

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.468/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

M/s. Maxsas Facility Management vs. DCIT, Circle 1,  
Private Limited, Ghaziabad.  
C – 37, 1<sup>st</sup> Floor, Metro Plaza,  
Sector 15,  
Ghaziabad.

**(PAN : AAHCM6399J)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri P.C. Yadav, Advocate  
REVENUE BY : Shri N.K. Bansal, Senior DR

Date of Hearing : 06.06.2019

Date of Order : 11.06.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Maxsas Facility Management Pvt. Ltd.  
(hereinafter referred to as the 'assessee') by filing the present  
appeal sought to set aside the impugned order dated 25.10.2017  
passed by the Commissioner of Income-tax (Appeals), Ghaziabad  
qua the assessment year 2014-15 on the grounds inter alia that :-

*“1. That on the facts and circumstances of the case and in  
law, the Ld Commissioner of Income Tax (Appeals), Ghaziabad  
[hereinafter referred to as CIT(A)] grossly erred in dismissing*

*the appeal of the appellant, which is bad in law and not called for.*

*(Ground No.1)*

*2. That on the facts and circumstances of the case and in law, the order passed by the Learned Assessing Officer, (hereinafter referred to as Ld. AO) is bad in law and the addition made u/s 69B of the IT Act, 1961 is liable to be deleted.*

*2.1. That without prejudice, and under the facts and circumstances of the case, the order passed by the Ld. AO is perverse, without application of mind, illegal and unjustified.*

*2.2. That on the facts and circumstances of the case and in law the learned CIT(Appeals) has erred in law by not allowing the appellant adequate opportunity to represent before:*

*a. not accepting the additional evidence produced during the proceedings and;*

*b. by just examining the veracity of the evidence in the light of a clerical typing error by the Ld. Registered Valuer.*

*(Ground No.2)*

*3. That on the facts and circumstances of the case and in law, both the lower authorities have erred in law, as well as on facts of the case in sustaining addition of Rs.58,51,000/- u/s. 69B of the Income Tax Act, 1961 on account of Undisclosed Investment (i.e. difference between the Stamp Duty Value and Actual purchase consideration paid for the immovable property purchased).*

*3.1. That on the facts and circumstances of the case and in law on the basis of explanation, documents and evidences furnished, the Ld. AO has erred in law by making addition without referring the valuation of property to the DVO as per the provision of sub section (2) of section 50C of the Act.*

*3.2. That under the facts and circumstances of the case and in law on the basis of explanation, documents and evidences furnished, the learned CIT(Appeals) has erred in law by not admitting the additional evidences filed by the appellant in the form of Valuation Report, just because the appellant not specifically quoted reference to Rule 46A / moved separate application in that regards.*

*(Ground No.3)*

*4. That on the fact and circumstances of the case and in law the initiation of penalty proceedings under section 271 (1) (c) of the LT. Act 1961 is mechanical and without recording any*

*adequate satisfaction for such initiation which is uncalled for untenable and bad in law deserves to be quashed.  
(Ground No.4)”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : During assessment proceedings, Assessing Officer noticed that the assessee has purchased two immovable properties for Rs.51,00,000/- and Rs.49,90,000/- whereas perusal of the sale deed shows that the circle rate of the property was Rs.84,39,000/- and Rs.75,02,000/- against which stamp duty of Rs.5,90,800/- and Rs.5,25,200/- respectively was paid. AO, declining the plea taken by the assessee that he has purchased the properties at lower value than the circle rate, treated the properties in question having been purchased @ Rs.84,39,000/- and Rs.75,02,000/- and thereby made an addition of Rs.58,51,000/- on account of undisclosed investment.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessee shown to have purchased the properties in question for Rs.51,00,000/- and Rs.49,90,000/- as against the circle rate of Rs.84,39,000/- and Rs.75,02,000/- by making the payment of stamp duty of Rs.5,90,800/- and Rs.5,25,200/- respectively, It is also not in dispute that section 50C is not applicable to the buyer.

6. The ld. AR for the assessee contended inter alia that the assessee has actually purchased immovable properties for Rs.51,00,000/- and Rs.49,90,000/- and has brought on record report of the approved valuer; that merely on the basis of the variation in the circle rate, addition cannot be made and relied upon the decision rendered by the *CIT vs. Khoobsurat Resort Pvt. Ltd. 256 CTR 0371 (Del.) and Jagnath Saleja vs. ITO – TCA-142 of 2019 dated 15.02.2019-Madras.*

7. However, on the other hand, ld. DR for the Revenue contended that Stamp Duty Act, 2008 confers a right on the assessee to dispute the value of the property for fixation of value on the basis of rate fixed by the Collector and as such, assessee has admitted and accepted the value of the property determined in

accordance with the Stamp Duty Act and relied upon the assessment order as well as order passed by the Id. CIT (A).

8. Perusal of para 5.2.2 of the impugned order passed by the Id. CIT (A) goes to show that the valuation report has been ignored by the Id. CIT (A) on the ground that the assessee has not filed any application for additional evidence as per provisions contained under Rule 46A of the Income-tax Rules, 1962. We are of the considered view that merely on the ground that the assessee has not challenged the circle rate under the Stamp Duty Act, 2008, addition cannot be made being the variation in the circle rate as well as the rate claimed by the assessee because act of making the payment of stamp duty at the circle rate does not bar the assessee for claiming the actual sale consideration paid to the vendor, invariably to avoid litigation and to buy peace of mind. Moreover, sale deed is read in entirety wherein the purpose of making payment of stamp duty at circle rate is explained by the vendor and vendee.

9. Hon'ble High Court of Delhi in case cited as *CIT vs. Khoobsurat Resort Pvt. Ltd.* (supra) decided the identical issue in favour of the assessee that express provisions contained u/s 50C enabling the Revenue to treat the value declared by the assessee for payment of stamp duty ipso facto cannot be a legitimate ground for holding that there was under valuation in the purchase of

immovable property. Operative part of the findings returned by the Hon'ble High Court are extracted for ready perusal as under :-

*“15. This Court is of the opinion that the express provision of Section 50-C enabling the revenue to treat the value declared by an assessee for payment of stamp duty, ipso facto, cannot be a legitimate ground for concluding that there was undervaluation, in the acquisition of immovable property. If Parliamentary intention was to enable such a finding, a provision akin to Section 50-C would have been included in the statute book, to assess income on the basis of a similar fiction in the case of the assessee who acquires such an asset. No doubt, the declaration of a higher cost for acquisition for stamp duty might be the starting point for an inquiry in that regard; that inquiry might extend to analyzing sale or transfer deeds executed in respect of similar or neighbouring properties, contemporaneously at the time of the transaction. Yet, the finding cannot start and conclude with the fact that such stamp duty value or basis is higher than the consideration mentioned in the deed. The compulsion for such higher value, is the mandate of the Stamp Act, and provisions which levy stamp duty at pre-determined or notified rates. In the present case, the revenue did not rely on any objective fact or circumstances; consequently, the Court holds that there is no infirmity in the approach of the lower authorities and the Tribunal, granting relief to the assessee. This question is accordingly answered in favour of the assessee, and against the revenue.”*

10. When the assessee has come up with specific case that he has purchased the properties for a particular amount and under the mandatory provision of Stamp Duty Act, he had to get the sale deed executed at the circle rate and to prove his case brought on record valuation report which has been ignored by the Id. CIT (A) on flimsy grounds, the addition made by the AO and confirmed by the Id. CIT (A) is not sustainable because under the prevalent

provision of law applicable to the facts and circumstances of the case, AO has no power to reach the conclusion that assessee has shown under-valuation of the immovable properties purchased merely on the ground of variation in the sale consideration paid and value declared for payment of stamp duty by relying upon section 2(xix) of Stamp Duty Act wherein definition of “market value” is given and by relying on the provisions contained in Stamp Duty Act that “assessee has not challenged the circle rate fixed by the Collector”. There was no material available with the AO/CIT(A) that the assessee has made under-valuation of the property in order to evade the tax which approach is not sustainable in the eyes of law.

11. AO has not brought on record any evidence by way of sale deeds of the adjoining properties to show that the assessee has under-valued the immovable properties purchased rather merely proceeded on circle rate which cannot be a basis for addition in this case. So, following the decision rendered by the Hon’ble Delhi High Court in *CIT vs. Khoobsurat Resort Pvt. Ltd.* (supra), we are of the considered view that section 50C is only applicable to the seller of the property in order to compute the capital gain and it cannot be extended in case of the purchaser in order to estimate the undisclosed investment.

12. In view of what has been discussed above and following the decision rendered by Hon'ble Delhi High Court in case cited as *CIT vs. Khoobsurat Resort Pvt. Ltd.* (supra), AO/CIT (A) have erred in making addition of Rs.58,51,000/- on account of undisclosed investment i.e. being the difference in the stamp duty value and actual sale consideration paid for the immovable property purchased by the assessee. Consequently, addition made by the AO and confirmed by the Id. CIT (A) is ordered to be deleted, hence appeal filed by the assessee is allowed.

**Order pronounced in open court on this 11<sup>th</sup> day of June, 2019.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 11<sup>th</sup> day of June, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**