id. CIT(A) has also extensively relied on the assessment order.

9. From the above factual matrix of the case, it is pertinent to point out that once the assessee objects to the value of the property determined by the Id. AO then the Id. AO is duty bound to refer the matter to the DVO as per the Section 50C(2) of the Act. When there is a specific objection raised by the assessee then it becomes mandatory for the Id. AO to refer the valuation to the DVO which exercise has not been carried out in the present case in hand. We therefore are inclined to remand this issue back to the file of Id. AO to refer the same for valuation to the DVO and needless it is to say that sufficient opportunity is to be given to the assessee before concluding the *de novo* assessment.
10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.11.2024

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 29.11.2024
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai