

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.924/Bang/2019
Assessment Year: 2016-17

Sri Sandeep Patil Flat No.1802, Ground Floor 18 th Block, Embassy Habitat Vasanthnagar Bengaluru-560 001 PAN NO :AKSPP0412B APPELLANT	Vs.	The Income Tax Officer Ward-1(3)(5) Bengaluru RESPONDENT
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Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	01.09.2020
Date of Pronouncement	:	09.09.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 27.03.2019 passed by Ld. CIT(A)-1, Bengaluru and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld. CIT(A) in partially confirming the addition made by the A.O. U/s 56 (2)(vii)(b) of the Income Tax Act, 1961 (in short 'the Act') relating to difference in purchase consideration between sub-registrar value and purchase price.

2. The facts relating to the issue are stated in brief. During the year under consideration, the assessee has purchased a flat in Bengaluru for a sum of Rs.2,33,00,000/-. The A.O. noticed that the value determined by the stamp valuation authority for the above said flat was Rs.3,34,83,000/-. However, the stamp duty valuation

at the time when “Agreement to sell” was entered into was Rs.3,11,16,000/- Hence, the assessing officer proposed to assess the difference between the stamp value at the time of entering agreement to sell and actual consideration shown purchase agreement as income of the assessee u/s 56(2)(vii)(b) of the Act. The assessee submitted that the sale was a distress sale by the seller since the seller had lost original title deeds of the property. Accordingly, the assessee disputed the value determined by the stamp authority and accordingly opted for a reference to District valuation officer for determination of Fair Market Value (FMV) of the flat. Since the report of DVO was not received by the due date prescribed for completion of assessment, the A.O. assessed the difference of Rs.78,16,000/- (Rs.3,11,16,000/- (-) Rs.2,33,00,000/-) as income of the assessee u/s 56(2)(vii)(b) of the Act. Subsequently, upon receipt of the DVO valuation, who had valued the property at Rs.2,68,86,400/-, the assessing officer passed a rectification order u/s 154 of the Act and accordingly, reduced the addition to Rs.35,86,400/- (Rs.2,68,86,400/- (-) Rs.2,33,00,000/-).

3. The assessee challenged the addition so made by the A.O. by filing appeal before Ld. CIT(A). Before the Ld CIT(A) the assessee disputed the valuation made by DVO by pointing out discrepancies in the report of the DVO. On being convinced, the Ld. CIT(A) arrived at the difference between fair market value of the property and actual consideration at Rs.15,92,800/-. Accordingly, he sustained the addition to the extent of Rs.15,92,800/-. For the sake of convenience, we extract below the decision rendered by the Ld. CIT(A).

“5.0 I have considered the grounds raised by the appellant as well as the materials on record. The appellant has raised as many as 12 grounds in the appeal memorandum, which are all directed against the addition of Rs.35,86,400/- made u/s.56(2)(viib) of the

Act. As per the agreed facts, the appellant had purchased the property at #1802, 18th Floor, Embassy Habitat, 59, Palace Road, Bengaluru, for a consideration of Rs.2,33,00,000/- under the sale deed dated 25.01.2016. This sale deed came to be registered for the guidance value of Rs.3,11,16,000/- and the A.O. proceeded to make an addition of Rs.78,16, 000/- in the order u/s.143(3) dated 21/12/2018 in terms of section 56[2][viib] of the Act. However, since the appellant had raised objections to treat the guidance value as the Fair Market Value (FMV) of the property purchased, the A.O. had made a reference to the District Valuation Officer (DVO) on 07.12.2018 and observed that suitable rectification would be made on receipt of the valuation report. Thereafter, the DVO rendered the final valuation report dated 02.01.2019 determining the FMV of the property at Rs.2,68,86,400/- as against the guidance value of Rs. 3,11,16,000/-. Upon receipt of the valuation report, the A.O. has passed the impugned order u/s.154 rws 155(15) dated 18.01.2019 reducing the addition to Rs.35,86,400/-.

5.1 It is the appellant's case before me that the FMV of the property estimated by the DVO in terms of the final valuation report dated 02.01.2019 is excessive for the reason that the DVO has not considered the negative factors explained by the appellant like loss of the original title deed and the property not being freehold as it was mortgaged to the Department of Mines and Geology, which had driven the prices down. It is also argued that the DVO had made a further addition of 6% of the FMV of the flat determined by him at Rs. 2,48,92,800/- for special amenities / facilities. It is the contention that there is no basis for such an addition of 6% to the FMV of the flat and at best, the FMV of the flat including the 2 covered car parks should have been taken at Rs.2,53,92,800/- and not Rs.2,68,86,400/- . Finally, it is also contended by the appellant that the addition made u/s.56(2)(viib) of the Act, cannot stand since, the difference between the FMV estimated by the DVO and the actual consideration paid is less than 15% when considered on the basis of the FMV after deducting the 6% made on account of special amenities / facilities.

5.2 I have gone through the final valuation report of the DVO dated 02.01.2019. In the said valuation report, the DVO has stated that he has taken the guidance rate issued by the local authority as well as comparable sale instances of other properties falling within the vicinity as the basis for valuation of the property purchased by the appellant. It has been stated in the valuation report of the DVO that most transactions relating to other properties in the vicinity are at par with guidance value with lesser value of registration to the extent of 12%. Hence, the DVO adopted the guidance rate issued by the local authority for the relevant period as the basis for valuation and has given suitable deductions to arrive at the FMV of the flat. It is my considered view that the guidance rate issued by the local authority for the relevant period would take into account all the special features and amenities and thus, when the basis for valuation is the guidance value, no separate addition of 6% of the FMV is required to be made. It is seen that the DVO has taken the FMV of the flat having built up

area of 2593 sft including undivided share of land of 1334.07 sft. at Rs.2,48,92,800/-, which works out to exactly 80% of the guidance value of Rs.3,11,16,000/-. A further addition of Rs.5,00,000/- towards 2 covered car parks has also been made by the DVO. Hence, the contention of the appellant before me that the DVO has not regarded the negative factors like loss of title deeds, leasehold property, mortgage, etc., cannot be accepted.

5.3 *However, there is some merit in the contentions of the appellant that the FMV of the property should be taken at Rs.2,48,92,800/- since the special amenities and two covered car parks as per the valuation report would be covered in the FMV of the flat based on the guidance value taken as the basis of valuation. On this basis, it is seen that the difference between the FMV of the property purchased by the appellant and the actual consideration paid comes to Rs.15,92,800/-. This difference between **the FMV** of the property and the actual consideration works out to 6.83% and the same is not properly explained by the appellant."*

4. The assessee also argued before Ld. CIT(A) that no addition should be made u/s 56(2)(vii)(b) of the Act, if the difference between fair market value of the property and actual consideration is less than 10% of the actual consideration. The Ld. CIT(A), however, did not accept the said contentions of the assessee and accordingly rejected the same. Aggrieved on this aspect, the assessee has filed t

5. The Ld. A.R. placed his reliance on the following decisions in order to reiterate his contentions that no addition u/s 56(2)(vii)(b) of the Act is called for, if the difference between the fair market value of property and the actual consideration is less than 10% of the actual consideration.

(a) Shri Rama Jogi Reddy Sanepalli Vs. ITO (ITA No.34/Bang/2019 dated 15.2.2019).

(b) B.S. Sanjay (HUF) Vs. ITO (ITA No.1141/Bang/2018 dated 4.5.2018)

(c) M/s. John Fowler (India) Pvt. Ltd. Vs. DCIT (ITA No.7545/Mum/2014 dated 25.1.2017).

(d) Chandra Prakash Jhunjhunwala Vs. DCIT (ITA No.2351/KOL/2017 dated 9.8.2019)

6. The Ld. A.R. further submitted that the Parliament itself has inserted third proviso in Section 50C(1) of the Act, as per which, if the difference between stamp value and the actual consideration is 5% or less the same shall be ignored w.e.f. 1.4.2019. The limit of 5% has been increased to 10% w.e.f. 1.4.2021. The Ld. A.R. submitted that the effect of these amendments has been considered by the Kolkata Bench of Tribunal in the case of Chandra Prakash Jhunjhunwala (supra) and it has been held that the third proviso to section 50C should be treated as curative in nature and will apply retrospectively from 1.4.2003 i.e. from the date of insertion of section 50C in the Statute. The Ld. A.R. submitted that even prior to the introduction of third proviso to section 50C(1) of the Act, the coordinate benches in other cases referred above has held that difference of less than 10% shall be ignored. In this regard, the Ld. A.R. invited our attention to the decision rendered by the Mumbai bench of Tribunal in the case of John Fowler India Pvt. Ltd. (supra). Accordingly, he submitted that the difference determined by Ld CIT(A) is less than 10% of actual consideration and hence the same should be ignored.

7. The Ld. D.R. on the contrary, relied on the decision rendered by Ld. CIT(A). He submitted that section 56(2)(vii)(b) of the Act does not contain any such proviso corresponding to the third proviso to section 50C(1) of the Act. Further, the proviso has only prospective effect. He submitted that, under the principles of interpretation, the provisions of the Act shall have to be interpreted strictly. He submitted that the provisions of section 56(2)(vii)(b) does not state that difference between stamp value and the actual consideration

upto 10% should be ignored. Accordingly, he submitted that the addition sustained by Ld. CIT(A) should be upheld.

8. We heard the rival contentions and perused the record, A specific query was put to Ld. A.R. as to whether the third proviso to section 50C(1) of the Act can be applied to section 56(2)(vii)(b) of the Act in the absence of such proviso in that section. The Ld. A.R. submitted that the provisions of section 50C of the Act are applicable in the hands of the seller and provisions of section 56(2)(vii)(b) are applicable in the hands of buyer in respect of very same transaction of transfer of land or building. Hence, there could not be two different “fair market value” in respect of the very same property, i.e. one in the hands of the seller and another in the hands of the buyer. Accordingly, he submitted that the principles applied to determine the fair market value of the property in the hands of the seller should equally be applied in the hands of buyer also.

9. We find merit in the explanations given by Ld. A.R. We notice that the Mumbai bench of Tribunal has examined an identical issue in the hands of John Fowler India Pvt. Ltd. (supra) and, by following the decision rendered by Jaipur Bench in the case of Smt. Sita Bai Khetan Vs. ITO (ITA No.823/JP/2013 dated 27.7.2016), the Tribunal has held that the difference between the value adopted by stamp valuation authority and actual consideration is to be ignored as the same is less than 10%. For the sake of convenience, we extract below operative portion of the order passed by Mumbai bench.

“We have heard the rival submissions and perused the orders of the authorities below and the case law relied on. Considering the entire facts of the assessee's case, the

submissions of the assessee cannot be ignored. The sale consideration of these two plots sold on the same day though be separated agreements, is more than the stamp duty valuation by Rs. 3,00,00,000/-. Even assuming for a movement that the sale consideration in respect of Plot in survey No. 22 and 42 is less than the stamp valuation it is Rs. 33,48,284/- which is less than 10% of the stamp duty valuation of the said plot. Therefore, in view of the ratio of the decisions relied on by the assessee, the assessee should succeeded in its appeal. The Jaipur Bench in the case of Smt. Sita Bai Ketan (Supra) held as under:-

4. 2 "We have heard rival contentions and perused the material available on record We find that the Hon'ble coordinate Bench in ITA No. 1.543/PN/2007 in the case of Rahul Constructions Vs. DCIT (Supra) has held as under:-

"We find that the Pune Bench of the Tribunal in the case of Assit. vs. Harpreet Hotels (P) Ltd. Vide ITA No. 1156-1160/Pn/2007 and relied on by the learned counsel for the assessee had dismissed the filed by the Revenue where the CIT(A) had deleted the Unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. KaadduJayghoshAppasahebh, the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. Vs, UT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is hound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs. 20,55,000/- as against the actual sale consideration of Rs. 149,00,000 disclosed by the assessee. We, therefore, set aside the order of the CIT(A) and direct the AO to take Rs. 19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed"

In the instant case, the difference between the valuation adopted by the Stamp Valuation Authority and declared by the assessee is less than 10%. Therefore, respectfully following the decision of the Hon 'file Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessed is allowed".

8. Therefore, respectfully following the said decision we direct to AO to adopt the valuation of sale consideration as declared by the assessee. The additions made by the Assessing Officer u/s. 50C is deleted and as grounds raised by the assessee are allowed.

10. We also notice that the Parliament has introduced third proviso in section 50C(1) of the Act, as per which the difference in stamp duty valuation and actual consideration should be ignored, if it is less than 5%/10%. Even though the said provision has come into effect from 1.4.2019/1.4.2021, we notice that the Kolkata Bench of Tribunal has held it to be curative in nature in the case of Chandra Prakash Jhunjunwala (supra) and accordingly held that the proviso shall apply since the date of insertion of sec.50C of the Act. Accordingly, the above said reasoning given by the Kolkata bench of ITAT also supports the contentions of the assessee.

11. In view of the foregoing discussions we find merit in the prayer of the assessee. We notice that the addition of Rs.15,92,800/- sustained by Ld CIT(A) works out to less than 10% of the actual consideration of Rs.2,33,00,000/- paid by the assessee. Accordingly, we modify the order passed by Ld. CIT(A) and direct the A.O. to ignore the difference between fair market value determined by CIT(A) and the actual consideration as the same is less than 10% of the actual consideration.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 9th Sept '20

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 9th Sept, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.