

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.620/Kol/2020
Assessment year: 2015-16

ITO, Ward-43(1), Kolkata.....Appellant

vs.

Sri Mantu Shaw.....Respondent

3 No.Arabinda Sarani,

Dum dum Road,

Kolkata-700028.

[PAN: AZNPS4510P]

Appearances by:

Shri Miraj D Shah, AR, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 13, 2023

Date of pronouncing the order : February 22, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 04.09.2020 of the Commissioner of Income Tax(Appeals)-13, Kolkata [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Revenue in this appeal has taken the following grounds of appeal:

"i) Whether on the facts and circumstances of the case and in law, Ld. CIT (A) - 13, Kolkata is erred in allowing the relief of the assessee amounting to Rs.2,77,71,696/- without appreciating the facts that the assessee had failed to submit the details of most of the sundry creditors during the assessment proceedings and no remand report called for during appellate proceeding.

ii) Whether on the facts and circumstances of the case and in law, Ld CIT(A)-13, Kolkata is erred in allowing relief to the assessee by pronouncing that 5% difference between Stamp duty value and the value decided by the valuation officer

(iii) The appellant craves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal.

3. The first ground taken by the Revenue is against the action of the CIT(A) in deleting the addition made by the Assessing Officer on account of bogus sundry creditors.

The ld. CIT(A) has discussed this issue in detail vide para 5.1 onwards, wherein, the ld. CIT(A) has noted that the assessee has duly proved the identity and creditworthiness of the creditors by showing that the aforesaid credits were in fact the advances received from the prospective buyers of flats constructed by the assessee. That the said advances were duly reflected and taken into account at the time of final conveyance deed/possession letter.

The ld. DR could not point out any infirmity in the order of the CIT(A) in this respect.

4. The second ground taken by the Revenue is regarding the action of the CIT(A) in deleting the addition made by the Assessing Officer u/s 56(2)(viib) on account of differential value between stamp duty value of the property and purchase consideration of the property. The assessee explained before the CIT(A) that the market value of the property purchased by the assessee was less than the stamp duty value. The ld. CIT(A) noted that the Assessing Officer, under the circumstances, was supposed to refer the matter to the Departmental Valuation Officer. Since the Assessing Officer has not done so, the ld. CIT(A) referred the matter to the Departmental Valuation Officer. The ld. CIT(A), after

considering the report of the Departmental Valuation Officer, noted that the differential value of the purchase consideration as compared to the value estimated by the Departmental Valuation Officer was less than 5%. The Id. CIT(A), therefore, relied upon the decision of the various benches of the Tribunal including Hon'ble Jaipur Bench of the Tribunal in the case of Sita Bai Khetan vs. ITO order dated July 27, 2016, wherein, it has been held that less than 10% in such a scenario was liable to be ignored.

5. After hearing the Id. representatives of both the parties, we do not find any infirmity in the order of the CIT(A) in this respect.

6. In view of the above, the appeal of the Revenue is accordingly hereby dismissed.

Kolkata, the 22nd February, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 22.02.2023.

RS

Copy of the order forwarded to:

1. ITO, Ward-43(1), Kolkata
2. Sri Mantu Shaw
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches