



ITA.Nos.4382 & 5808/Mum/2016
Assessment Year-2012-13

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
श्री रविश सूद, न्यायिक सदस्य
के समक्ष।

BEFORE SHRI MANOJ KUMAR AGGARWAL, AM
AND
SHRI RAVISH SOOD, JM

आयकर अपीलसं./I.T.A. No.4382/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

Income Tax Officer-1(2)(1) Room No.536, Aaykar Bhavan M.K.Road Mumbai-400 020	बनाम/ Vs.	Jas Propbuild Private Limited Marathon Innova, 1 st Floor B-1/101 Opp. Peninsula Corporate Park Off. Ganpatrao Kadam Marg Lower Parel(W)Mumbai-400 013
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCJ-5258-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपीलसं./I.T.A. No.5808/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

Income Tax Officer-1(2)(3) Room No.527,5 th Floor Aaykar Bhavan M.K. Road Mumbai-400 020	बनाम/ Vs.	Mahesh Conbuild Private Limited Marathon Innova, 1 st Floor B-1/101 Opp. Peninsula Corporate Park Off. Ganpatrao Kadam Marg Lower Parel(W)Mumbai-400 013
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAHCM-0052-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Hiro Rai, Ld. AR
Revenue by	:	Manoj Kumar Singh, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	19/09/2018
घोषणा की तारीख / Date of Pronouncement	:	05/10/2018



आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Year [AY] 2012-13 assails order of Ld. first appellate authority on similar grounds of appeal. Since the common issues are involved, we dispose-off the same by way of this common order for the sake of convenience & brevity. First we take up ITA No. 4382/Mum/2016 which contest the order of Ld. Commissioner of Income-Tax (Appeals)-2 [CIT(A)], Mumbai, *Appeal No.CIT(A)-2/IT/328/2014-15 dated 22/03/2016* on following sole ground of appeal:-

Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.98,88,000/- as additional investment in tenancy right, without appreciating the Assessing Officer's findings that the assessee has made investment in tenancy right which exceeds the amount recorded in books of accounts maintained by the assessee and explanation offered is not satisfactory in nature considering the fact that the sale of tenancy right to other persons/companies is at price higher than market price determined by stamp duty authorities while in the case of the assessee the tenancy rights were sold at less than market price.

The registry noted a delay of 425 days in filing the appeal. However, the revenue has filed Revised Form No. 36 to rectify the *date of communication of the order appealed against*. Counting from this date, the appeal is within time and therefore, finding the same in order, we proceed to dispose-off the appeal as argued before us.

2.1 The assessee being *resident corporate entity* has been assessed u/s 143(3) on 25/02/2015 vide order passed by Ld. Income Tax Officer-1(2)(1), Mumbai [AO] wherein the income of the assessee has been determined at Rs.98.35 Lacs after certain additions as against returned



loss of Rs.0.52 Lacs *e-filed* by the assessee on 28/09/2012. The sole subject matter of this appeal is addition of Rs.98.88 Lacs u/s 69B.

2.2 During assessment proceedings, it was noted that the assessee purchased certain tenancy rights in properties situated at *Gala No.50B to 54B, Survey No. 3428 & C.S. No. 2020, Delile Road, Byculla, Mumbai* from an entity namely *Lombard Private Limited* for consideration of Rs.219.60 Lacs. However, the *stamp duty value* of the stated properties was Rs.302.88 Lacs, which led the Ld. AO to believe that the assessee undervalued the investment by Rs.98.88 Lacs. The Ld. AO fortified its stand by comparing the similar investments made by assessee's associated concerns in similar properties, the details of which are extracted at *para-2* of the quantum assessment order. To verify the facts, a summon was issued to the Principal Officer of *M/s Lombard Private Limited* on 29/12/2014 and his statement was recorded u/s 131 on 16/01/2015, which is also extracted at *para-5* of the quantum assessment order. A perusal of the same reveals that the seller denied having received any additional compensation against the sale of the stated rights. However, not convinced Ld. AO opined that the seller could not sell tenancy rights for price less than the market prices and therefore, invoking the provisions of Section 69B, the differential amount of Rs.98.88 Lacs was added to the income of the assessee.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 22/03/2016 wherein the assessee, *inter-alia*, contended that merely because the stamp duty value was higher than agreed consideration, the same could not be the basis for invoking the provisions of Section 69B unless the same is corroborated



with evidences. Reliance was placed on several judicial pronouncements in support of various submissions. After due consideration, Ld. CIT(A) concurred with the stand of the assessee by making following observations:-

DECISION:

3.4 I have gone through the assessment order dated 25.02.2015, wherein the AO has added a sum of Rs.98,88,000/- u/s.69B as the full amount is not fully disclosed in the books of accounts, as per para 12 of the order, by applying the provision of section 50C for the transfer for tenancy rights by the appellant company. The AO has opined that the appellant has admitted consideration for the transfer of tenancy rights of Gala no. 50B to 54B situated at 556, N.M. Joshi Marg Byculla (W), Mumbai 400 001 at Rs.2,19,60,19. However, as per the Stamp Duty authorities, the value was calculated at Rs.3,02,88,000/-. Accordingly, there was a difference of Rs.98,88,000/- which is undervalued by the appellant. Accordingly, AO has added Rs.98,88,000/- along with return of income. However, the AR of the appellant argues that section 50C will not apply for transfer of tenancy rights on relying on the following judicial decisions:

- a) *Tejinder Singh v. Dy. CIT 19 taxmann.com 4 (Kol)*
- b) *Smt. Kishorisharad Gaitonde vs. ITO (IT Appeal No. 1561 (Mum)*
- c) *Shri Atul G. Puranik, C/o vs. ITO 11 taxmann.com 92 (Mum)*
- d) *M/s. Munsons Textiles vs. Asst.Commissioner of Income-tax (ITA no. 6320/Mum/2010)*

3.5 I have gone through the above submissions, assessment order and the judicial decisions relied by the AR of the appellant. The Hon'ble ITAT in the case of *Kishorisharad Gaitnode vs ITO, Shri Atul G. Puranik, C/o Vs ITO and M/s. Munsons Textiles vs. ACIT* has given the finding that Section 50C will not be applicable in case of transfer of tenancy rights in respect of land or building or both.

3.6 Respectfully following the judicial decision of ITAT as stated above, I am of the considered opinion that application of section 50C for the transfer of tenancy rights may not be applicable and therefore, I direct the AO to delete the addition made of Rs.98,88,000/-

4. In the result, the appeal is allowed.

The perusal of the same reveals that the impugned additions have primarily been deleted on the reasoning that the provisions of Section 50C did not apply to tenancy rights. Aggrieved by the stand of first appellate authority, the revenue is in further appeal before us.

4. We have carefully heard the rival contentions and perused relevant material on record. Upon due consideration, we find that the addition of



the differential amount [Stamp Duty Value Vs. Agreed consideration] has been made by Ld. AO by applying the provisions of Section 69B on the premise that no seller could sell the properties at less than the fair market prices. However, in support, no corroborative evidences have been brought on record and nothing on record suggest contrary. Nothing has been shown to demonstrate that any additional consideration flew from assessee to the seller and even the seller denied having received any consideration over and above the agreed consideration. It is trite law that additions could not be made merely on the basis of suspicion, conjectures or surmises. The Ld. CIT(A) provided relief to the assessee on the reasoning that the provisions of Section 50C do not apply to tendency rights. However, in our opinion, the additions, by invoking the deeming fiction created by Section 50C, could be made in the hands of the seller only and not in the hands of the purchaser unless contrary is demonstrated. Therefore, the impugned additions, though on different reasoning as applied by Ld.CIT(A), could not be sustained. Hence, viewed from any angle, we find no reason to interfere with the impugned order. The appeal stands dismissed.

ITA No.5808/Mum/2016 : Mahesh Conbuild Private Limited

5. The assessee, in similar manner, has been saddled with additions of Rs.79.50 Lacs u/s 69B and the same has been deleted by Id. CIT(A) on similar reasoning. Since the facts and circumstances are *pari-materia* the same, our observations, conclusions and decision etc. *mutatis mutandis* apply to this appeal also. By confirming the stand of Ld. CIT(A), we dismiss the appeal.



Conclusion

6. Both the appeals stand dismissed.

Order pronounced in the open court on 05th October, 2018.

Sd/-

(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated 05.10.2018

Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai