

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.294 & 295/Del./2015
Assessment Years 2011-2012 & 2012-2013

The DCIT, Central Circle-31, Room No.319, E-2, ARA Centre, Jhandewalan Extn. New Delhi.	Vs	M/s. Sutlej Agro Products Ltd., 30, Community Centre, Saket, New Delhi. PIN – 110 088. PAN AAACS4232K
(Appellant)		(Respondent)

For Revenue :	Shri S.S. Rana, CIT-D.R.
For Assessee :	Shri Amol Sinha And Shri Ashvini Kumar, Advocates

Date of Hearing :	31.01.2019
Date of Pronouncement :	06.02.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by Revenue are directed against the Common Order of Ld. CIT(A)-XXXIII, New Delhi, Dated 29th September 2014, for the A.Ys. 2011-12 and 2012-13 on the following common ground of appeal.

“On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that unaccounted investment in property cannot be computed on the basis of market valuation by Registration Authority.”

2. Briefly the facts of the case are that original return of income was filed for both the years on 11th November 2013 and 30th September 2009 which was processed under section 143 of the Income Tax Act, 1961. Subsequently, a search action under section 132 of the Income Tax Act was carried out in the case of M/s. Aakriti Hotels Private Ltd., and M/s. Jaguar Buildcon Pvt. Ltd., at Community Centre, Saket, New Delhi on 22nd November 2011. During the course of search proceedings, certain documents belonging to the assessee-company were seized. The A.O. recorded the satisfaction under section 153C of the Income-Tax Act, 1961 and proceeded against the assessee-company. During the course of search proceedings, sale deed was seized and on perusal of the same, it was noticed that during the year under assessment i.e., 2011-12, the assessee-company has purchased a property i.e., Plot No.3, Sector-4, Noida from M/s B.K. Resorts vide sale deed Dated 31st March, 2011. It was further noted that as per the sale deed, sale consideration has been mentioned at Rs.1,68,64,103/- whereas the market value as per the

Registering Authority for the said plot is of Rs.10,55,80,000/- on which stamp duty has been paid. Similarly in the A.Y. 2012-13, sale deed was found during the course of search, which revealed that assessee-company has purchased a property i.e., Plot No.4, Sector-4, Greater Noida from M/s. Sir, Biotech India Ltd., vide sale deed dated 9th May 2011. It was noticed that as per the sale deed, the sale consideration has been mentioned at Rs.8,07,15,000/-, whereas as per the market value as per the Registering Authority for the said plot is of Rs.32,42,50,000/- on which stamp duty has also been paid. The assessee-company was requested to explain why the difference in the sale consideration may not be added to the income considering the same as unexplained investment in the above assets. The assessee-company explained that it has purchased the property on a consideration mentioned in the sale deed and has not paid anything more than that. The assessee-company came to know that on that valuation of the property as per stamp duty has been made at higher amount. The A.O. however did not accept the contention of

the assessee-company and made the addition of Rs.8,87,15,897/- and Rs.24,25,35,000/- on account of unexplained investment in the hands of the assessee-company in both the assessment years under appeals and computed the income accordingly under section 153C of the Income Tax Act, 1961. The assessee-company challenged the assumption of jurisdiction under section 153C of the Act as well as additions on merit before the Ld. CIT(A). The written submissions of the assessee-company is reproduced in appellate order in which the assessee-company reiterated the same facts as were submitted before the A.O. It was further submitted that the conclusion drawn by the A.O. is not supported by Law. No addition can be made to the declared income unless the A.O. established that the assessee had paid over and above the value declared in the sale deed. The A.O. has not brought any material on record to justify the additions. In the absence of any material on record, no addition could be made against the assessee-company. The assessee-company relied upon several decisions in support of the contention. The Ld. CIT(A)

accepted the explanation of the assessee-company and deleted the addition. His findings in appellate order in para 5.3 of the order is reproduced as under.

“5.3. Decision :

I have considered the assessment order, written submission and the argument of Ld.AR. The sole basis of addition is that the market value of the property No. 7, BZP Area, Greater Noida purchased by the appellant as per registration authority was Rs.8,94,22.900/- where as consideration paid by the appellant was only Rs.1,30,00,000/-. The Ld. assessing officer has treated the balance as under valuation of the property. There is no provision under I.T. Act for making addition for undervaluation of property in the hands of the purchaser. At the most, this addition can be taken an unaccounted investment in property. As Unexplained investment in the property is made as if the balance was paid out of books. Ld. AR's main argument is that there is no evidence of unaccounted payment in the said property. Purchaser &

seller have agreed to sale the property at lower rate compared to market value as per the registration authority. Valuation as per the registration authority is only intended to collect stamp duty for sale purchase transaction.

Considering the entire facts & circumstances of the case, I agree with the arguments of Ld.AR that unaccounted investment in property cannot be computed on the basis of market valuation by registration authority. For computing capital gain, such valuation can be taken as deemed consideration by virtue of specific deeming provision contained in section 50C of I.T. Act., in the hands of the seller. There is no such deeming provision for computing unaccounted investment u/s 69B or undervaluation of property. No evidence was gathered by the assessing officer which establishes payment outside books of account. Therefore, I hereby delete the addition made on account of unaccounted investment/undervaluation of Rs.8,87,15,897/- and Rs.24,35,35,000/- made in the

assessment order for A.Y. 2011-12 and A.Y. 2012-13 respectively. These grounds of appeal for both assessment years are allowed.”

3. Learned DR relied upon the order of the A.O.
4. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and relied upon the following decisions.
 - 4.1. Order of ITAT, Delhi-C Bench, Delhi in the case of ITO vs. Fitwell Logic System (P.) Ltd., reported in (2010) 1 ITR (T) 286 (Del.) in which it was held as under :

“Held that, there was no evidence or material brought on record by the Assessing Officer to show and establish that the assessee had made actual investment to the extent of Rs. 1,34,79,780 being valuation for the purpose of stamp duty as against Rs.1,25,00,000 shown in the sale deed. As such the addition was to be deleted.”

4.2. Order of ITAT, Delhi-F Bench, Delhi, in the case of ACIT, Circle-32(1), New Delhi vs. Rakesh Narang (2015) 64 taxmann.com 332 (Delhi-Tribu.) in which it was as under :

“In case of purchase of property by assessee, in absence of any positive material on record, mere higher value of property estimated by DVO or Registered valuer could not form basis for making addition under section 69B

Section 56(2)(vii) is applicable on cases in which individual or HUF receives immovable property on or after 1-10-2009 and, therefore, where property was purchased by assessee in financial year 2007-08, mandate of section 56(2)(vii) could not be applied retrospectively

Substitution of 'full value of consideration received' with 'stamp value' in terms of section 50C is applicable only in hands of seller of property who has to compute capital gain under section 48 pursuant to transfer of a capital asset.”

4.3. Order of ITAT, Ahmedabad B-Bench, Ahmedabad in the case of ITO, Ward-4(3), Ahmedabad vs. Harley Street Pharmaceuticals Ltd., reported in (2010) 6 ITR (T) 182 (Ahmedabad) in which it was held as under :

“Section 50C, read with sections 69 and 69B of the Income-tax Act, 1961 – Capital gains - Special provision for full value of consideration in certain cases – Whether section 50C creates a legal fiction for taxing capital gains in hands of seller and it cannot be extended for taxing difference between apparent consideration and valuation done by stamp valuation authorities as undisclosed investments under sections 69 and 69B - Held, yes.”

4.4. Judgment of the Hon’ble jurisdictional Delhi High Court in the case of CIT, Delhi-1, Delhi, vs. Agile Properties (P.) Ltd., (2014) 225 Taxman 107 (Del.) (HC) in which it was held as under :

“In absence of any positive evidence on record, addition cannot be made on account of undisclosed investment in property merely placing reliance upon report to DVO.”

4.5. Judgment of the Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Puneet Sabharwal (2011) 338 ITR 485 (Del.) (HC) in which it was held as under :

“In order to make addition under section 69B, opinion of DVO per se is not sufficient and other corroborated evidence is required.”

4.6. Learned Counsel for the Assessee also submitted that since the assessee-company is a purchaser of the property and no material have been brought on record for proving that assessee-company made any payment over and above what is recorded in the sale deed, therefore, no addition could be made against the assessee-company. There is no provision under the Income Tax Act, for making addition for undervaluation of the property in the hands of the purchaser. He has submitted that later on Section

56(2)(x) have been inserted into the Income Tax Act with effect from 01.04.2017 to deal with such situation which would not be applicable to assessment years under appeals.

5. We have considered the rival submissions and do not find any justification to interfere with the Orders of the Ld. CIT(A) in deleting the additions. It is not a denying fact that Section 50C is applicable in the case of the seller of the property to take into consideration the valuation of the property as per the value adopted by the Registration Authority. However, there is no provision under the Income Tax Act to deal with such situation in respect of the purchase of the property. Section 56(2)(x) of the Income-Tax Act was inserted into the Act with effect from 1st April 2017 to deal with such situation. However, it is well settled Law that substantive provisions could not be applied retrospectively. There is no other material brought on record to justify the conclusion that assessee-company made unaccounted investment in purchase of the property. In the absence of any evidence on record to justify unaccounted payment for purchase of the property, the Ld. CIT(A) was

justified in deleting the additions. The A.O. did not gather any evidence to establish that payments were made by the assessee-company outside the books of account. The decisions relied upon by the Learned Counsel for the Assessee are squarely apply to the conclusion of the Ld. CIT(A). We, therefore, do not find any merit in both the appeals of the Revenue. Both the appeals of the Revenue are dismissed.

6. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open Court.

Sd/-
(OP KANT)
ACCOUNTANT MEMBER
Delhi, Dated 06th February, 2019
VBP/-
Copy to

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

1.	The applicant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.