

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH  
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4322/Mum/2019  
(Assessment Year :2015-16)**

M/s. IRD Limited E8-14, Industrial Park, Bhiwandi, Thane – 421 302	Mechanalysis World	Vs.	ITO 3(2)(1) Mumbai Room No.673, 6 <sup>th</sup> Floor Aayakar Bhavan M.K.Road, Mumbai-400 020
<b>PAN/GIR No.AAACC4509P</b>			
<b>(Appellant)</b>		..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri Vachaspati Tripathi
<b>Date of Hearing</b>	<b>06/07/2022</b>
<b>Date of Pronouncement</b>	<b>12/07/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.4322/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/IT-298/17-18 dated 09/04/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/12/2017 by the Id. Income Tax Officer-3(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. None appeared on behalf of the assessee despite issuing notices on several dates. Hence we proceed to dispose of this appeal after hearing the Id. DR and after perusing the materials available on record.

3. We find that assessee is engaged in the business of manufacturing engineering goods. The assessee sold its depreciable asset being commercial shop No.301, 302 having super built-up area of 667 sq.ft to M/s. Janus Consultants Pvt. Ltd., vide sale deed dated 08/10/2014. The said property is situated at third floor, Sagar Deep, Plot No.11, LSC Saini Enclave, Vikas Nagar, Delhi-92. The sale consideration reported in the sale deed was Rs.31,00,000/-. The Id. AO observed that the market value as per the documents submitted by M/s. Janus Consultants Pvt. Ltd., during the course of assessment proceedings u/s.143(3) of the Act before its Assessing Officer was Rs.56,07,907/-. Based on this date, the Id. AO show-caused the assessee to explain why the market value of the property has not been taken as the value of the property. The Id. AO also observed that provisions of Section 50C of the Act would come into operation in the hands of the assessee herein. The assessee vide letter dated 20/12/2017 filed its reply and explained the transactions in detail with supporting evidences and also requested the Id. AO to refer the matter to the Valuation Officer in accordance with provisions of Section 50C(2) of the Act to determine the fair market value of the property. The assessee categorically objected to the adoption of market value at Rs.56,07,907/- as it did not represent the true value of the property. The Id. AO however, without considering the submission of the assessee made addition u/s.50C of the Act on the basis of value adopted by the builder M/s. Sudarshan Housing and Finance Ltd., for transferring the said property to buyer i.e. M/s. Janus Consultants Pvt. Ltd., and made an addition of Rs 25,07,907/- (56,07,907-31,00,000) in the hands of the

assessee. Infact the assessee during the course of hearing also submitted the subsequent sale agreement of the property sold by it to M/s. Janus Consultants Pvt. Ltd., on 29/05/2017 falling in A.Y.2018-19 for Rs.25,00,000/- which was much lower than the sale consideration of Rs.31,00,000/- sold in A.Y.2015-16 for the similar extent of the property. The assessee also submitted the valuation report of Mr. Kalyan Bhattacharya, valuers and engineers vide valuation report dated 16/09/2014 wherein the property under dispute was valued for Rs.30,47,633/-. The Id. AO ignored all the submissions made by the assessee for proving the market value of the property and relied upon the working of the builder to levy transfer charges to transfer the property to buyer and not appreciating the fact that such working does not represent the market value of the property sold and does not represent the value adopted or assessed or assessable by the stamp duty valuation authority for the purpose of Section 50C of the Act.

3.1. The assessee before the Id. CIT(A) also submitted that the property is a lease hold property and yet to be converted into free hold property. The property sold is an unregistered sale and no stamp duty was paid and the said property was purchased by M/s. Janus Consultants Pvt. Ltd., from the assessee. For transferring the property to the buyer, transfer fees is payable to builder i.e. M/s. Sudarshan Housing and Finance Ltd. Office No.301 & 302 were purchased from the builder Sudarshan Housing & Finance Ltd. as a first sale. DDA had auctioned the plot and Sudarshan Housing & Finance Ltd was successful in bidding for the said plot on which it has constructed the building known as Saini Enclave. As the plot is not freehold, the same is shown by DDA in their books mentioning the "owner as Sudarshan Housing & Finance Ltd." Since the land is not freehold, no sale can take place unless it is converted into a freehold land

without the DDA's permission. Hence any transfer of the premises in the said building takes place in the books of the builder namely Sudarshan Housing & Finance Ltd. In order to transfer the said Offices, the builder had charged M/s. Janus Consultants Pvt. Ltd, transfer charges. For the purpose of arriving at this transfer charges, the value of the property was determined at Rs 56,07,907/-. The builder had worked out the transfer charges and collected the said amount from them for transferring the ownership in the said company's records.

3.2 The transfer charges of Rs. 3,78,063/- was payable to the Landlord as they charge this said fees to be paid to Govt. Authorities as and when the said property is converted into freehold land and the transfer which has already been taken place, the Landlord recovers transfer charges from every transferee on a basis of future market price of land and building. The buyer have to comply with the said working of 6% of market value arrived by M./s. Sudarshan Housing & Finance Ltd. and if not complied the said company does not give NOC to the transferor. In the instant case, the Id. CIT(A) upheld the action of the Id. AO by observing as under:-

*“3.1.5 As per the agreement, dated 08.10.2014, the vendor i.e M/s Janus Consultants Pvt Ltd has purchased the shop from builder M/s Sudarshan Housing and Finance Limited (SHFL). SHFL has acquired the perpetual leasehold rights to the commercial plot No.11, LSC Saini Enclave, Vikas Marg, Delhi-92 at a public auction held by the Delhi Development Authority (DDA) on August 24,1994. Thereafter, the DDA had executed the perpetual lease deed on October 13,1994 in favour of SHFL. It is perused from the above that the lease is of Plot and not of shop, and for the applicability of section 50C, the transfer should be of land or building or both. In this case, as per the agreement, the appellant becomes the absolute owner of the property, then, where is the question of leasehold land or freehold land.*

*3.1.6 Further, the appellant has contended that the purchaser has in turn sold the property again after this transaction, at Rs.25 lakhs only. That, the appellant had sold the property at Rs.31 lakhs which was much more than Rs 25 Lakhs. Therefore, the sale price is justified. Frankly, I am not entirely convinced with this argument given by the appellant. Just because some purchaser has re-sold the property at an amount less than at which it was bought, the implications of section 50C cannot be changed. I can only say that this future transaction of Rs.25 lakhs is also very much vulnerable to the provisions of section 50C, if the AO of the that assessee chooses to resort to the same.*

*3.1.7 In view of the above discussion, I do not wish to interfere with the decision of AO. Therefore, addition of Rs.25,07,907/- u/s 50C made by the AO is hereby sustained. This ground of appeal is dismissed.”*

3.3. The above primary facts remain undisputed and hence, the same are not reiterated herein for the sake of brevity. At the outset, we find that assessee had sold the shop for Rs.31,00,000/-. The Id. AO had considered the market value of the property based on the value fixed by the builder i.e. Sudarshan Housing and Finance Ltd., which is relevant for the purpose of levy of transfer charges payable to the builder. We find from the perusal of the orders of the lower authorities, the sum of Rs.56,07,907/- is certainly not the value determined by the stamp duty valuation authority for the purpose of Section 50C of the Act. Hence, the said value cannot be taken as sacrosanct in the peculiar facts and circumstances of the instant case. However, it is a fact that assessee had filed valuation report dated 16/09/2014 wherein the valuer had valued impugned property at Rs.30,47,633/- and assessee had sold the property for Rs.31,00,000/-. When this valuation report is placed on record, it is incumbent on the part of the lower authorities to either dispute the said valuation report or refer the matter to the Id. Department Valuation Officer (DVO) in terms of Section 50C(2) of the Act to determine the fair market value of the property. Moreover, we find that assessee had indeed objected to adoption of market value of Rs.56,07,907/- and had indeed

requested for reference to DVO before the Id. AO. This request has been rejected by the lower authorities without any basis which action, in our considered opinion, is grossly against the provisions of the Act. Hence, in order to meet the ends of justice, we deem it fit and appropriate to remand this issue to the file of the Id. AO, with a direction to refer the valuation of subject mentioned property to the Id. DVO for determination of fair market value and also to consider the value fixed by the stamp duty authority in terms of Section 50C of the Act as on the date of sale and determine the sale consideration as per law. Accordingly, the ground No.1 raised by the assessee is allowed for statistical purposes.

4. The ground No.2 raised by the assessee is challenging the action of the lower authorities in ignoring the revised return along with revised computation of income filed by the assessee wherein the assessee seem to rectify the error in the claim of unabsorbed depreciation of earlier year of Rs.28,70,907/-.

4.1. We have heard Id. DR and perused the materials available on record. The assessee had originally filed its return of income on 30/09/2015 declaring Nil income under normal provisions of the Act and declaring book profit of Rs.20,99,829/- u/s.115JB of the Act. The Id. AO during the course of assessment proceedings observed that assessee had claimed set off of unabsorbed depreciation of Rs.37,22,415/- and sought for details of the same. The assessee in response thereto filed revised computation of income and stated that the unabsorbed depreciation figure is only Rs.28,70,907/-. The Id. AO proceeded to make addition of Rs.8,51,508/- for excess unabsorbed depreciation claimed by ignoring the revised return and revised computation of income filed by the assessee.

4.2. It is not in dispute that assessee had filed its original return along with statement of brought forward depreciation, its utilisation and balance unabsorbed depreciation to be carried forward to subsequent years. In the said statement, there was error in taking the unabsorbed depreciation figure for A.Y.2006-07 and A.Y.2010-11 resulting in wrong set off of claim for the year. To rectify this error, the assessee had filed revised return u/s.139(5) of the Act on 08/12/2017 along with revised computation of income and had furnished the same at the time of hearing before the Id. AO. The assessee also stated that the excess depreciation carried forward and claimed did not have any effect on current year's tax payable as ultimately the taxes were paid only u/s.115JB of the Act. It was pleaded that the said mistake had happened only due to inadvertence.

4.3. We find that the Id. CIT(A) had accepted to the fact that there was an error in the original return filed by the assessee with regard to set off of unabsorbed depreciation and the same was duly rectified by way of a revised return and revised computation of income. From the perusal of the manner in which total income has been determined by the Id. AO in the assessment order, we find that the Id. AO had completely ignored the revised return of income filed by the assessee as it was filed belatedly. The Id. AO accordingly has also ignored the revised computation of income filed by the assessee during the course of assessment proceedings. However, we find that there cannot be any grievance to the assessee in the instant case as it is an admitted fact that there was an error committed by the assessee in the set off of unabsorbed depreciation for A.Y.2006-07 and A.Y.2010-11 to the total extent of Rs.8,51,508/-. Hence, this error needs to be brought in the computation of total income by the Id. AO which has been rightly done by the Id. AO. Hence, we

uphold the action of the Id. AO in this regard. Accordingly, the ground No.2 raised by the assessee is dismissed.

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

Order pronounced on 12/07/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 12/07/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai