

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

**BEFORE, SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.5946/Del/2017
(Assessment Year : 2014-15)

ACIT Circle – 7(2) New Delhi	Vs.	M/s DSL Properties Pvt. Ltd. 6/3, East Patel Nagar, New Delhi-110 008
PAN No. AABCD 9629 E		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri R. S. Singhavi & Satyajeet Goel, C.A.
Revenue by	Shri Vivek Kumar Upadyay, Sr. D.R.

Date of hearing:	27.07.2023
Date of Pronouncement:	13.10.2023

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the Revenue against the First Appellate Order of the Learned Commissioner of Income Tax (Appeals) – 3, Delhi ('CIT(A)' in short) dated 31.07.2017 arising from the assessment order dated 30.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2014-15.

2. The grounds of appeal raised by the revenue read as under:

- *“The Ld. CIT(A) erred in law and on the facts of the case in deleting the disallowance made by the AO amounting to Rs.3,99,23,600/- under the Capital Gain”.*

3. Briefly stated, the assessee company is engaged in the business of purchase, development and sale of properties and also derives income from interest and capital gains. For the A.Y. 2014-15 in question, the assessee filed return of income declaring total income at Rs.32,81,01,050/-. The return filed by the assessee was subjected to scrutiny assessment. In course of the scrutiny assessment, the Assessing Officer observed that the assessee company has *inter alia* earned Long Term Capital Gains on sale of property situated at B-35, Sector-132, Greater Noida. The property was sold to M/s. UTC Softech Pvt. Ltd. (UTC) for a stated consideration of Rs.36,00,76,400/-. A search and seizure under section 132 of the Act was conducted on 10.10.2013 on Urbtech Group including the purchaser of the property M/s. UTC Softech Pvt. Ltd. (earlier known as Suntar Properties (P.) Ltd.). Certain loose papers, diary, documents were *inter alia* seized in the search. The AO of the purchaser vide his letter dated 26.02.2016 exchanged the information to the AO of the assessee along with copies of the relevant documents pertaining to the assessee herein.

3.1 On perusal of seized documents seized, the Assessing Officer observed that real sale consideration agreed stands at Rs.40,00,00,000/- towards the sale of aforesaid property at B-35, Sector-132, Greater Noida. Consequently, in course of assessment proceedings, the assessee was confronted with such incriminating evidences so gathered. A show-cause notice was issued by the AO proposing to assess the difference of Rs.3,99,23,600/- in the hands of the assessee as undisclosed income attributable to understatement of such sale consideration. Simultaneously, a summon under section 131 dated 02.12.2016 were also served upon UTC for personal deposition in the matter and also to afford opportunity of cross examination thereof to the assessee. The summons so issued however remain un-complied. The assessee also sought adjournment and called upon the Assessing Officer to provide the copy of Panchnama and statement of Director etc. of Urbtech Group.

3.2 In this backdrop, the Assessing Officer took cognizance of the diary/loose paper/document found from the possession of the purchaser showing sale consideration of Rs.40,00,00,000/-. A copy of such loose papers/documents were provided to the assessee. The relevant loose paper giving rise to the controversy is also scanned at para 3.5 of the assessment order. It was observed by the AO that the loose paper clearly confirms that the real consideration paid to the assessee against the sale of property stands at Rs.40,00,00,000/- and the sale consideration disclosed at Rs.36,00,76,400/- was a suppressed figure. The Assessing Officer thus alleged suppression of sale consideration to the extent of Rs.3,99,23,600/- and consequent lower reporting of LTCG. The Assessing Officer accordingly enhanced the Long Term Capital Gain declared to this extent while framing the assessment order.

4. Aggrieved, the assessee preferred appeal before CIT(A).

4.1 The CIT(A) re-appreciated the factual matrix and found merit in the plea raised by the assessee. The CIT(A) accordingly reversed the additions so made on account of understated sale consideration.

4.2 The relevant operative para of the order of the CIT(A) is reproduced hereunder for ready reference:


2.1 Having gone through the submissions of the appellant, the order of assessment passed by the Assessing Officer and the material facts placed on the record, it emerges from the facts that the Assessing Officer made the addition of Rs.3.99 crore on the basis of the document scanned and copied on the page number 3 of the order of assessment for the assessment year 2014-2015. The counsel of the appellant filed the detailed submissions and other documentary evidences to rebut the observations of the Assessing officer as noted in the order of assessment. It is stated that the Assessing Officer provided the assessee two copies of the documents seized during the search. It is explained that on the 36 perusal of the document No.54 seized by Party A-6, it is amply clear that the deal in question was for Rs.36,00,76,400/-, which is same as per Registered Sale Deed and also on the basis of which capital gain in question was worked out. The said seized document was precise containing the working on the basis of which land under sale measuring 20116 sq. mtrs. @ Rs.17,900/- per sq. metre tallies with the actual sale consideration of Rs.36,00,76,400/-, which is shown in the

Registered Sale Deed. It is further stated that the said seized paper contains the details of the working of the stamp duty of Rs.1,80,04,000/- and this value reconciles with the value on actual stamp paper of Rs.1,80,04,000/- as per Registered Sale Deed. The seized document proves the authenticity and veracity of the registered sale deed and the sale consideration at Rs.36,00,76,400/-, which was provided by the Assessing Officer himself to the assessee and it is not clear as to how and why the Assessing Officer did not refer to the said document in the Assessment Order.

2.2 The Assessing Officer relied on the document No.15 for making the addition. The scanned copy of the document is reproduced as under:-

(15) 05
SATURDAY
FEBRUARY 02 2013

Plot No 35, Sec-132, = 40 cr.		
up to 31.8.13		
Tax Paid 75000 +	T.M.	1.80
15000 +	Stamp Paper	2.00
		43.80
paid upto 30.4.13		
By Debit T.Jas:		18.45
		2.00
		2.00
Balance A/c on 30.4.13		18.55



The addition of Rs.3,99,23,600/- has been made on the basis of the above notings whereas the document no.54 seized in file A/6 the copy of which was given by the Assessing Officer to the assessee has not been discussed at all in the order of assessment. The scanned copy of the document is reproduced in the order for the ready reference:-

TELEPHONE INDEX

NAME & ADDRESS	PHONES	MOBILE
R.S.S 7249		(59)
9871295279 I.D. Geed. Regd.		2471894
H.No.2528 Jawahar Colony		
Near Air Force Road. FBD.		
	4/5 to 4th every month.	
feather.	1594326	per month
Azan	996454	do
DSL Probandel Vidya		
20116 17900/-	35,80,00,000	
	36,00,76,400	
Extension fee for 5 years. 3036000 per year		
	1 years 415500.	
Cost. Stamp Paper	1,76,80,000.	
	do	3,24,000.
		1,20,04,000
P. Salim		
	11/11/13	
wf 2133011	10/10/2013	
wg Avinash	10/10/13	
		100

TELEPHONE IN:		MOBILE:
NAME & ADDRESS		
Hi-Led	253423	1.80
Peather	184270	80.00
10.4.13	50.00	
28.4.13	35.00 →	
E-20 Lajpat Nagar III		
M/S. DSL Properties (Pvt) Ltd		
B-35 Sector-132		
20116 @ 17900/-	36,00,76,400/-	
Paid till 30.5.13	24,15,55,100/-	
	11,85,21,300/-	
37000	66,23,000	
extr. Pct.	36,00,000	
	10,82,98,300	

The document no.54-A/6 clearly denote that the property in question measuring 20116 yards has been sold @ Rs.17,900/- for the value of Rs.36,00,76,400/- The document contains the name of the assessee and the plot number and the sector in which the property is situated. The document further contains the working and the value of the stamp duty of Rs.1,80,04,000/- which matches with the stamp duty paid by the buyer whereas, the document number 15 in file A/62 does not contain any details and the figures have been noted in the form of rough notings. The comparison of the two documents makes it clear that the property at B 5 in Sector 132 measuring 20116 square metres in Greater Noida has been sold @Rs.17,900/- for the total consideration of Rs.36,00,76,400/-. The circle rate of the property in question was Rs. 12,000/- per square metre. The total valuation as per circle rate amounts to Rs.24,13,92,000/- whereas the total consideration for the leasehold rights has been shown at Rs.36,00,76,400/-. The transfer deed for the lease hold rights dated 06.06.2013 contains the same figures as noted down in the document no.54 in file A/6. In view of the aforesaid facts, the addition of Rs.3,99,23,600/- made by the Assessing Officer is deleted.

3. As the result, the appeal of the appellant is treated as allowed."

5. The Revenue has challenged the order of the CIT(A) granting relief to the assessee before the Tribunal.

6. The Ld. DR for the Revenue strongly assailed the action of the CIT(A) and defended the order of the AO.

6.1 The Learned DR pointed out that; **(a)** the CIT(A) has clearly proceeded on misconception of facts and law while determining the issue in favour of the assessee **(b)** the CIT(A) failed to appreciate that Assessing Officer has put all efforts to justify his action; the copy of loose papers/dairy/document found at the premises of the purchaser showing the same property (B-35, Sector-132, Greater Noida) received from the AO of the purchaser was duly confronted to the assessee; a summon was also issued to the purchaser of the property; the assessee failed to file any defense but raised counter enquiry like copy of panchnama and copy of statement of Director of searched person; the summon under section 131 issued upon the purchaser was also not complied with **(c)** the CIT(A) overlooked the categorical loose paper no. 15 to Annexure-A62 seized from the premises of Urbtech Group; the loose paper clearly reflects the calculation and working including sale consideration of Rs.40,00,00,000/-; the reliability of loose paper no.15 is also vindicated by the fact that payment made up to certain period were also found reflected and certain payments by one Mr. Deepak Tyagi was also shown **(d)** the CIT(A) has acted in undue haste and accepted version of the assessee without seeking any remand report and without making any enquiry on such overriding factual aspects and casually inclined towards *document no.54* showing consideration of Rs.36,00,76,400/- without any discussion on correctness of *document no.15* which is apparently reliable in the wake of the fact that part payments were also recorded and balance due was also shown **(e)** the CIT(A) did not disclose as to how document no.15 showing sale consideration of Rs.40,00,00,000/- is not reliable and how the onus placed upon the assessee was discharged on the face of such seized material found from the possession of the purchaser **(f)** the CIT(A) has ignored the tell-tale evidence gathered by the department and agreed to the version of the assessee without any justifiable reason.

6.2 The Learned DR thus submitted that the first appellate order is non-speaking on vital aspects and thus requires to be brushed aside. The Ld. DR thus urged for reversal of the action of the CIT(A) and restoration of the assessment order.

7. The Learned AR for the assessee, on the other hand, relied upon the findings rendered in the First Appellate Order. The Learned Counsel for the assessee submitted that Diary page/loose paper marked no.15 to Annexure-A62 is in the nature of the dumb document and does not carry basic features like area involved, rate per square meter etc. whereas the sale consideration declared in ROI is backed by a legally enforceable registered document. The sale consideration shown in registered deed is also much higher than the circle rate notified by the State Revenue Department and thus no adverse inference on the sale consideration is justified based on a dumb document. The Learned Counsel further submitted that the Assessing Officer has not provided the copy of Panchnama drawn in the case of searched person and the statement of the purchaser deposited in the course of search, as demanded in the course of hearing. Learned Counsel thus pointed out that in view of the contradictions and inconsistencies between document/loose paper no.54 *vis-a-vis* doc. no. 15, the CIT(A) correctly and rightly relied upon the consideration declared in sync with registered sale agreement and the consideration referred in document no.54 to affirms the declared sale consideration. The Learned Counsel referred to judgment rendered by Hon'ble Delhi High Court in the case of *CIT vs. Shri Kulwant Rai 291 ITR 36(Delhi)* to contend that assessment cannot be made on the basis of imagination and guesswork, which has been done by the AO in the instant case. The Learned Counsel thus submitted that the action of the CIT(A) cannot be faulted and no interference therewith is called for.

