

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

I.T.A No. 1769/Kol/2013
Assessment Year: 2009-10

M/s. Griham Construction
(PAN: AAGFG5840G)
(Appellant)

Vs. Income-tax Officer, Wd-41(2), Kolkata
(Respondent)

Date of hearing: 17.12.2015
Date of pronouncement: 20.01.2016

For the Appellant: S/Shri Mahadev Ghosh & S.N.Kundu, Advocates
For the Respondent: Shri R. K. Kureel, JCIT

ORDER

Per Shri Mahavir Singh, JM:

This appeal by assessee is arising out of order of CIT(A)-XII, Kolkata in Appeal No.481/CIT(A)-XII/41(2)/11-12 dated 12.03.2013. Assessment was framed by ITO, Ward-41(2), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2009-10 vide its order dated 27.03.2014.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in estimating the sale consideration of constructed flats for the purpose of market value by taking the stamp duty valuation as fixed by State Government despite the fact that the assessee’s product is a business product.

3. Briefly stated facts are that the assessee firm is a promoter and developer of real estate business. The AO noticed from the accounts of the assessee that it has disclosed sale of constructed/finished flats at Rs.95.74 lacs. According to AO, the sale value declared as per Deed of Conveyance is very less and for this he quoted the following example in assessment order, which is reproduced as under:

“For example, the purchaser Shri Biswajit Kundu is shown to have purchased it at Rs.1250000/- as per declared value, in sharp contrast with the market value of rs.1878790/- about 1.5 times higher. So, the assessee’s contention cannot be accepted. Ld. AR also says that the customers are government employees and they have made purchases out of bank loan or advances from office. It means by denying the declared value, we suggest the public servants have resorted to untrue statements/transactions with secret fund.”

According to AO, by taking the market value in view of stamp duty valuation the same comes to Rs.1,32,99,900/-. Accordingly, he estimated the transaction value at Rs.1,32,99,900/- @ 10% valuation was allowed at Rs.13,29,900/- and thereby according to AO, the sale value comes to Rs.1,19,69,953/- and he rounded of the figure at Rs.1,19,70,000/-. Accordingly, the difference between the estimated price by the AO at Rs.1,19,70,000/- and as declared by the assessee in its accounts at Rs.95.74 lacs comes to Rs.23,96,000/-. The AO added this differential in the sale price at Rs.23.96 lacs as income of the assessee and added to the returned income. Aggrieved, assessee preferred appeal before CIT(A), who confirmed the action of AO by observing in para 5 as under:

“12. It is abundantly clear from the explanation given in the Central Board of Direct Taxes circular that the basic intention to insert section 50C is for the purpose of determining full value of sale consideration for the purpose of computation of capital gains under section 48 of the Act. It is well-settled rule of interpretation that meaning ascribed by the authority. The issuing of notification or circular is good guide of contemporaneous exposition of the position of the law and this rule is popularly known as "contemporanea expositio". This rule of interpretation has been given recognition by the hon' ble Supreme Court in the case of K. P. Varghese v. ITO [1981] [131 ITR 597](#). In our opinion, there should not be any cloud of doubt that section 50C has application only to the extent of determining the sale consideration for computation of capital gains under Chapter IV-E of the Act and it cannot be applied for determining the income under other heads.”

Aggrieved, assessee is in second appeal before Tribunal.

4. We have heard rival submissions and gone through facts and circumstances of the case. Admittedly, the assessee is in the business of real estate i.e. development and construction of land and building. We find that practically, the AO has invoked the provisions of section 50C of the Act i.e. he estimated the sale price adopted by the assessee by enhancing the same by adopting the value as per Stamp duty valuation. It is a fact that the sale of units by assessee was business asset and not capital asset. Even otherwise, from the assessment order, he just simply estimated by taking the market value by adopting the Stamp Valuation Authority's rates by taking one example only. We find that the AO for determining the business income practically applied the provisions of section 50C of the Act by taking the value of sale price of assessee's business flats by adopting Stamp Valuation Authority's rates. Now question arises whether the provisions of section 50C of the act can be applied for the purpose of determination of cost of asset, which is a business asset, by adopting the Stamp Valuation Authority's rates. In our view, this issue now stands covered by the decision of Inderlok Hotels P. Ltd. Vs. ITO (2009) 318 ITR (AT) 234 (Mum), wherein it has been held as under:

“Held, (i) that the Finance Act, 2002, inserted, section 50C in the Income-tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, was less than the value adopted or assessed by the registration authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed would be deemed to be the full value of the consideration, and capital gains would be computed accordingly under section 48 of the Income-tax Act. Section 50C had application only to the extent of determining the sale consideration for computation of capital gains under Chapter IV-E of the Act and it could not be applied for determining the income under other heads. Admittedly the sale of the flats was treated as business income and not as capital gains, hence, the provision of section 50C was not applicable. The addition made by the Assessing Officer of Rs. 51,22,956 was to be deleted.”

Respectfully following the aforesaid decision cited supra and in the given facts and circumstances of the case, we delete the addition and allow this appeal of assessee.

5. In the result, the appeal of assessee is allowed.
6. Order is pronounced in the open court on 20.01.2016

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 20th January, 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT – M/s. Griham Construction, 19, D. P. Nagar Colony, Baranagar, Kolkata-700050
2. Respondent – ITO, Ward-41(2), Kolkata.
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.