

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.1967/Kol/2016**  
Assessment Year :2011-12

Asha Real Estates And Developers Pvt. Ltd., RoomNo.210, 2 <sup>nd</sup> Floor, 163, Rabindra Sarani, Kolkata-69 <b>[PAN No.AAECA 4266 F]</b>	<b>V/s.</b>	Income Tax Officer, Ward-9(1), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Rajiv Kumar Mahajan, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Saurabh Kumar, Addl. CIT-SR-DR
सुनवाई की तारीख/Date of Hearing	12-07-2018
घोषणा की तारीख/Date of Pronouncement	24-08-2018

**आदेश /ORDER**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2011-12 arises from the Commissioner of Income Tax (Appeals)-16 Kolkata's order dated 08.08.2016, passed in case No.594/CIT(A)-16/Kol/2015-16/W-991), upholding the Assessing Officer's action adding an amount of ₹14,92,918/- as representing under valuation of sale consideration and making u/s 40(a)(ia) disallowance ₹44,00,968/-; respectively in assessment order dated 31.03.2014 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We come to the former issue of under valuation of flats sales amounting to ₹14,92,918/-. There is no dispute about the assessee's actual sale price in

the two flats and 2B on second floor and 3A and 3B on third floor at different rates. The assessee's case before the Assessing Officer was that said sale prices were an instance of distress sale being in dire need of immediate payment for making corresponding payments to suppliers as well as fresh land purchases. All this failed to impress upon the Assessing Officer who added the impugned under valuation *qua* the two flats in question 2B ad 3A to the tune of ₹1,40,182 and ₹13,52,736/-; respectively totaling to ₹14,92,918/- in question. The CIT(A) upholds the Assessing Officer's action as follows:-

*"4 Grounds No. 3, 4 and 5 are addition on account of under valuation of sales in flats.*

*During the course of assessment it was found that the assessee had sold flats 2B and 3A at less than the market value or stamp duty value of the flats. The AO same to the conclusion that since the deed value is less than the stamp duty value or the market value, the cash component is definitely there and hence made an addition of Rs.14,92,918/-.*

*Before me, the AR has made submission that the assessee was in need of funds, and hence flat were sold less that the market value. Reliance has been also drawn towards the judgments of Nariman Land Developers Private Limited vs. Department of Income Tax vide ITA No.365/3695/Mum/2009, which it has been held that some materials should be found to dispute the contention of the assessee. Here in this case, this judgment is not applicable because the flats have been sold less the stamp value and less the market value of the flats. Hence, the order of the AO is confirmed and the appeal of the assessee is dismissed on grounds 3, 4 and 5."*

3. Both the Learned Representatives reiterate their respective stands. The Revenue is very particular in vehemently contending that the assessee had shown impugned actual sale consideration to be much less than both stamp value or the market value as clarified in the CIT(A)'s findings herein. We find no merit in the instant arguments as neither of the lower authorities has indicated as to what was the actual market price or the stamp price of the two flats taken as the fair market value of the asset in question. We find that the tribunal co-ordinate bench's decision (*supra*) decided the identical issue against the Revenue in absence of any material on record indicating under valuation of sale consideration. Neither of the lower authority has referred to any material on record indicative of any cash component involved in sale price

of the above two flats. We therefore accept assessee's instant former substantive ground. The impugned addition of ₹14,92,918/- stands deleted accordingly.

4. Next comes the latter issue of section 40(a)(ia) disallowance of ₹44,00,968/- on account of assessee's failure in deducting TDS on payment to contractors for supply of labour, marble work, electric work, carpentry work on various sites as well as labour payments, plaster of paris and electric works. The taxpayer's case before the Assessing Officer was that it had duly subjected all the payments to TDS applicable and also @ 20% on absence of payees PANs. It further explained that the relevant labour payment had also not exceeded either the per day limit or the gross amount limit indicated in section 194C of the Act so as to invite any TDS deduction. The Assessing Officer quoted one of such payment to Mr. Jalal Uddin Mondal's case involving labour charges of ₹1,54,155/- in four instances to conclude that the said corresponding payments were not in the nature of daily wages. He thus deleted the amount in question of ₹44,00,968/- as upheld in course of lower appellate proceedings.

5. Learned counsel vehemently contends during the course of hearing that both the lower authorities have erred in law as well as on facts in disallowing the impugned labour payments. He has filed assessee's detailed written submissions indicating therein that an amount of ₹34,65,948/- wrongly debited stood revised in next financial year 2011-12, reconciliation indicating amounts reflected in TDS quarterly returns of ₹40,13,320/-, labour charges for site AS-217 and AB-69 involving sums of ₹13,52,059/- and 10 lac respectively for reference, seven payees cases involving payments of less than ₹ 30,000/- each not requiring any TDS deduction, 20% TDS deduced in case of two parties Sek Islam and Jelani Furniture etc. We find that neither of the lower authorities has considered all these details. The fact also remains that the Assessing Officer & the CIT(A) have invoked the impugned disallowance in

enterity without examining each payee's case since going by the solitary instance of Mr. Mondal (supra) only. We therefore restore 40(a)(ia) issue back to the Assessing Officer for afresh adjudication as per law after affording adequate hearing to the taxpayer.

5. This assessee's appeal is partly allowed.

Order pronounced in the open court 24/08/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 24/08/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Asha Real Estates & Developers Pvt. Ltd., Room No.210, 2<sup>nd</sup> Floor, 163, Rabindra Sarani, Kolkata-69
2. प्रत्यर्थी/Respondent-ITO Ward-9(1), Kolkata
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।