

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.4235/Del/2019  
Assessment Year: 2015-16

M/s. Satya Dharma Hotels Pvt. Ltd., 177, 1 <sup>st</sup> Floor, Vigyan Vihar, New Delhi 110092 <b>PAN AAHCS 0289 H</b>	vs.	ITO, Ward-22(4), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri P.C Yadav, Adv. Shri Shivam Garg, CA Shri Raghav Sharma, CA
Revenue For :	Shri Vipul Kashyap, Sr.DR

Date of Hearing :	18.04.2023
Date of Pronouncement :	09.06.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of CIT(A)-8, New Delhi dated 01.03.2019 for AY 2015-16.

2. The grounds of assessee are as follows:-

1. *That on the facts and circumstances of the case and in law, the order passed by CIT (A)-08, New Delhi is contrary to the facts and bad in law.*

2. *i) I am not agreeing with the computation of capital gain made by assessing officer.*

*ii) During the assessment, sec 55A of Income Tax Act has not been considered by assessing officer for valuation of the land as requested by us. Taking rate of registering authority and not consider the fair market value which is very low.*

*iii)The Ld. AO has not considered the addition made during the year and added back in the income of the assessee company.*

4. *Demand calculated by A.O. is prejudicial to the company and, if appeal is not allowed to be proceeded it amounting to against the law.*

5. *The company have valid reason for taking FMV as sale consideration as per section 55A of Income Tax Act.*

6. *The disallowance of addition in land of Rs. 2935000 is not tenable and not justified.*

7. *I am genuine in the eye of law and followed valid procedure for computation of capital gain.*

3. The Id. counsel of assessee submitted that the assessee company is engaged in the business of running a hotel on rent. During the course of assessment proceedings Assessing Officer observed that the assessee has sold a piece of land situated at Rajasthan for an amount of Rs. 14 lakh and the Assessing Officer taking into consideration circle rate of land of Rs. 2,26,19,892/- invoking the provisions of section 50C of the I.T Act 1961 (for short the 'Act') held that the value of circle rate has to be deemed as consideration received for the purpose of computation of capital gain. The Id. counsel submitted that the hearing before Assessing Officer started on 22.12.2017 and assessee submitted reply on 26.12.2017 along with documentary evidences but the Assessing Officer without allowing further opportunity to the assessee framed assessment order on 13.12.2017 by making addition of circle rate adopted by stamp valuation authority ignoring the relevant provisions including sub section (2) of section 50C of the Act. The Id. CIT(A) confirmed the addition without appreciating the facts in the proper prospective, which is also not sustainable as the authorities below have ignored that the assessee has duly explained the difference between the circle and fair market value and in view of sub section (2) of section 50C of the Act. The Assessing Officer ought to have refer the matter to the DVO. He also drew our attention towards page no. 1 of assessment order and submitted that the assessee has successfully demonstrated the sustainable cause of difference between actual consideration which was as per fair market value, and circle rate through vide submission dated 11.12.2017 but the same was ignored and without referring the matter to the DVO, the Assessing Officer proceeded to invoke deeming provision of section 50C of the Act, which is not sustainable.

4. Replying to the above, the Id. Senior DR strongly supported the orders of the authorities below. However, in all fairness, he candidly submitted that if it is found just and proper that the Assessing Officer has to do compliance of sub section (2) of section 50C of the Act, than the department has not objection in restoring the issue to the file of Assessing Officer.

5. On careful consideration of rival submission, at the very outset, from provision of sub section (2) of section 50C of the Act, it is gathered that when the assessee before

the Assessing Officer claims that the value adopted or assessed or assessable by the stamp valuation authority under sub section 1 exceeds the fair market value of the property as on the date of transfer then the Assessing Officer may refer the valuation of the capital asset to a valuation officer. In the present case from the orders of the authorities below particularly the assessment order it is clearly discernable that the assessee before the Assessing Officer submitted detailed submission vide dated 11.12.2017 challenging that the circle rate of land was higher than the market value of the land and also stated reasons for this difference. The Assessing Officer show cause the assessee which was replied by the assessee on 26.11.2017 giving details of additions and calculation of capital gain but the Assessing Officer dismissed the same by holding that the assessee has not furnished any reply regarding difference of sale consideration and circle rate adopted by the stamp valuation authority. In our humble view when the assessee is submitting the cause of difference between actual sale consideration and circle rate adopted by the stamp valuation authority then the Assessing Officer was under obligation to refer the matter to DVO for determination of fair market value as on the date of transfer of capital asset but the Assessing Officer proceeded to make addition treating the entire value as per circle rate without referring the matter for valuation as per requirement of clause (a) of sub section (2) of section 50C of the Act. The Id. CIT(A) having co-terminus power also failed to comply with the said provision.

6. Therefore, under the facts and circumstances of the case, we find that the matter requires to be restored to the file of Assessing Officer for limited purpose, that is for compliance of provision of section 50C (2) (a) of the Act to avoid multiplicity of proceedings. Needless to say that the Assessing Officer will provide due opportunity of hearing to the assessee and will Revenue-adjudicate the issue without being influenced by the earlier orders.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09.06.2023.

Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER  
Dated: 09<sup>th</sup> June, 2023.

Sd  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi