IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW

BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, MEMBER

ITA No.247/Lkw/2017
A.Y. 2014-15

Hakikat Saraf, 124/B/168, Govind Nagar, Kanpur-208006	vs.	Income Tax Officer-2(5), Kanpur
PAN:AFPPS4419H		
(Appellant)		(Respondent)

Assessee by:	Sh. Rakesh Garg, Advocate
Revenue by:	Sh. Sunil Kumar Rajwanshi, Addl CIT DR
Date of hearing:	29.08.2024
Date of pronouncement:	29.10.2024

O R D E R

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal against the order under section 250 of the Income Tax Act, 1961, passed by the CIT(A)-1, Kanpur dated 24.01.2017. The grounds of appeal are as under:-

> *"01. Because the CIT(A) has erred on facts and in law in upholding the addition of Rs.47,33,000/- under section 56(2)(vii)(b)(ii) of the I.T. Act, 1961, which addition is contrary to facts, bad in law and be deleted.*
>
> *02. Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has arbitrarily held, that the difference between the actual gross consideration Rs. 1,09,34,000/- and the stamp value estimated by the Stamp Valuation authorities, subsequently reduced by the District Valuation Officer at Rs. 1,56,67,600/- is deemed income under section 56(2)(vii)(b)(ii) of the Act.*

03. Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has arbitrarily held, that the value as estimated by the District Valuation Officer is the correct Fair Market Value, thereby erred in upholding the addition of Rs.47,33,000/- which addition is contrary to facts bad in law and be deleted.

04. Because the method of valuation adopted by the Valuation Officer in estimating the Fair Market Value of the property is contrary to the established principles of valuation, especially as applicable to the "rent controlled properties", the CIT(A) has erred in not appreciating the same thereby upholding the addition which is contrary to the provisions of law, the addition be deleted.

05. Because the CIT(A) has failed to appreciate that the very title of the said property disputed, the property being occupied by tenants governed by the Rent Control & Eviction Act, and several litigations pending before the judicial forums both in respect of the title and the occupants, are all factors which effected the Fair Market Value of the property, which have neither been considered nor appreciated by the CIT(A).

06. Because on a proper consideration of facts and circumstances of the case, the assessee having got the property valued by an independent Registered valuer, before the purchase itself who estimated the Fair Market Value at Rs.74.65 lakhs unrealistic the same cannot be said to be incorrect, unreasonable or untrue.

07. Because the determination of the Fair Market Value on the basis of Circle Rates, adopted by the District Authorities is of no credence, in as much as, the Circle Rates are applied for the purposes of collection of revenue/Stamp Duty irrespective of what be the Fair Market Value of the property, the addition upheld by the CIT(A) is contrary to facts and be deleted.

08. Because the estimate made by the District Valuation Officer cannot be said to be Fair Market Value of the property, in as much as, the Fair Market Value of the property depends on demand and supply as also what a prudent buyer is willing to pay, in simple terms what a property would fetch, if sold in the open market as against any fixed or estimated price based on circle rate, the estimate made by the District Valuation Officer is entirely unreliable and totally misplaced, the addition made be deleted.

09. Because the CIT(A) as well as the AO have failed to consider the objections filed in response to the Valuation Report prepared by the District Valuation Officer, and as such, have erred in ignoring the same and upholding the Valuation Report as prepared by the District Valuation Officer, the Valuation determined by the District Valuation Officer being excessive and arbitrary cannot be said to be the fair value, the addition made be deleted.

10. Because the CIT(A) has failed to appreciate that the valuation report prepared by the District Valuation Officer is not binding on him, and as such, he ought to have the matter independently examined by summoning the District Valuation Officer and the assessee's Registered Valuer; cross verified the facts so as to remove the anomalies in the valuation report, prepared by the District Valuation Officer and to arrive at the reasonable Fair Market Value, based on the various judicial principles and precedents as laid down from time to time.

11 Because the very fact that the stamp duty valuation of the property being estimated at Rs.3,94,70,000/- and thereby being substantially reduced by the Valuation Officer at Rs.1,56,67,600/- itself establishes that the valuation made by the Stamp Valuation authorities and Valuation Officer is, not is fair market value of the property nor based on sound principles.

12. Because the provisions of section 56(2)(vii) (b) having been inserted in the Act w.e.f. 01.04.2014 by Finance Act, 2013 and the property having been purchased on 04.01.2014, the provisions of section 56(2)(vii)(b)(ii) of the I.T. Act, 1961 would not be applicable, the addition made is contrary to facts, bad in law and be deleted.

13. Because the provisions of section 56(2)(vii)(b)(ii) of the I.T. Act, 1961 are not based on the principle of equity, and fairness, in as much as, the said provisions are applicable only to "individuals" and "HUFs" and are not applicable to "other persons", this makes the provision discriminatory and violative to the provisions of the Constitution of India, the addition made on the basis of the same be deleted."

2. The facts of the case are that the assessee had purchased residential cum commercial property no. 119/560(old) and/or 119/1091(new) at Darshanpurwa, Kanpur on 10.01.2014 for a purchase consideration of Rs.80,00,000/-. The market value for stamp duty purposes of the property was Rs.3,94,70,000/-. During the course of assessment proceedings, the ld. AO issued a show cause notice to the assessee, to explain why the provisions of section 56(2)(vii)(b)(ii) of the Income Tax Act, 1961 may not be applied to his case. In response, it was submitted that the circle rate of Rs.3,94,70,000/-, had no relevance for the purposes of the transaction, since the property was a disputed property loaded with multiple court cases. A valuation report from a registered valuer dated 4.01.2014, was submitted recording the distress value of property at Rs.74.65 Lacs. The ld. AR further submitted that the

Registry had also been challenged and the assessee had not managed to get possession of the aforesaid property. In view of the submissions made by the ld. AR, the ld. AO made a reference to the valuation cell of the Income Tax Department for determining the fair market value of the property under section 50C(2) of the Act, 1961. In response, the Valuation Officer of the Income Tax Department submitted a valuation report on 1.07.2016, wherein the fair market value as on 10.01.2014 was determined at Rs. 1,56,67,600/-. After obtaining the said valuation report, the assessee was given an opportunity to submit its response. The ld. AO found those objections raised to be unsatisfactory and therefore, rejected the same. After allowing for expenses on stamp purchase, Government Treasury Fee and expenses on brokerage / commission, he determined the total cost of purchase at Rs.1,09,34,000/- and thereafter, he held that a sum of Rs.47,33,000/- needed to be brought to tax as per the provisions of section 56(2)(vii)(b)(ii). Penalty proceedings under section 271(1)(c) were also initiated.

3. The assessee was aggrieved at the addition and therefore, filed an appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee submitted that nine tenants were occupying 90% of the property and had been there for 50 to 75 years. The property was a disputed property and loaded with multiple court cases. A list of twelve court cases was provided. It was submitted that before entering into the transaction, the assessee had taken independent advice from the registered valuer regarding the stressed market value, and the distress sale value of the encumbered property had been determined at Rs.74.65 lacs. Based on this valuation report, the assessee had entered into the transaction of purchase. However, even two years after getting the property registered in his name, due to the dispute and the challenge to the Registry, the assessee had not been able to take possession of the property. It was submitted that, this in itself demonstrated that the price paid for the property was its actual fair market value. It was further submitted that the ld. AO had not considered the objections filed in relation to the DVO report and since

these objections had not been considered before finalizing the assessment, the order of the ld. AO was against the law and against the principles of natural justice. The ld. CIT(A) observed that there were three issues involved in the valuation done by the DVO.

a. The assessee had calculated the value of land on the basis of DM circle rate and method of calculation of rent capitalization at Rs.1,31,82,187/- while the DVO had calculated FMV at Rs.1,44,63,011/-.

b. The building was occupied more than 90% by tenants and the assessee had not got the possession also till date.

c. DVO had determined the value of construction as Rs.12,04,602/- while the assessee has submitted that depreciation value works out more than cost of building and therefore the net value of the building should be treated as nil.

4. After considering the issues, the ld. CIT held that stamp valuation authority rates are based on a process of equalizing the market rates to the registration rates across the circle, based on the average rate on which actual registrations are being done. Thus, it could not be said that the SVA rates were incorrect. He further noted that the assessee had not made any objections before the SVA or the Sub Registrar regarding the stamp valuation rate applied. He opined that this was because that may have led to an enquiry, that would have revealed that a portion of the cost was being paid in cash. He further opined that in such cases, the other party does not object because they have received the consideration partly in cash and party by cheque. The ld. CIT(A) held that a very purpose of section 50C/56(2)(vii) was to prevent evasion of taxes in land deals by such methods. He observed that the DVO had taken into account factors like condition of shops, safety, maintenance, parking and other facilities including vacant possession. The ld. CIT(A) then discussed the meaning of the expression, “fair market value” as referred to in section 50C/56(2)(vii) and held that it ordinarily meant the price that could be fetched on

sale in the open market on the date of execution of instrument of transfer of such property. The ld. CIT(A) held that the fair market value of a property cannot be stated in an abstract form. It varies from time to time and factors such as the locality, situation, general appearance in the area, availability of shopping and marketing facilities, condition of public place and transportation, availability of utilities and many other things. He held that the fair market value estimated by the DVO has taken the demerits of the property cited above. The DVO had applied rent rates fixed by the DM and ascertained the market values which a willing, reasonable and prudent purchaser would pay for the shops. Thus, he held that no additional rebate on the calculation of FMV is warranted. He held that no merit was there in claiming depreciated value of building for the purposes of calculation, when the same had not been adopted in the registration deal itself. He also held that due relief had been allowed for by the DVO for tenancy / squatting in the property and no further relief was merited. Accordingly, he dismissed the appeal.

5. Aggrieved with the said dismissal of his appeal, the assessee is before us. Shri. Rakesh Garg, Advocate (hereinafter referred to as the "ld. AR") submitted before us that the only issue involved in the present appeal was an addition of Rs.47,33,000/- made under section 56(2)(vii)(b)(ii) of the Act, 1961 being the difference between the actual sale consideration paid towards the purchase of immovable property and the guideline value i.e. stamp duty valuation. He further submitted that in view of difference between the actual purchase consideration of Rs.80,00,000/- and the value for stamp duty purposes of Rs.3,94,70,000/-, the matter was referred to the valuation officer who estimated the value at Rs.1,56,67,000/-. The ld. AO had made the addition of the difference of the amount estimated by the valuation officer and actually paid by the assessee and thereby made an addition of Rs.47,33,000/-. It was submitted that the property purchased was fully tenanted and was subject to prolonged litigation. As many as twelve suits were pending in the Civil Court at Kanpur. The details of litigation were contained in

a paper book filed by him from pages 146 to 240. It was submitted that the assessee had not been able to get the possession of the said property even till date. It was submitted that the property is under litigation, was not in dispute and all the litigation was with the tenants occupying the property. It was submitted that prior to entering into the transaction, the assessee had got the fair market value of the property assessed by a registered valuer, who vide his report dated 4.01.2014 had estimated the FMV at Rs.74.65 Lacs and the assessee had entered into the transaction taking the same as a basis. The ld. AR drew our attention to various decisions of the ITAT, wherein it had been that where the property is a subject matter of litigation, the FMV of the said property has to be discounted at the difference between the actual sale consideration paid and the value as estimated by the authorities, could not straightway be treated as income from other sources under section 52 of the Act.

i. Aruna Kommuri vs. ACIT - ITA No.2030/Hyd/2017 dated 23.07.2020

ii. Wenceslaus Joseph D'souza vs. ITO – ITA No.4732/Mum/2016 dated 26.12.2019

6. It was submitted that the mere fact that stamp duty value had been paid at a higher value as against sale consideration, would not mean that the assessee had paid higher amount than what he had actually paid. It was submitted that the purpose of stamp duty was to collect revenue irrespective of the actual fair market value. For stamp duty purposes, the value was determined for the entire block / whole area and it was not property specific. Reference in this regard was made to the decision of the Hon'ble Allahabad High Court in the case of ***CIT vs. Smt. Rajkumari Vimla Devi*** *279 ITR 360.* It was submitted that the term fair market value had been defined in the act and was as under:-

"Sec.2 (22B) *"fair market value", in relation to a capital asset, means-*

(i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act."

The fair market value of the property diferred from property to property depending on its situation, area, location, accessibility and ownership. Thus, the, "stamp duty value" could not be equated with the actual consideration paid. It was also submitted that the proviso to section 56(2)(vii)(b)(ii) made abundantly clear that the provisions of section 50C were para materia to section 56(2)(vii)(b)(ii).

7. On the other hand, Shri Sunil Kumar Rajwanshi, ld. CIT DR (hereinafter referred to as the "ld. DR") relied upon the orders of the ld. AO and the ld. CIT(A). He submitted that section 56(2)(vii)(b)(ii) imposed a deeming fiction according which the fair market value was determined on the basis of stamp duty value or a valuation report whichever was lower and in the instant case, since the valuation report was far in excess of the amount claimed to be paid by the assessee, the balance was taxable in the hands of the assessee as, "other income" under section 56(2)(vii)(b)(ii) .

8. We have duly considered the facts and circumstances of the case. It is not in dispute that the property is heavily tenanted and heavily litigated. The assessee has filed copies of suit papers as pending in the Civil Court, Kanpur in the following cases:-

"1. Smt. Krishna Trivedi v/s Ravi Khera, Case No. 185/2009 (Old & mentioned in Registry)

2. Smt. Krishna Trivedi v/s Gulshankhera, Case No. 185/2009 (Old & mentioned in Registry)

3. Smt. Krishna Trivedi v/s Sunil Kumar Bajpai, Case No. 109/2009 (Old & mentioned in Registry)

4. Hakikat Saraf v/s Sunil Bajpai, Case no. 96/2014 ACMM VII

5. Hakikat Saraf v/s Smt. Shakuntala Devi, Shri. Ravi Trivedi & Ms. Jyoti Trivedi, Case No.1610/2014 (For Vacation of Property)

6. Smt. Shakuntala Devi v/s HakikatSaraf, Case No. 1669/2014, (Registry Challenged on basis of Will)

7. Sunil Kumar Bajpai v/s Smt. Krishna Trivedi, HakikatSaraf; Smt. SheetuSaraf, Case No. 158/2014

8. Hakikat Saraf v/s Smt. Shakuntala Devi, Ravi Trivedi, Km. Jyoti, Shri. Prakash Dwivedi, Shri Ambika Prasad Tiwari & Shri. Radhey Shyam Shukla, Advocate, Case No. 05/2016 (Criminal Case Challenging Validity of WILL created on forged basis)

9. Hakikat Saraf v/s Shri. Ravi Trivedi&Shri. Ravi Khera, Case No. 366/2015 (Criminal Case)

10. Smt. Shakuntala Devi v/s Shri. Sunil Kumar Bajpai, HakikatSaraf, SheetuSaraf and Smt. Krishna Trivedi, Case No. 29/2016

11. Shri Gulshan Khera v/s Smt. Krishna Trivedi, Hakikat Saraf, Sheetu Saraf, Case No. 120/74 of 2016

12. Shri. Ravi Khera v/s Smt. Krishna Trivedi, Hakikat Saraf, Sheetu Saraf, Case No. 121/74 of 2016."

9. Thus it can be seen that as on date, there are twelve cases pending in respect of approved property, of which at least three cases pertained to the period before the property was purchased by the assessee. In the case of Aruna Kommuri vs. ACIT - ITA No.2030/Hyd/2017, the Hon'ble ITAT has held, *"from the submissions made by the ld. AR, it is quite evident that there was some litigation with respect to the property sold by the assessee. This fact is also not disputed by the ld. Revenue Authorities. It is quite obvious that if the title of the immovable property is defective, then the market value of the immovable property will be considerably reduced."* The Hon'ble ITAT held that in this situation, it would have been appropriate on the part of the ld. AO to obtain a valuation report from the ld. DVO in accordance with the provisions of the act and thereafter complete the assessment on the basis of value determined by the ld. DVO. In the instant case, the ld. AO has made the reference to the valuation officer and only after considering the valuation report of the ld. DVO,

made the addition of Rs. 47,33,000/- and the ld. CIT(A) has dismissed the appeal of the assessee on the grounds that the valuation report framed by the ld. DVO had taken into account the encumbrances of the said property. Therefore, it is appropriate to examine the report of the ld. DVO to see how far this is actually so. Perusal of the report of the ld. District Valuation Officer, Kanpur dated 1.07.2016 shows that in column no.6.4, "particulars of tenants/leases/licenses etc., and portion occupied by each, the ld. DVO has written, "not applicable". Thus he has not explicitly accounted for tenancy / litigation in his report except for the rejection of the reduction factor of 80% for calculation of distress sale value of Rs.74.65 lacs which the ld. DVO has held to be arbitrary and unjustified and very very high and thereby excessive. It is also observed from a perusal of the DVO's valuation report and the sale deed, that the DVO has adopted the rate given in the sale deed i.e. he has given 60% reduction on account of the value of land in comparison to Stamp Duty Value while evaluating the same. Thus, though his report is not explicit in recognizing the fact of tenancy and litigation, it does appear to have been accounted for in view of the fact that he has adopted the DM circle rate method and valued the land on the basis of the rate contained in the sale deed. It appears that further cognizance has been taken of the same litigation in determining the value of the building where 3% annual deduction has been allowed for a period of 25 years on account of poor condition and maintenance of building due to litigation and court cases. Thus, on perusal of the valuation report, it cannot be said that the Valuation Officer has not considered the encumbrances or the tenancy factor while valuing the land. The assessee has submitted that on account of the various encumbrances, the price that has been paid by him was the actual fair market value because he has not received possession of the property even till date. In response to this arguments, it is observed that section 56(2)(vii)(b)(ii) is a deeming provision, which in certain circumstances holds that in the event of a property being purchased for less than its stamp duty value, the stamp duty value will be taken as the fair market value but if

valuation by the Departmental Valuation Officer shows that the fair market value is less, then it is the value determined by the DVO which would be taken as the fair market value. As this is a deeming provision that mandates us to consider a particular method of valuation, the plea of the assessee that his purchase price represents the fair market value cannot be accepted. Furthermore, it is pertinent to point out that the ld. AO is bound by the report of the Valuation Officer, in view of the fact that the report of the Valuation Officer under section 50C (which applies to section 56(2)(vii)(b)(ii)) is a report made under the provisions of sub sections 2, 3, 4,5 and 6 of section 16A, Clause i of sub section (1) and sub sections 6 and 7 of section 23A sub section (5) section 24, section 34AA, section 35 and section 37 of the Wealth Tax Act, 1957, (27 of 1957). Therefore, the ld. AO had no power to consider objections against the estimate by the Valuation Officer if the objections of the assessee were not found to be in order by the Valuation Officer. However, it is observed that the DVO has valued the building at Rs.12,04,602/-, rejecting the contention of the registered valuer that the value of the building should be taken as nil, on the ground that a building always has some residual value, depending on availability of usable material (salvage value) which, while he stated that it ought to be 10 to 15 per cent of the cost of building, he estimated the same at Rs.12,04,602/- which is around 20 per cent of the cost of the building. It appears from the same that both the DVO and the registered valuer are in agreement that the building was not capable of renovation but was in such poor condition that it required demolition. The only difference is whether even such building had commercial value on account of what could be retrieved from the demolished ruins. Considering the same, we hold that the estimate of 20 per cent residual value, that has been adopted by the DVO, is much too high to reflect the salvage value from the ruins of the building upon demolition. Accordingly, we hold that residual value of 5 per cent would be sufficient to account for any items that may be retrieved from such demolition. Accordingly, we restrict the residual value of the building to 5 per cent of total costs

i.e. 3,01,150/- and sustain the addition made on this account to this extent. The assessee gets relief of Rs.9,03,452/- on this account. Grounds No.1,2 & 3 are partly allowed, while ground Nos. 4 to 11 are dismissed accordingly.

10. However, it is observed that the assessee in ground no. 12 of its appeal submitted that as the property was purchased on 10.01.2014, the provisions of the amended section 56(2)(vii)(b)(ii) which has been inserted w.e.f. 1.04.2014 by Finance Act, 2013 would not be applicable to it. This is not a ground raised earlier before the Ld CIT(A), but since this is a legal ground and goes to the root of the taxability of the amount in the hands of the assessee, we proceed to admit and decide the same in view of the decision of the Hon. Supreme Court in NTPC vs CIT 229 ITR 383(SC)

11. Ongoing through the provisions of section 56(2)(vii)(b)(ii) prior to its amendment by the Finance Act, 2013 w.e.f. 1.04.2014, it is seen that the provisions of section 56(2)(vii)(b)(ii) only applied to immovable property that was received without consideration and it was only after the amendment that properties purchased for inadequate consideration were brought without the ambit of section 56(2)(vii)(b)(ii). However, ongoing through the explanatory memorandum, it is seen that the amendment would apply to assessment year 2014-15 onwards. In the circumstances, the submission that the assessee is not liable to be taxed according to the provisions of section 56(2)(vii)(b)(ii) is not acceptable. Ground No. 12 is also dismissed accordingly.

12. Ground no 13 is beyond the jurisdiction of this court to decide and therefore it is dismissed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 29.10.2024 at Lucknow, U.P.

Sd/-	*Sd/-*
[SUDHANSHU SRIVASTAVA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 29/10/2024
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Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.