

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3869/M/2019
Assessment Year: 2008-09**

ACIT 23(3), Room No.104, 1 st Floor, Matru Mandir, J.D. Road, Tardeo, Mumbai – 400 007	Vs.	M/s. The Salsette Catholic Co-op. Housing Ltd., The Bandra Gymkhana, 42 St. Andrew's Road, Bandra (W), Mumbai – 400 050 PAN: AAAT0195N
(Appellant)		(Respondent)

**CO No.67/M/2020
(Arising out of ITA No.3869/M/2019)
Assessment Year: 2008-09**

M/s. The Salsette Catholic Co-op. Housing Ltd., The Bandra Gymkhana, 42 St. Andrew's Road, Bandra (W), Mumbai – 400 050 PAN: AAAT0195N	Vs.	ACIT 23(3), Room No.104, 1 st Floor, Matru Mandir, J.D. Road, Tardeo, Mumbai – 400 007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 05.07.2021

Date of Pronouncement : 12.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal by the Revenue and the cross objection by the assessee have been preferred against the order dated 27.03.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment

year 2008-09. The assessee has raised legal issue of wrong reopening u/s 147 of the Act in the cross objection and therefore we would take up the cross objection first for adjudication.

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2. By virtue of cross objection the assessee has challenged the order of Ld. CIT(A) upholding the reopening of assessment under section 147 of the Act which the assessee challenged to be illegal and bad in law and in ground No.2 the assessee has challenged the order of Ld. CIT(A) upholding the assessment order passed under section 143(3) read with section 147 of the Act which is otherwise illegal and bad in law in view of the wrong reopening of the assessment.

3. The facts in brief are that the assessee filed the return of income on 02.01.2009 declaring total income of Rs.21,74,000/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee is reopened under section 147 of the Act after the AO received information that the assessee has transferred a land in village Valahi to M/s. Transcon Properties Pvt. Ltd. vide transfer deed dated 09.05.2007 for a consideration of Rs.12 crores whereas the value as per the Assistant Director Town Planning Valuation, Maharashtra, Pune, the value was Rs.50,12,17,552/-. Accordingly, a notice under section 148 of the Act dated 30.03.2015 was issued and finally assessment under section 147 of the Act was framed by making an addition of Rs.44,55,14,722/- under section 143(3) read with section 147 of the Act dated 31.03.2016.

4. The assessee challenged the order of AO before Ld. CIT(A) on the jurisdiction of the AO to reopen the assessment, however, the same was dismissed by observing and holding as under:

“4.2.1 From the reasons recorded, I find that the AO has received information from the Investigation Wing of the Income Tax Department that the stamp value of the sale/ conveyance deed, in respect of the transfer of land by the appellant to M/s. Transcon Properties Pvt. Ltd., executed on 09.05.2007 was Rs.50.12 crores as determined by Asst. Director Town Planning Valuation, Maharashtra, Pune, as against the value shown in the conveyance deed at Rs.12 crores. The above said information, which shows substantial difference between the sale value of the property in the conveyance deed and the valuation arrived at by the Asst. Director Town Planning Valuation, Maharashtra, constitutes a tangible material that gives rise to an inference of escapement of income in view of the provisions of Section 50C which require that the value of consideration received or accruing as a result of transfer of a capital asset is to be adopted at the rate assessed or assessable by the Stamp Valuation Authority. It is a settled law that at the time of initiation of, reassessment proceedings, what is important is that there should be information from credible source which give "rise to belief regarding the escapement of income and the under assessment or escapement of income is not required to be proved to the hilt at this stage.

4.2.2 The appellant has submitted that the reopening was not valid since the value was determined by Assistant Director Town Planning Valuation, Maharashtra which is in the nature of an opinion and subject to adjustments which were required to be done. The valuation report of the property at a higher figure does not necessarily mean that income has escaped the assessment.

In this regard, I find that the appellant has relied on various decisions wherein it was held that the reopening of assessment on the basis of a report of DVO (District Valuation Officer) is not legally tenable where the DVO's report mentioned fair market value at a higher figure than the sale price disclosed by the assessee. I find that in the present facts of the case the 'Valuation report' pertains to the stamp duty valuation, which has been prepared by Asst. Director Town Planning Valuation, Maharashtra, Pune on a reference from the Stamp Valuation Authority and is a nodal authority for such 'Valuation. Such difference in the valuation is to be treated as income by the express provisions of section 50C, which is not the case with the difference in valuation as per a report of the DVO. Thus, the decisions cited are based on different facts and not relevant to the present case. Therefore, I am of the considered opinion that the reassessment proceeding has been initiated in a valid manner, on the basis of a report of Government Authority entrusted with the task of doing the stamp valuation, for the stamp valuation authority. The exact quantum of income, which is to be added on the basis of such report has to be examined in the assessment proceedings after giving opportunity to the assessee which has been done by the AO. Therefore, Ground No.7, challenging the validity of initiation of reassessment proceedings, is found to be without merit and is dismissed. I find that the assessment order has been passed in the time allowed

u/s. 153 of the Act and Ground no.1 challenging the validity of assessment on the ground of limitation is also dismissed.”

5. After hearing both the parties and perusing the material on record, we find that in this case the assessment was reopened the assessment on the basis of information received by the AO that the plot sold and registered vide conveyance deed dated 09.05.2007 for a consideration of Rs.12 crores was in fact had market value of Rs.50,12,17,552/- according to the valuation done by Assistant Director Town Planning Valuation, Maharashtra, Pune on a reference from the Stamp Collector, Borivali to be adjudicated under section 31 of the Mumbai Stamp Act. The Ld. Counsel of the assessee vehemently submitted before us that the reopening of assessment under section 147 of the Act read with section 148 of the Act has been done invalidly without valid jurisdiction as the AO has no material before him to reopen the assessment. The Ld. A.R. submitted before us that the reopening was made on the basis of valuation done by Assistant Director Town Planning Valuation, Maharashtra, Pune which in its report itself submitted that depreciation has not been given or considered on account of various legal suits pending in different courts. We note that there are 47 civil suits pending against the said property in the various courts and the property was occupied by the encroachers and tenants. Therefore, we find merit in the contention of the Ld. A.R. that the valuation done by the Assistant Director Town Planning Valuation, Maharashtra, Pune was not a reliable information to reopen the assessment which was mere an opinion and has no authenticity as the significant factors like pending suits, encroachments and tenants on the land have not been considered while valuing the property. We

also find that the Hon'ble Bombay High Court in the case of Mrs. Ruhi Mary Thomas & ors. vs. Salsette Catholic Co-operative Housing Society Ltd. and other in civil suit No.237 of 2010 vide order dated 02.02.2015 has also rejected the valuation done by the Assistant Director Town Planning Valuation, Maharashtra, Pune in para 15, 16, 17 for the same reason. Moreover, the case of the assessee is also squarely covered by the decision of Hon'ble Supreme Court in the case of ACIT vs. Dhariya Construction Co. (2011) 197 taxman 202 (SC) wherein it has been held that opinion of District Valuation Officer per-se is not an information for the purpose of reopening of assessment under section 147 of the Act and AO has to apply his mind to the information if any collected and must form a belief thereon otherwise the revenue is not entitled to reopen the assessment. We note that in this case also the AO has not applied his mind to the valuation received from Assistant Director Town Planning Valuation, Maharashtra, Pune as the AO has completely failed to take into account the encumbrances in the said land as there are 47 pending civil litigations, encroachments and occupation by tenants. Therefore, we are of the considered view that the reopening has been done on the basis of valuation report of Assistant Director Town Planning Valuation, Maharashtra, Pune is wrong and without jurisdiction. Accordingly, we set aside the order of Ld. CIT(A) requesting the reopening of the assessment under section 147 of the Act.

6. Since we have allowed the ground raised in the cross objection of the assessee the Revenue's appeal becomes infructuous and is accordingly dismissed.

7. In the result, the cross objection of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 12.10.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 12.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.