8. We have carefully considered the rival submissions and perused the assessment order and the First Appellate order. The material referred to and relied upon in course of hearing has been carefully perused in terms of Rule 18(6) of the Income-tax Appellate Tribunal Rules, 1963. The controversy in the present case relates to additions on account of understated sale consideration on sale of property by the assessee in the factual matrix. The issue is essentially factual in nature and is thus wholly dependent upon the examination of facts threadbare.

8.1 The Assessing Officer in the course of assessment relied upon a loose paper no.15 found from the possession of the purchaser at the time of search which reflected the sale consideration to be Rs.40,00,00,000/- as against Rs. 36,00,76,400/- declared by the assessee. Based on material seized from the possession of the purchaser, the AO confronted the loose paper/document no.15 and also another loose paper/document no.54 to the assessee. The explanation of the assessee on the propriety of the sale consideration was called for. Summon to the purchaser was also simultaneously issued for personal deposition and to illicit information on contents of such loose paper found from their possession. The AO in the assessment order has noted that neither summon to the purchaser were complied nor the assessee has offered any clarification on the issue. Apart from raising some counter question upon the AO, the assessee has not offered any worthwhile explanation.

8.2 The CIT(A) in first appeal however referred to pleading of behalf of the assessee and relied upon the contents of loose paper no.54 showing sale consideration as per registered deed and accepted the version of the assessee towards sale consideration of Rs.36,00,76,400/- declared by the assessee.

9. In this backdrop, we observe that while holding in favour of the assessee, the CIT(A) has not discussed as to how a tangible document/ loose paper no.15 found from the possession of the purchaser in course of drastic action of search is unworthy of any reliance. The overwhelming characteristic of contents of such notings/loose paper showing part payments against the agreed sale consideration and resultant outstanding was totally ignored. The CIT(A) has also not made any discussion on non-compliance of summons issued to the purchaser under section 131 of the Act. A hand written document found from the premises of purchaser, without being disowned, called for due weight. The CIT(A), to our mind, merrily accepted mundane and stereotyped defenses raised on behalf of the assessee in a perfunctory manner without seeking any comment from the AO and without traversing glaring facts. Thus, while the AO, to our mind, has discharged his quasi

judicial duties in a just and proper manner, the CIT(A), on the other hand, has failed to adhere to legitimate expectation and has passed a nondescript and cryptic order without dealing with the fundamental aspects of the matter.

10. It is surprising that a noting/ document reflecting not only sale consideration but also showing part payments and outstanding amounts has been found to be unworthy of any reliance.

11. It is trite that the scope of powers vested to the CIT(A) under section 251 are co-terminus and co-extensive with that of AO exercising quasi judicial functions. The CIT(A) is not only an appellate authority but also possess the powers of an adjudicating authority similar to that of an AO. The powers of enquiry thus in a sense, runs concurrently. Proper appreciation of all material placed before him was incumbent in law. The CIT(A) ought to have made suitable enquiries on the proprietary of sale consideration declared in the light of document seized instead of brushing aside the action of the AO in a lopsided manner.

12. In our considered view, the order of CIT(A) lacks comprehension. The CIT(A) has omitted to expound the facts in perspective while displacing the order of AO. The fallacy in action of the CIT(A) is quite visible and hence the impugned first appellate order cannot be countenanced in law.

13. The appellate order of the CIT(A) is thus set aside and matter is restored back to the file of the CIT(A) for fresh determination of the issue in accordance with law after making enquiries or causing enquiry through the AO in this regard. The assessee shall be given suitable opportunity to adduce evidence and offer explanation as may be considered expedient to defend its claim.

14. With these observations, appeal of the Revenue is allowed for statistical purposes.

Order was pronounced in the open court on 13.10.2023

Sd/-

**(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 13.10.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI