

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. N. K. Choudhary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3575/Del/2014 : Asstt. Year : 2010-11

M/s Kisaan Engineering Works Pvt. Ltd., Pradeep & Co., Tax Advocates, 7, Navyug Market, Ghaziabad (U.P.)	Vs	JCIT, Range-2, Hapur, Chungi Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AAACK5966G		

Assessee by : Sh. Satyajeet Goel, CA

Revenue by : Sh. Ravi Kant Choudhary, Sr. DR

Date of Hearing: 30.08.2022

Date of Pronouncement: 31.10.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Ghaziabad dated 19.02.2014.

2. Following grounds have been raised by the assessee:

"1. That the Ld. CIT[A] has grossly erred in confirming addition of Rs. 13,73,116/- being disputed payment of electricity expenses crystallized in assessment year 2010-11.

2. That the Ld. CIT[A] has erred in holding that there is no comment on the fact that these expenses have already been claimed in earlier year and if these are allowed in this year it will amount to double deduction, in the facts and circumstances of the case that electricity expenses are inclusive of surcharge meaning thereby that no payment has been made to them in earlier year.

3. That the addition confirmed by the Ld. CIT [A] does not mention provisions of the Act under which the said addition has been made.

4. That the Ld. CIT[A] has erred in confirming the addition of Rs. 17,15,000/- in the facts and circumstances of the case by applying provisions of section 50C of the Act whereas the sale consideration is excluded from the definition of Capital Asset of section 2[14] of the Act as stock in trade.

5. That the Ld. CIT[A] has erred in confirming addition of Rs. 125,502/- being legitimate business expenditure.

6. That the order of the Ld. CIT[A] is arbitrary, unjust and against principles of natural justice and income returned may be restored.”

3. The assessee company is engaged in the business of manufacturing of flanges, rings, shafts rolls, etc. The company has two units viz. M/s Sushila Steels which was closed on 05.07.2007 and the other M/s. C.D. Industries taken over by M/s Kisaan Engineering Works Pvt. Ltd. on 01.04.2006. The return of income for A.Y. 2010-11 was filed on 28.09.2010 declaring therein income of Rs. 38,18,430/-. The Assessing Officer completed assessment on a total income of Rs.77,22,050/- vide an order passed u/s 143(3) of the Act dated 28.12.2012 which includes addition of on following counts:

- (1) Rs. 13,73,116/- on account of prior period expenses.
- (2) Rs. 17,15,000/- on account of application of Section 50C of the Act.
- (3) Rs. 1,25,502/- on account of disallowance of expenses.
- (4) Rs.6,90,000/- on account of additional amount surrendered

4. The above additions were confirmed by the Hon'ble CIT(A), Ghaziabad.

Prior Period Expenses:

5. In the course of framing assessment order, the Assessing Officer had treated the prior period expenses to be crystallized in A.Y. 2000-2001 whereas said expenses were under litigation as the electricity department raised the bills for peak hours creating additional charges of Rs.11,72,160/-, the said demand was challenged in the Civil Court, Ghaziabad by the appellant and as such no provision was made in the books of accounts, the electricity department also levied surcharge of Rs. 24,50,986/- and Rs. 6,42,773/- on the above demand. Later on U.P. Power Corporation Ltd. vide an order No. 273 dated 06.02.2010 offered one time settlement scheme where in it was stated that if the disputed demands are paid off, then the entire surcharge would be waived off, the appellant to avoid undue hardship and uncertainty of the decision of the court opted for the scheme and department also agreed and revise the demand of Rs. 3,81,155/- to an amount of Rs. 1,89,441/-. This way the appellant deposited an amount of Rs. 13,73,116/- which crystallized in A.Y. 2010-11.

6. Further, the Ld. CIT(A) on page 28 of the appellate order observed that appellant has not denied and is silent on the facts that the amount of Rs. 10,25,800/- paid in earlier year out of total demand was not claimed in earlier year and further if these allowed in this year, it will be amount to double deduction. The Ld. CIT(A) has grossly erred in confirming addition of Rs. 13,73,116/- being disputed payment of electricity expenses crystallized in A.Y. 2010-11.

7. We have gone through the contents, we are in principle agree that the amount paid under One Time Settlement (OTS) scheme is to be allowed in the year in which the payments have

been made. The Id. CIT(A) categorically held that the assessee has not denied and is silent on the fact that the amount of Rs.10,25,800/- paid in earlier year out of the total demand was not claimed by the assessee in the earlier year as well. Hence, we remand this issue to the file of the AO to examine whether the similar claim has been made and debited in the P&L account for the relevant Assessment Years. In case the assessee has not claimed this amount earlier, we direct that the benefit should be accorded during the current year.

Addition u/s 50C:

8. During the year, the assessee sold land on 01.09.2010 to the tune of Rs.11,42,660/-, the circle of which was Rs.28,57,000/-. The Assessing Officer brought to tax the difference of the amount between the circle rate and sales price after invoking provisions of Section 50C. It was submitted that the factory near Dankaur Railway Station was closed in September 1995 and the company decided to sale the land after developing the same into residential plots. The assessee submitted that during the year 2001-02, wherein the assessee sold land @ Rs.485/- per sq. yrd. whereas the circle rate being Rs.800/- and in that year the Id. CIT(A) has directed the AO to consider rate of Rs.525/- per sq. yrd. against the report of the valuer determining the rate at Rs.550/- per sq. yrd.

9. The Id. CIT(A) held that the provisions of Section 50C were not in force for the A.Y. 2001-02 and they have been brought to statute only w.e.f. 01.04.2003. The provisions of Section 50C(2) mandates that the AO may refer the valuation of the capital asset to a valuation officer for determining the fair market value. In this case, the Assessing Officer failed to do so.

10. The Id. AR argued that the said land was near to the railway track and also near cremation ground and is very far from the main road and always water lodged. The sale of such land was also under protest and the case has been filed against the sale.

11. Heard the arguments of both the parties and perused the material available on record.

12. The similar issue has been adjudicated by the Co-ordinate Bench of ITAT in the case of Amarshiv Construction Pvt. Ltd. Vs. DCIT in ITA No. 3061/Ahd/2015 vide order dated 29.12.2017. The relevant part of the order is as under:

"2. We come to the relevant facts now. The assessee company had sold its capital assets in question i.e. a plot measuring 37838sq.ft. comprised in land survey no.974/27 for consideration of Rs.75,67,600/- at Timba, R.S. No.974/14 admeasuring 40,772sq.ft. for Rs.81,54,400/- and R.S. No. 974/26 admeasuring 39625 sq.ft. for Rs.79,25,000/-; respectively. The said transactions also attracted additional stamp duties. Net effect thereof was that the total consideration amount stood notionally increased to Rs.95,69,273/-, Rs.1,03,08,584/- and Rs.99,91,020/-; respectively. The Assessing Officer adopted the above enhanced consideration(s) to invoke Section 50C of the Act resulting in long term capital gains in addition in question of Rs.62,21,877/- in assessment order dated 26.03.2014.

3. The CIT(A) affirms the impugned addition as under:

"5.2.3. From the details furnished by the appellant during the course of the appellate proceedings and the submissions made along with these, it is seen that the market value of the land fixed by the Stamp Duty Officer had been disputed by the purchaser and accordingly, they had approached in appeal to the Collector, Stamp Duty Valuation Division, Panchmahals for correct valuation as per the market price. The translation of the letter issued by the Sub Registrar, Godhra to the purchaser asking for the payments of additional Stamp Duty in regard of one of these plots is reproduced below:

"We have to inform you that a document for change of ownership/sale was received on 07.09.2010 vide Acknowledgement No.600/2010 for Rs.75,67,600/- for registration. The price as per the Jantri record as on date is Rs. 1,87,29,900/-. On the said price the stamp duty payable is Rs. 9,17,766/-. In the documents submitted by you the Stamp Duty paid is Rs. 3,71,000/-.

In view of this the short fall in Stamp Duty works out to Rs. 5,46,766/- which is desired by you to be paid the same should be paid within the period of 30 days from the receipt of this notice. After the receipt of the payment the necessary entries would be made in the sale deed and the same would be returned.

If the said Stamp Duty is not paid within a period of 30 days the said document would be referred to the Collector Stamp Duty Valuation Division - 1/2, Panchmahals for correct valuation of market price as per the provisions of Section 32(ka)(1)."

5.2.4. Thus, the Stamp Duty as per the jantri rate has not been accepted in this case and the same had been appealed against and, accordingly, a fresh market value was determined by the Collector, Stamp Duty Valuation which was substantially lower than the valuation of the land as per the jantri rate. For e.g. in case of R.S. No. 974/27, the sale consideration shown by the appellant is Rs.75,67,600/- as against which the jantri rate was Rs.1,87,29,900/-. After filing appeal against this jantri rate, the market value was determined at Rs. 95,73,102/- on which the Stamp Duty was paid for the registration of the sale deed. Thus, the appellant had already been given substantial relief by the Collector Stamp Duty Valuation Division and hence, as per the provisions of clause (b) of sub section (2) of Section 50C of the It Act, 1961, the AO was not obliged to refer the matter for fresh valuation to the District Valuation Officer.

5.2.5 Hence, it is held that since the market value of the land has already been determined by the higher authority as per the appeal filed by the purchaser of the land and market value of the lands have already been substantially reduced as compared to the market value as per jantri rate, hence, the AO was correct in adopting such market value of

the lands as determined by the Collector as the sale consideration received by the appellant as per the provisions of Section 50C of the IT Act, 1961. Accordingly, there is no requirement of remanding the matter back to the AO for referring the valuation of the land to the District Valuation Officer. The addition made by the AO is as per law and hence, the appellant is not entitled to receive any further relief. Accordingly, this ground of appeal is dismissed."

4. Heard both the parties. Case file perused. There is no dispute from the above narrated facts and circumstances that both the lower authorities have gone by the reduced jantri price for the purpose of invoking Section 50C of the Act so as to make the impugned long term capital gains addition. The CIT(A) particularly is of the opinion that the above reduced jantri price in Stamp Act Appellate proceedings coming to Rs.95,73,102/- is just and proper. We however see no reason to concur with the above extracted findings as the impugned addition u/s.50C(2) of the Act mandates reference to the DVO in case an assessee contests the jantri price in question to be higher than fair market value of the relevant capital asset. Hon'ble Calcutta high court's judgment in (2015) 372 ITR 83 (Cal.) Sunil Kumar Agarwal vs. CIT holds that such a reference is mandatory even if an assessee does not make any such prayer. We therefore accept assessee's sole substantive grievance for statistical purposes and remit the issue back to the Assessing Officer to proceed afresh as per law u/s.50C(2) of the Act by making reference to the DVO."

13. Since, a principle has been laid down that as per Section 50C(2), the reference to the DVO is mandated, for substantial justice, we remit the issue back to the AO with direction that any addition can be made only after making the reference to the DVO as per the provisions of Section 50C(2).

Disallowance of Rs.1,25,502/-:

14. This disallowance has been made by the revenue on the grounds that there is no business of the assessee, however we find that the expenses incurred in relation with employment of

security guard and others cannot be disregarded. Hence, the disallowance made is liable to be deleted.

15. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 31/10/2022.

Sd/-

(N. K. Choudhary)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 31/10/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR