

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1311/Del/2018  
Assessment Year: 2014-15

RMG Buildwell (P) Ltd.,  
G-1354, Lower Ground Floor,  
CR Park,  
New Delhi.

Vs ITO,  
Ward-20(3),  
New Delhi.

PAN: AAECR0311C

(Appellant)

(Respondent)

Assessee by : Shri Naresh Chandra Agarwal, CA  
Revenue by : Shri M. Barnwal, Sr. DR  
Date of Hearing : 15.07.2021  
Date of Pronouncement : 27.07.2021

ORDER

This appeal filed by the assessee is directed against the order dated 26<sup>th</sup> December, 2017 of the CIT(A)-7, New Delhi, relating to assessment year 2014-15.

The grounds raised by the assessee are as under:-

1. Whether the learned assessing officer as well as learned CIT(A) was justified in making and sustaining an addition of Rs 1,61,740.00 U/s 56 on account of difference between the circle rate and actual consideration received.
2. Whether the learned CIT (A) as well as assessing officer was justified in not referring the property in question to the department valuation officer as demanded by the assessee and as per the provision of section 43CA read with section 50C of the Act.

2. Facts of the case, in brief, are that the assessee is a company and entered into a collaboration agreement with M/s Techmen Buildwell (P) Ltd. for construction of flats. As per the said agreement, the assessee company was to get 35% of total revenue from sale of various flats. It filed its return of income on 4<sup>th</sup> December, 2014 declaring total income at Rs.2,80,893/-. During the course of assessment proceedings, the AO noted that the assessee has sold a flat for Rs.55,16,000/- by M/s Techmen Buildwell (P) Ltd. However, the Circle Rate for which the stamp duty was paid by the purchaser worked out to Rs.59,78,115/-. The assessee has accounted for as its income at Rs.19,30,600/- being 35% of Rs.55,16,000/-. The AO, therefore brought to tax an amount of Rs.1,61,740/- being 35% of the difference of Rs.4,62,115/-. In appeal, the Id. CIT(A) upheld the action of the AO by observing as under:-

3.2. I have carefully considered the assessment order and written submission filed by the Ld. AR. It is seen that the appellant sold certain properties forming part of stock in trade. The properties were sold at a price which happened to be less than the stamp duty value. The stamp value required to be paid for registration of sale of properties was accepted and paid by the appellant. The value adopted by the stamp valuation authority was not challenged by the appellant in any proceedings. Thus, the appellant has admitted that the market value adopted for the purposes of stamp valuation was correct. In this regard, it will be relevant to reproduce the provisions of section 43CA of the Act as under:

"43CA. Special provision for full value of consideration for transfer of assets other than capital assets in certain cases,ô

(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be

deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3)í í í í í .

(4)í í í í í í ö

3.3. A glance at the section 43CA makes it clear that it is special provision for taking the full value of consideration in certain cases of transfer of property. It is a deeming provision which makes it mandatory to adopt the value of consideration which has been adopted or assessed by the stamp valuation authority for the purpose of computing the capital gains. Regarding the Ld. AR's submission that the AO should have referred the valuation of the property to the valuation officer, the said section does not make reference mandatory. The legislature has used the word 'may' which indicates that the AO may make a reference to the valuation officer. However, the appellant's case is covered by the provisions of sub-section-1 of section 43CA. Therefore, there was no need for the AO to refer the valuation of the property to the valuation officer. Hence, the contention of the appellant are rejected. In view of the above discussion I am of the considered opinion that the AO was justified in making the addition. The addition of Rs.1,61,740/- made by the AO is confirmed. These grounds of appeal are ruled against the appellant.ö

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

4. The ld. counsel for the assessee strongly challenged the order of the CIT(A). He submitted that the difference between circle rate and the actual amount is only 7.5%. Referring to the decision of the Mumbai Bench of the Tribunal in the case of M/s John Flower (India) Pvt. Ltd. vs. DCIT, vide ITA No.7545/Mum/2014, order dated 25<sup>th</sup> January, 2017, he submitted that the Tribunal has allowed the appeal of the assessee on the ground that the difference between circle rate and the sale consideration received by the assessee is less than 10% and, therefore, in such

a case, no addition can be made. Referring to the various decisions cited in the said decision, he submitted that where difference between circle rate and the sale consideration received by the assessee is less than 15%, addition has not been made. He submitted that the Id.CIT(A) has invoked the provisions of section 43CA. However, the Finance (No.2) Act, 2019 has increased such difference to 10% w.e.f. 01.04.2020. He submitted that since, in the instant case, the difference between circle rate and the sale consideration is less than 10%, therefore, in view of the decision of the Mumbai Bench of the Tribunal in the case of M/s John Flower (India) Pvt. Ltd. (supra), the addition sustained by the CIT(A) should be deleted.

5. The Id. DR, on the other hand, relied on the order of the AO and the Id.CIT(A).

6. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the AO, in the instant case, made addition of Rs.1,61,740/- being 35% of the difference of Rs.4,62,115/- on account of sale of flat sold by M/s Techmen Buildwell (P) Ltd. for Rs.55,16,000/- as against the circle rate of Rs.59,78,115/-. I find, the Id.CIT(A) sustained the addition made by the AO the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Id. Counsel

that since the difference between the circle rate and the sale consideration is less than 10%, therefore, in view of the decision of the Mumbai Bench of the Tribunal in the case of M/s John Flower (India) Pvt. Ltd. (supra), no addition is called for.

7. I find some force in the above argument of the Id. Counsel. Undoubtedly, the flat sold by M/s Techmen Buildwell (P) Ltd. for Rs.55,16,000/- was less than the circle rate since the stamp duty was to be paid by the purchaser at Rs.59,78,115/-. The difference between the circle rate and the actual sale consideration comes to Rs.7.73% of the circle rate which is less than 10%. I find, the Mumbai bench of the Tribunal in the case of M/s John Flower (India) Pvt. Ltd. (supra) while considering an identical issue has deleted the addition made by the AO u/s 50C on the ground that such difference is less than 10% of the stamp duty valuation. The relevant observations of the Tribunal from para 7 onwards read as under:-

7. 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 moment 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 succeed 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. 15431PN/2007 in the case of Rahul Constructions Vs. DCIT (Supra) has held as under:-

õWe find that the Pune Bench of the Tribunal in the case of Asstt. CIT 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 appeal 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. Kaaddu Jayghoslz Appasaheb, 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. CIT (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 AD 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 bound to occur, we are of the considered opinion that the AD in the instant case is not justified in substituting the sale consideration at Rs. 20,55,0001- 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. õ

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 -ble Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessee is allowedö.

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.

8. Since the difference between circle rate and the actual sale consideration in the instant case at Rs.4,62,115/- is about 7.7% of the circle rate, which is less than 10% of the stamp duty valuation, therefore, respectfully following the decision of the Mumbai Bench of the Tribunal, I hold that the Id.CIT(A) was not justified in

sustaining the addition made by the AO. Accordingly, the order of the CIT(A) is set aside and the grounds raised by the assessee are allowed.

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

Pronounced in the open court on 27.07.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 27<sup>th</sup> July, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi