

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos. 3394, 4176 & 4801/Del/2015  
Assessment Years: 2009-10, 2010-11 & 2011-12**

**ACIT, Central Circle -4,  
New Delhi.**

**vs. JKG Construction Pvt. Ltd.,  
B-174, Yojna Vihar, Delhi**

**PAN : AABCJ1045L  
(Appellant)**

(Respondent)

Appellant by : Ms. Nidhi Srivastava, CIT/DR  
Respondent by: Sh. R.K. Sharma, Advocate

Date of hearing: 08/04/2021  
Date of order : 10 /06/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-23 ("Ld. CIT(A)"), in the case of JKG constructions Pvt. Ltd ("the assessee"), for the assessment years 2009-10 to 2011-12, deleting the additions, Revenue preferred these appeals. Since the facts out of which the issues requiring adjudication arise, are identical, we deem it just and proper to dispose these appeals by way of this common order.

2. Brief facts of the case are that the assessee is a company and as the name indicates is involved in construction activities. Search and

seizure operation under section 132 of the Income Tax Act, 1961 (for short "the Act") was carried out in the case of M/s JKG Constructions Pvt. Ltd belonging to the JKG group on 04/08/2011 and during such search certain documents were found. Such documents include a calculation sheet for booking flat by one Sh. Chaya Singh and Bhuwan Prakash Yadav signed by Chhaya and JK Goel showing the total cost of the flat as Rs. 48,83,625/-, dated 29/3/2011 for Rs. 31,30,750/-, a payment clearance dated 28/3/2011 and a Kachi Parchi dated 12/02/2011 for receipt of a sum of Rs. 2.65 Lacs by Sanjay Singh in respect of such flat No. 802; and letter dated 30/7/2008 requesting allottee RK Gauba to pay Rs. 1,54,910/- spell that JKG CPL, mentioning the cost as Rs. 13,57,800/- and the agreement in respect of flat No. A-601. Flat number A-601 was sold to Pushpa Gauba at Rs. 23,37,650/-.

3. Basing on these documents learned Assessing Officer concluded that the group has been receiving money in excess of the disclosed sale consideration for the flats; that the real price of flat number A-802 was Rs. 48,83,625/- whereas the price of flat number A-601 was Rs. 30,57,800/- which shows that the disclosed consideration in respect of flat number A-802 was only 64% of the actual consideration whereas the same for flat number A-601 was 83% thereof. On this premise, learned Assessing Officer calculated the difference between the actual price according to him and the disclosed price in respect of all the sales that took place in the financial years 2008-09 to 2010-11 (corresponding to the assessment years 2009-10 to 2011-12) and made an addition of Rs. 1,97,37,919/-, Rs. 5,35,32,673/- and Rs. 3,94,75,181/- for the assessment years 2009-10 to 2011-12 respectively.

4. Aggrieved by such additions assessee preferred appeals before the Ld. CIT(A) and contended that the amount of Rs. 2.65 Lacs was paid for stamp duty to Mr. Singh who is a document writer; that the payments cannot be considered as evidence of understatement in sale consideration because the sale of flats by builders is always subject to negotiations and the final consideration differs from the initial prices basing on the down payments or delays in handing over possession which results in reduction of price. Assessee contended that in respect of flat No. A-802 the initial cost of Rs. 3600/-per square feet was renegotiated to Rs. 2300/- per square feet by down payment of Rs. 16,40,000/-on 9/11/2010 and promise of remaining payment within 6 months. So also in respect of flat number A-601, the said plot was booked on down payment basis which carried a discount. Ld. CIT(A) considered these contentions, accepted the same and directed the additions to be deleted.

5. Revenue is, therefore, aggrieved by such deletion and filed these appeals stating that the Ld. CIT(A) ignored the fact of suppression of sale price of the flats in order to evade the tax and what is evidenced by the documents is not properly appreciated by the Ld. CIT(A).

6. It is the submission of Ld. DR that the Ld. CIT(A) failed to consider the presumption under section 292C of the Act as to the documents and such provisions clearly state that the documents from premises of assessee belonged to the assessee are true and in the absence of any evidence to the contrary they have to be relied upon. Further according to the Ld. DR the order of the Ld. CIT(A) is a nonspeaking order. She further submits that the decision of the Hon'ble jurisdictional High Court in the case of Kabul Chawla has no application to the facts of this case, as it has not attained the finality.

7. It is argued by Ld. AR that basing on the documents for two flats, the learned Assessing Officer extrapolated the inference to all the sales made in 3 years and it is nothing but surmises and conjectures that the assessee suppressed the sale consideration of the flats in respect of all such sales to evade the tax. Even otherwise as rightly found out by the Ld. CIT(A) on facts that depending upon several factors the sale consideration of the flats is subject to negotiations and announcements and directions. Factors like immediate payment or delays in handing over the possession of the flat would reduce the sale consideration. For these reasons he prayed that the order of the Ld. CIT(A) need not be interfered with.

8. We have gone through the record in the light of the submissions made on either side. It is a fact that in the search operation, even according to the Revenue, the documents that are found relate only to 2 flats, namely, A-601 and A-802. Insofar as flat number A-601 is concerned the documents are that the letter dated 30/7/2008 requesting the allottee by name RK Gauba to pay a sum of Rs. 1, 54, 910/-out of the total sale consideration of Rs. 30,57,800/-. Though the subsequent agreement in favour of Smt. Pushpa Gouba shows the sale consideration as Rs. 23,37,650/-on the ground that in view of the down payment such sale carried discount at 15% reducing the initial price of Rs. 30,57,800/-to Rs. 25,99,130/-. Ld. CIT(A) recorded that the circle rate cost of such flat was Rs. 33,73,000/- in June, 2011 whereas the sale of this plot took place in the year 2008 and therefore, such a price as mentioned in the agreement is not at all low and is unjustifiable one. Though the Ld. CIT(A) compared the cost of the plot as in the month of June 2011 with the cost mentioned in the agreement is concerned to draw an inference, but it is not

equivalent to the verification of the cost mentioned in the agreement with the prevailing market value, which exercise had to be done by the learned Assessing Officer.

9. In respect of the flat number A-802, Ld. CIT(A) found that the payment of Rs. 2.65 Lacs to Sanjay Singh is corroborating the 8% of the sale consideration towards a stamp duty. Ld. CIT(A) further found that in view of the down payment of Rs. 16.4 Lacs on 9/11/2010 with a promise of repayment of balance within 6 months, the cost of this plot was also reduced. Except drawing inferences on the basis of the documents, learned Assessing Officer did not refer to the prevailing market prices in the vicinity so as to conclude that there is an attempt to reduce the sale consideration for the sole purpose of evading the tax. No material was produced before the Ld. CIT(A) to reach a conclusion as to the actual cost of the plot in competition with the prevailing market value. In respect of this flat also, the learned Assessing Officer requires to make enquiry as to the prevailing market value of the plot vis-à-vis the figures mentioned in the documents.

10. Now coming to the omnibus additions made by the learned Assessing Officer for all the 3 years, basing on these documents relating to 2 flats, learned Assessing Officer, while stating that there was understatement of the cost of the flats by 36% and 26.5% respectively the average of which comes to 24.5%, extrapolated the same in respect of all the sales of plots that took place between the assessment year 2009-10 and 2011-12. It remains an admitted fact that insofar as the other flats are concerned no material whatsoever, much less incriminating material is forthcoming. It is only the imagination of the learned Assessing Officer that merely because there appears to be

understatement in respect of one or 2 flats the same must have occurred in respect of all. Absolutely there is no material to support such an extrapolation of the inferences drawn by the learned Assessing Officer basing on the documents relating to two flats, to all the sales that took place for long three years. The maxim Falsus in uno and falsus in omnibus has an obligation in India and it has not received any acceptance or approval by the higher courts. It is therefore clear that the action of the learned Assessing Officer in calculating the so-called understatement of the cost of the flats for all the 3 years and making addition is accordingly cannot be justified.

11. For these reasons, we are of the considered opinion that the additions made by the learned Assessing Officer in respect of all the sales that took place in all the 3 years cannot be sustained. While setting aside the impugned orders, we restore the issue for verification of the actual cost of the flats Nos. A-601 and A-802 with reference to the prevailing market value vis-à-vis the figures mentioned in the seized documents. Assessee is free to put forth their contentions on these documents before the learned Assessing Officer and the learned Assessing Officer will take a fresh view in respect of those two flats alone.

12. In the result, all the appeals of the Revenue are allowed for statistical purpose.

Order pronounced in the open court on 10/06/2021.

Sd/-  
**(O.P. KANT)**  
ACCOUNTANT MEMBER

Sd/-  
**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Dated: 10/06/2021  
'aks'