

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.322/Ind/2023
(Assessment Year: 2009-10)

M/s. Indore Paraspar Sahkari Grih Nirman Sanstha 224-Mishal Plaza, Tilakpath, Indore (Appellant / Assessee)	vs.	ACIT, Circle 2(1) Indore (Respondent/ Revenue)
PAN: AAAAI2629G		
Assessee by	Ms. Shreya Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	06.06.2024	
Date of Pronouncement	18.06.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 28.06.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2009-10. The assessee has raised following grounds of appeal:

"1.The order of the learned Commissioner of Income Tax (Appeal) is based on hypothetical presumption, illegal, bad in law, unjustified and is beyond the facts and circumstances of the case. 2. The learned commissioner of income tax (Appeal)

has erred in confirming market value of the property considered by the learned ACIT 2(1), since the property under appeal is a restricted property having restricted sale, same is decided after taking into account certain characteristics. Usage of the aforementioned leased property is restricted solely to the construction of a community hall, with a clear emphasis on its utilization for educational purposes. This indicates that any construction or usage of the property should align with the goal of creating a space that supports educational initiatives within the community. In the recent provision for valuation of various plots issued by Chairman Central Board of Evaluation and Inspector General Registration Bhopal, Madhya Pradesh. As per the provision "Plots Reserved for Educational or Health Units (School/ College/ Hospital/ Nursing Home): The valuation of plots that are specifically reserved for educational or health units will be accepted at 60 percent of the residential plot rate. This implies that these plots will be assessed at a rate that is 60 percent of the value assigned to residential plots within the same layout. The oxford dictionary defines market value as "The Amount for Which Something Can Be are not available in the captioned property in view of the fact that the mentioned property is not freely marketable, it has number of restrictions on sale and its use, hence the concept of market value is not applicable in the instant case, this fact was overlooked by the assessing authority.

3. the Ld. commissioner of income tax (Appeal) has erred in considering the assessment of total income of the assessee with addition of market value as per CGL guidelines of the property, even without waiting of the DVOS report for aforesaid property. Hence the case requires natural justice of law.

4. The appellant craves leave to add, to amend, to modify or alter any of the grounds of appeal as and when necessary."

2. The solitary issue arises in this appeal of the assessee is whether the CIT(A) has erred in confirming the addition made by the AO u/s 50C of the Act by taking full value consideration as per

Stamp Duty Valuation. In ground no.3 the assessee has specifically raised the issue regarding the AO has made the addition on the basis of market value as per collector's guidelines of the property without waiting the report of the DVO.

3. The Ld. Counsel of the assessee has submitted that the assessee is Group Housing Co-operative Society registered under M.P. Co-operative Society Act 1960 on 22.05.1980. Vide order dated 08.03.2013 the Deputy Commissioner of Housing Cooperative Society initiated liquidation of the society u/s 69 of the Housing Cooperative Society Act and appointed receiver/liquidator. The receiver taken over the charge of society on 09.03.2013 and issued a Public notice dated 11.03.2013 to all debtors and creditors regarding their claim. Earlier in the process of liquidation a community Hall along with land situated at scheme no.71, sector-C was transferred vide sale deed dated 17.12.2008 for a consideration of Rs.87,07,657/-. The said plot of land was leasehold property and therefore, the assessee was having only leasehold rights in the said land. However, the Registration Authority valued property for the purpose of levying stamp duty at Rs.1,84,93,000/-. The AO has adopted full value consideration at Rs.1,84,93,000/- as per section 50C of the Income Tax Act and made addition of Rs.99,60,637/-. Ld. AR has further submitted that the fair market value of the property was much less than the stamp duty value due to the reason that the property was leasehold property and secondly the Community Hall as per the terms of the lease between Indore Development Authority (IDA) and assessee cannot be used other

than the purpose specified therein. There are restrictive covenants regarding the use and utilization of the said property only for public purpose and the assessee society cannot earn any profit or any commercial activity in the said Community Hall. Ld. Counsel has pointed out that though the CIT(A) has confirmed the adoption of full value consideration however, the AO was directed to workout capital gain as per section 50C of the Act instead of making the entire addition of full value consideration. The A.O has passed giving effect order as per the directions of the CIT(A) and thereby a capital gain of Rs.12,07,193/- was worked out by the AO.

3.1 The Next contention of the Ld. Counsel is that since it is a leasehold property and the transfer was under the supervision of the competent authority in the Cooperative Society Department of Government of MP and therefore, the consideration which was duly approved by the authorities as well as the transfer after the permission taken from the IDA cannot be held as suppressed or understated. In support of her contention she has relied upon the decision of Ahmedabad Benches of the Tribunal in case of DCIT vs. Saifee Jubiee High School & Madressa Yusufyan Society 91 taxmann.com 509 as well as the judgment of Hon'ble Bombay High Court in case of Virendra vs. Appropriate Authority & Ors 327 ITR 185. Thus, the Ld. Counsel for the assessee has submitted that the addition sustained by the CIT(A) is not justified and the same may be deleted.

4. On the other hand, Ld. DR has submitted that the objections raised by the assessee before the AO are restricted only for adopting fair market value and not on the applicability of section 50C of the Act. He has referred to the para 6.2.2 of the impugned order of CIT(A) and submitted that the CIT(A) has duly considered the contention raised by the assessee and held that once the capital asset being land or building or both is transferred and consideration received is less than the value adopted by any authority of State Government(Stamp Valuation Authority) the provisions of section 50C are applicable. He has relied upon the impugned orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. There is no dispute that the sale of Community Hall in question was not a normal transactions of transfer of capital assets but this transfer was in the proceedings of liquidation whereby the assets of the assessee society were to be realized for discharging the liabilities of the creditors. A liquidator/receiver was appointed by the Deputy Commissioner Cooperative Society who has carried out the proceedings of realization of the assets of the assessee society and the sale consideration against the transfer of this Community Hall was ultimately utilized for discharge of liabilities. The community Hall in question which is constructed on leasehold plot of land allotted by the IDA for specific purpose of Community Hall and to be used by the public at large and therefore as per Lease Deed the said Community Hall cannot be used for any other activity or purpose of making profit from the said Community

Hall. Thus, it is clear that the use of the Community Hall was for specific purpose and it is restricted only for Public at large without any Commercial use or earning any profit. Further the transactions of sale was under the supervision as well as orders of the statutory authorities after public notice inviting objection regarding sale of the property in question and hence, this cannot be said to be a normal transaction of transfer of a capital assets suppressing or understating the sale consideration. The sale transaction was in the public domain and subjected to the objections invited from the public and therefore, in these specific facts the decisions of Hon'ble Bombay High Court in case of Virendra vs. Appropriate Authority & Ors. (supra) is relevant wherein the Hon'ble High Court has held in para 3 to 5 as under:

"3. First of all, as pointed out, the show-cause notice dated 25-3-1994 is vague. There is no material including any sale instance referred therein. No copy of any document relating to the sale instance, even if any, was furnished to the petitioner along with the notice and/or at any time whatsoever. No justification and/or details provided to purchase the property in question. This according to us, is a gross breach of principle of natural justice as no adequate opportunity to meet the case and to respond to the action as proposed to be taken by the authority was given.

Such vague show-cause notice deprives the parties to oppose and to raise appropriate defence to the proposed action as there was not a tentative or prima facie view of the value of the property referred therein. There is no material whatsoever to justify that the transaction was undervalued and the basis for the conclusion which was arrived at. [Vide Appropriate Authority of Income Tax Vs. Jagdish Electricians India P. Ltd. and Others, Sona Builders v. Union of India and Ors. (2001) 10 SCC 280, Mrs. Nirmal Laxminarayan Grover Vs. Appropriate Authority and Others, Shreyas Builders and Another and Laxman Ganesh Tulshibaughwala and Others Vs. M.D. Kodnani and Others, Jagdish Electronics (India) Pvt. Ltd. and Another Vs. Appropriate Authority, Income Tax and Others, Smt. Pratibha Sheth and Others Vs. Appropriate Authority and Another, Jai Nadershah Karani and Another Vs. C.M.

Betgeri, Commissioner of Income Tax and Others, . In all the above cases, such show-cause notices and actions arising out of the same including orders were quashed and set aside for the similar reasons.

4. Even after going through the impugned order/action, we have noted that the sale instance as relied, of which no copy was served at the relevant time and/or at any time to the petitioner. The said sale instance is of the year 1994. As noted, pursuant to the offer given by respondent No. 2, the petitioner was qualified and respondent accordingly resolved to sell the property, based upon the valuation, which they had prepared, accepted the earnest money in the year 1991 itself. After due sanction, as required under the Bombay Public Trusts Act, the agreement in question was executed in the year 1993. The petitioners and respondent No. 2 thereafter submitted Form 37-I to respondent No. 1. The sale instance of the year 1994, therefore, relied upon in the present case of the property situated in other locality, cannot be treated a basis for determining so-called undervaluation of the market value as alleged. There is no material to show any fair market value of such property situated in the same locality and of the relevant year of 1991. The whole approach, therefore, is incorrect. It amounts to concluding to purchase the property without putting on record "fair market value" as contemplated u/s 269UD(1) of the IT Act is impermissible. We have also noted that there is nothing mentioned anywhere in the show-cause notice that the assessee's action was with a view to evade taxes. Respondent No. 1 failed to specify and discharge its onus of establishing the undervaluation as they failed to determine the fair market value with reasons. There are no sufficient reasons given while rejecting the defence of the petitioner for not taking note of tender notice dated 3-1-1991 instead of agreement dated 24th Dec. 1993 though there is no justification whatsoever given while comparing with a non-comparable property; vide Mehta Mody and Co. Vs. Appropriate Authority and Others, and Writ Petn. No. 558 of 1995, Cigeo Construction Co. (P) Ltd. vs: Appropriate Authority and Ors. dated 29-8-2008 & Writ Petn. No. 719 of 1993, Shewalkar Developers (P) Ltd. v. Union of India and Ors. decided on 7-8-2008 reported at Above cases support the submissions of the petitioner's counsel in all respects.

5. Importantly, respondent No. 2 after complying with all the formalities being a trust and property being a trust property, as required under the BPT Act, based upon the proper valuation of the property considered and decided and sanctioned by the competent authority just cannot be overlooked without any contra material to justify to challenge the said valuation. In a case like this, where the sanction is granted by the authority under the BPT Act. In Om Shri Jigar Association Vs. Union of India and Others, a Bench of Gujarat High Court considering similar provisions of Income Tax Act, as well as BPT Act has observed as under:

In the light of the aforesaid facts, it is apparent that there was no reason for the Appropriate Authority to resort to the provisions of Chapter XX-C of the Income Tax Act. It would be difficult to arrive at a conclusion that there is significant undervaluation of property to the extent of 15 per cent or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more. Further, the property was sold after inviting offers from the public at large by giving advertisement in the newspaper and that too after proper verification by the statutory authority under the Bombay Public Trusts Act. Even after executing the agreement to sell, objections are invited as provided under Rule 24. Hence, in such types of cases, even if some lower amount is received, it would not mean that power to purchase the said property u/s 269UD of the Income Tax Act can be exercised by the authorities under Chapter XX-C as it would be difficult to draw a presumption that there was an attempt to evade tax. This is made abundantly clear by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others,"

5.1 Similarly Ahmedabad Benches of the Tribunal in case of DCIT vs. Saifee Jubiee High School & Madrass Yusufiyan Society (supra) has considered an identical issue in para 4 as under:

"4. Learned Departmental Representative vehemently contends that the CIT(A) has violated the provision contained in Rule 46A of the Income Tax Rules in admitting assessee's additional evidence in the nature of its registered High School & Madressa Yusufiyan Society] A.Y. 2010-11 -4- valuer's report that the above capital assets' fair market value was Rs.12.4lacs only. His case is that the CIT(A) did not issue any notice to the Assessing Officer for factual verification of the said details. We find no merit in the instant argument. Page 11 of the paper book indicates that the Charity Commissioner had passed his order as per the provisions of the Bombay Trust Act and Rules (as applicable in Gujarat state) approving the impugned sale at a price of Rs.12.50lacs which ultimately culminated in the sale deed. There can hardly be any quarrel that such an approval involves a long drawn procedure of public notice inviting relevant bids. The Revenue fails to dispute that the assessee Trust is bound by such an approval order passed by the statutory authority. We further find that hon'ble jurisdictional high court's judgment in Om Shri Jigar Association Vs. Union of India (1994) 209 ITR 608 (Guj) as followed in (2010) 327 ITR 185 (Bombay) Virendra vs. appropriate authority & Ors. holds that there is no inference of understatement of consideration in such a case involving an approval accorded by the Charity Commissioner under the Bombay Trusts Act. Mr. Kabra seeks to distinguish the same by pleading that the said case law pertains to the proceedings u/s.269UD of the Act instead

of Section 50C of the Act. We observe that this distinction fails to rebut the fact that the above hon'ble high courts have considered the relevant provisions enshrined in Bombay Trust Law vis-à-vis understatement of sale considerations of the relevant capital assets therein. We conclude in this factual backdrop that whatever sale price Charity Commissioner had approved had to be followed in assessee's impugned sale deed. Couple with this, the lower appellate authority has already observed that there are various restrictions on usage of the capital asset. All these findings have gone uncontroverted from Revenue side. We thus see no reason to accept Revenue's sole substantive ground. The same is therefore rejected. So is the outcome of its appeal ITA No. 2301/Ahd/2014."

5.2 Thus, by taking into consideration the facts that the transfer of capital asset was in pursuance to the order of Charity Commissioner as per the provisions of Bombay Trust Act and Rules the Ahmedabad Bench has observed that there can hardly be any quarrel that such an approval involves a long drawn procedure of public notice inviting relevant bids and the assessee trust was bound by such approval order passed by the statutory authority. The Ahmedabad Bench of the Tribunal has followed the judgment of Hon'ble Gujarat High Court as well as judgment of Hon'ble Bombay High Court in case of Virendra vs. Appropriate Authority and Ors. (supra). Accordingly following the judgment of Hon'ble Bombay High Court in case of Virendra vs. Appropriate Authority and Ors. (supra) as well as the order of the Ahmedabad Bench of the Tribunal in case of DCIT vs. Saifee Jubilee High School & Madrass Yusufiyan Society (supra). We hold that the addition sustained by the CIT(A) is not justified in the peculiar facts and circumstances of the case when the transfer of capital asset took place as per approval and under the supervision of the statutory authorities and after due process of inviting the public

objections in respect of the said transactions. Accordingly the addition is deleted.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 18.06.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore