

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES : "C" NEW DELHI]**

**BEFORE SHRI S. K. YADAV, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I. T. Appeal No. 6085 (Del) of 2012
Assessment Year : 2009-10.**

Shri Har Prasad, C/o. M/s. RRA TAXINDIA, D-28, South Extn., Part-1, New Delhi - 110 049.	Vs.	Income Tax Officer, Ward : 1 (3), M e e r u t.
PAN : AXJPP 4028 P		
(Appellant)		(Respondent)

Assessee by : Dr. Rakesh Gupta, Adv.; &
Shri Somil Agarwal, Adv.;

Department by : Shri S. L. Anuragi, Sr. D. R.;

Date of Hearing : 15.05.2018;

Date of Pronouncement : 09.07.2018.

ORDER.

PER PRASHANT MAHARISHI, A.M. :

This appeal is preferred by the assessee, Shri Har Prasad, Individual, against the order of the learned Commissioner of Income Tax (Appeals) Meerut, dated 28.09.2012, for assessment year 2009-10, wherein he has confirmed the addition made by the learned Assessing Officer of Rs.4,24,400/- on account of profit on sale of land and further enhanced by Rs.66,35,350/-

. He further confirmed the addition of Rs.31,25,000/- on account of sundry debtors. The grounds of appeal raised by the assessee are as under :-

“ 1. That having regard to the facts and circumstances of the case, Ld. CIT (Appeals) has erred in law and on facts in not deleting the addition of Rs.4,24,400/- as made by Ld. Assessing Officer on account of profit on sale of land and has further erred in directing the Ld. AO in enhancing the addition by Rs.66,35,350/- totaling to Rs.70,59,750/- and that too by recording incorrect facts and findings and without considering the submissions of assessee.

2. That having regard to the facts and circumstances of the case, Ld. CIT (Appeals) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making addition of Rs.31,25,000/- on account of sundry debtors and that too without considering the submission of assessee.

3. That in any case and any view of the matter, action of Ld. CIT (Appeals) in not reversing the action of Ld. Assessing Officer in making the impugned addition and framing the impugned assessment order and in enhancing the assessment which is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

4. That having regard to the facts and circumstances of the case, Ld. CIT (Appeals) has erred in law and on facts in not reversing the action of Ld. Assessing Officer in charging interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other. ”

2. The brief facts of the case is that assessee is engaged in the business of trading of real estate. He filed his return of income of Rs.1,54,400/-. During the course of assessment proceedings, the learned Assessing Officer noted that assessee has sold 27 properties, however, has not shown any capital gain on sale of plot or any profit thereon. Therefore, he was summoned and his statement was recorded on 12.12.2011. The learned Assessing Officer noted that assessee has received all sale consideration, but has not paid any consideration to the persons whose land is sold, who have issued power of attorney in favour of the assessee. Therefore, the learned Assessing Officer issued a show cause notice that why income from trading of land may not be taken @ 10% of the sale consideration. The assessee objected to the same stating that it is too high and, therefore, the learned Assessing Officer rejecting the contention of the assessee, estimated the profit @ 10% of the sale consideration of Rs.44,24,000/- being Rs.4,24,400/- as income of the assessee. Further during the course of assessment proceedings the Assessing Officer noted that assessee has deposited Rs.33,49,300/- in its bank account with Union Bank of India in cash and source of such cash deposit was asked. The learned Assessing Officer was explained that the same amount is deposited out of the opening cash balance. The learned Assessing Officer rejected the

contention of the assessee that as assessee is not maintaining any books of accounts and huge cash on hand is shown without showing the same in the Wealth Tax return, he made an addition of Rs.33,49,300/- under section 68 of the Act. It was further noted that assessee as the sundry debtors from Smt. Mamta Jain and Shri Manish Jain of Rs.31,25,000/- which was not disclosed by the assessee in absence of any balance sheet etc., same were added to the income of the assessee. Consequently assessment order under section 143(3) of the Act was passed on 29.10.2011 determining the total income of the assessee at Rs.70,53,100/- against the returned income of Rs.1,54,400/-.

3. Assessee aggrieved with the order preferred appeal before the learned CIT (Appeals) without any success. Moreover the learned CIT (Appeals) noted that during the years 27 plots were sold by the appellant whose sale consideration was Rs.44,24,000/-, but whose circle rate was Rs.94,13,000/-. Therefore, he estimated 'on money' received by the assessee on sale of these properties of Rs.49,89,900/- further granted the credit of the corresponding credit for cost of purchases of Rs.23,53,250/- and thereby determined the profit of Rs.20,70,750/-. As the learned Assessing Officer has already made the addition of Rs.4,24,400/- against the profit determined by the learned CIT (Appeals) of Rs.70,59,750/- (Rs.20,70,750/- + Rs.49,89,000/-) he made the enhancement of Rs.66,35,350/- to the total income of the assessee. With respect to the addition of cash deposits of Rs.33,49,300/- he held that as he has already made an addition of Rs.70,59,750/- to the total

income of the assessee as 'on money' received on sale of land as well as profit on sale of land, the above addition is subsumed in that addition. It was further held by him that if later on the addition of Rs.70,59,750/- is deleted later on, the addition to the extent of Rs.33,49,300/- would be sustained. With respect to the addition of Rs.31,25,000/- on account of the sundry debtors, he held that bank statement of the person shown only shows the debit entries, however, corresponding credit are not shown. Therefore, he upheld the addition. The assessee is in appeal before us.

4. The ground of appeal No. 1 of the appeal is with respect to the enhancement of Rs.66,35,350/- and confirmed the addition of Rs.4,24,400/- on account of the land transaction by the learned CIT (Appeals).

4.1 The learned authorized representative submitted that assessee is undoubtedly a dealer in land and has sold 27 properties during the year. He submitted that as the assessee is a dealer in land, the sale price cannot be substituted by the circle rate as provisions of section 43CA came into effect were introduced by Finance Act, 2013 is with effect from 1.04.2014 and, therefore, same does not apply to the impugned assessment year. Even otherwise he submitted that the learned CIT (Appeals) has not given any opportunity to the assessee to explain its case. Regarding the enhancement he submitted that proper opportunity should have been granted to the assessee. He submitted that the authorized representative of the

assessee attended before him on 28.09.2012. However, with respect to enhancement there is no reference that what kind of opportunity was granted. He, therefore, submitted that whole order passed by the learned CIT (Appeals) was in violation of principles of natural justice.

5. With respect to the addition of Rs.31,25,000/- he submitted that both the debtors have shown the above transaction and it was squared up before the date of close of the balance sheet and, therefore, same were not outstanding as on the close of the year. He, therefore, submitted that the learned Assessing Officer has made the addition without considering the explanation of the assessee. He submitted that the addition has been confirmed without granting proper opportunity to the assessee.

6. The learned Departmental Representative vehemently contested and submitted that assessee has not correctly disclosed its profit on sale of land. The addition was made by the assessing Officer. He further submitted that before the learned CIT (Appeals) the copies of power of attorney was also asked for, but not at all furnished by the assessee. Several opportunities were granted to the assessee, but they failed to produce the relevant details before the Assessing Officer as well as the learned CIT (Appeals). He referred to para No. 4.5 of the order of the learned CIT (Appeals) that opportunities were ample, but assessee did not avail them. He, therefore, submitted that the

arguments of the learned authorized representative of violation of principles of natural justice is devoid of any merit. He further submitted that as the assessee is not able to submit the complete details, the learned Assessing Officer has estimated the profit @ 10% on sale price shown by the assessee whereas the learned CIT (Appeals) took the sale price as the circle rate. He submitted that at nowhere the provision of section 43CA has been invoked and, therefore, the learned authorized representative has incorrectly assumed such provision. With respect to the addition of Rs.31,25,000/- it was submitted that in para No. 6.3 the learned CIT (Appeals) has given the detailed reason why the debtors are bogus. He further submitted that assessee has deposited huge cash of Rs.33,49,300/- in the bank account of the assessee, which has not been challenged by the assessee in this appeal also. Any proof of the source of such deposit is also not given that its provision that assessee has received huge sum in cash towards the sale of these plots. In view of this, the learned CIT (Appeals) has correctly assumed the circle rate as relevant details were not forthcoming from the assessee.

7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The first ground of appeal is against the addition of Rs.4,24,400/- confirmed by the learned CIT (Appeals) on account of profit on sale of land and further enhanced the same by Rs.66,35,350/- adopting the circle rate as the sale price and also determining profit thereon. During the year assessee has sold 27 plots including certain houses to

several persons. The amount of sale consideration shown by the assessee in many cases was much less than the circle rates. Based on this the statement of the assessee was recorded wherein it has been stated by him that he has obtained the land on power of attorney and does not have any record of the persons from whom he has obtained those lands. He has also stated that he has already made payment to those persons from whom he has purchased the land on the basis of power of attorney. The assessee explained before the Assessing Officer that assessee is merely an intermediary and earned only 1% of profit. However, the learned Assessing Officer determined the profit @ 10% of the recorded sales of Rs.44,24,000/-. On appeal before the learned CIT (Appeals) he noted that there is a vast difference between the sale price and stamp duty price and, therefore, he took the circle rate as the sale consideration in absence of any information forthcoming from the assessee. He also made the addition of the profit. On this basis he made enhancement to the total income of the assessee of Rs.66,35,350/- on account of profit on sale of land. There cannot be any dispute that provisions of section 43CA are incorporated with effect from 1.04.2014 wherein it is mandated that when a dealer in real estate sells a property which is less than the circle rate then for the purpose of turnover to compute the profits the full value of the consideration received would be deemed to be the such circle rate. It is also correct that same does not apply for the impugned assessment year 2009-10. There cannot be

any quarrel on this argument of the learned authorized representative that in case of the assessee, who is the dealer of the land, provisions of section 43CA does not apply. But we hasten to say that as the complete detail from the assessee is not forthcoming, it was not possible for the lower authorities to estimate the correct profit on the sale of 27 units of real estate. It is also admitted that there was vast difference in the sale price shown by the assessee with the circle rate prevailing in that area. Furthermore, before the learned CIT (Appeals) the assessee was given several opportunities on 24.08.2012, 28.09.2012 etc., however, the copies of the power of attorney were not submitted by the assessee. In the end he could only submit two power of attorney. Before the learned CIT (Appeals) it was also the argument that the Assessing Officer did not examine the persons who have issued the power of attorney in favour of the assessee. The learned CIT (Appeals) in view of, no information coming, made his own enquiry to find out the circle rates and found sale deeds from the Sub Registrar, Meerut, and based on that he enhanced the profit and sale consideration by Rs.66,35,350/-. As it is submitted before us that proper opportunity was not given by the lower authorities is required to be adjudicated. As now the assessee is ready to produce the details before the lower authorities in the form of three power of attorney from Smt. Bhaana Devi, Shri Kishan Singh, Shri Raja Ram and Shri Shabbir, in the interest of justice and to give the last opportunity to the assessee to prove the sale price of the real estate where the market price as per

the circle rate is much higher and the cost of purchase of land from various power of attorney issuer to the assessee. The assessee would be discharging its own onus by producing the relevant details as well as the buyers to determine the correct sale price and the power of attorney holder about the sale consideration passed to them on execution of the power of attorney is required to be established by the assessee. If the assessee desire so, he is free to produce all those parties before the Assessing Officer and if they are so produced then Assessing Officer may examine them as a witness of the assessee. After the thorough examination of the whole issue, the Assessing Officer may determine the profit as per information and evidences produced by the assessee as well as gathered by the Assessing Officer, proper opportunity of the hearing may be granted to the assessee.

8. As the ground No. 1 is also coupled with another addition confirmed by the learned CIT (Appeals) of Rs.33,49,300/- on account of cash deposit is not contested by the assessee. It is hereby clarified that as the addition involved in ground No. 1 is set aside to the file of the Assessing Officer, the addition of Rs.33,49,300/- will survive now.

9. The second ground of appeal is with respect to the addition of Rs.31,25,000/- on account of sundry debtors. The assessee has paid Rs.12.50 lakhs through cheque to Smt. Mamta Jain and Rs.18.75 lakhs to Shri

Manish Jain totaling to Rs.31.25 lakhs, which were received back by the assessee in the month of March, 2009. They were not outstanding as a debtor. As the assessee could not furnish the proper proof, this issue is also set aside to the file of the learned Assessing Officer for examining it afresh. Accordingly ground No. 2 of the appeal is allowed with above direction.

10. Ground Nos. 3 and 4 were not pressed before us and, therefore, they are dismissed.

11. In the result, appeal of the assessee is partly allowed, for statistical purposes.

The order is pronounced in the Open Court on : **9th July, 2018.**

-Sd/-
(S. K. YADAV)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : **the 09.08.2018.**

MEHTA

Copy of the Order forwarded to :-

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (Appeals);

5. DR, ITAT, ND.

//True Copy//

BY ORDER

ASSISTANT REGISTRAR