

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 208/Ind/2023
Assessment Year : 2013-14

M/s. B.S.S. Enterprises, 4B, Civil Lines, Professor Colony, Bhopal	<u>बनाम/</u> Vs.	ITO, 4(1), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AAJFB6320 P		
Assessee by	Shri Ashish Goyal, C.A. and Shri N.D. Patwa, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	11.10.2023	
Date of Pronouncement	25.10.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 28.03.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi, ["Ld. CIT(A)"], arising out of assessment-order dated 23.03.2016 passed by ITO, 4(1), Bhopal u/s 143(3) of the Income-tax Act, 1961, for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal.

2. The assessee in present appeal is aggrieved by the addition of Rs. 30,49,900/- made by the AO and upheld by CIT(A).

3. Ld. AR for assessee carried us to Para nos. 5 & 6 of assessment-order and submitted that the assessee is a firm engaged in the business of trading

of lands/plots which is a fact accepted and categorically noted by AO. Then, the AO further noted that the assessee sold a land for Rs. 19 lakhs though the market value (stamp authority valuation) was Rs. 49.90 lakhs. The AO observed that the assessee has not declared the sale consideration of Rs. 49,90,000/- in Profit and Loss A/c. Ultimately, the AO made an addition of Rs. 30,49,900/- by substituting sale proceed at Rs. 49,90,000/- and deducting the consideration of Rs. 19,00,000/- already declared by the assessee and stamp charges of Rs. 40,100/- paid by the assessee.

4. Then, Ld. AR carried us to the order of first-appeal wherein the CIT(A) has upheld addition by observing as under :-

*“6.5 The appellant is in the business of trading of land and land development. The Id. AO has made addition to the total income of the appellant as the stamp duty value of the property sold was higher than the actual sale consideration offered by the appellant to tax. The appellant has made the contention that the Id. AO has made adjustments u/s 50C of the income tax which covers only transfer of capital assets. It has made the contention that property in question is the stock in trade and therefore the same shall not be applicable in the case of the appellant. Primarily, the contention of the appellant is found to be correct. **However, the stock in trade is not verifiable as the appellant has not provided any supporting evidence showing such asset as stock in trade in the books of account.***

6.6 In view of the above, I am of the considerable view that the appellant has not provided supporting documents to verify the claim that he has not sold capital asset but stock in trade during the year.”

5. Having carried us to the orders of both of lower-authorities, Ld. AR strongly attacked those orders. He contended that the assessee is a firm and not an individual and engaged in the business of trading of lands which is very much evident from copy of partnership-deed filed at Page No. 3-13 of Paper-Book. The fact that the assessee is engaged in the business of trading of lands/plots is undisputedly accepted by AO in assessment-order. The assessee sold land for Rs. 19,00,000/- which is clearly mentioned in the

registered-deed filed at page nos. 58-66 of the paper book. It is further mentioned in the registered-deed that the consideration was received through cheque drawn on Canara Bank. The assessee has received actual sale consideration of Rs. 19,00,000/- only although the stamp authority valuation might be Rs. 49,90,000/-. Ld. AR submitted that the AO has merely substituted the 'actual consideration' by notional figure of 'stamp authorities valuation', but, however, there was no provision in Income-tax Act authorizing such a substitution as has been done by AO. Ld. AR submitted that there are only two provisions 2 in Income-tax Act which authorizes such substitution, namely (i) Section 43CA, and (ii) Section 50C. The section 43CA came into statute vide Finance Act, 2013 from AY 2014-15 whereas the assessee's case involves AY 2013-14 for which the said section 43CA was not in law. Placing reliance on **Principal CIT-3 Vs. Swananda Properties (P) Ltd. (2019) 111 taxman.com 94 (Bom HC)**, Ld. AR submitted that the provision of section 43CA is applicable prospectively from AY 2014-15 and cannot apply to AY 2013-14.

6. With regard to another section 50C, Ld. AR submitted that the assessee was engaged in the business of trading of land/plot which is a fact noted by AO himself. Therefore, the land sold by assessee gave rise to income chargeable under the head "Income from Business" and not "capital gain". Ld. AR submitted that section 50C is applicable only when income is chargeable under "capital gain" head and not when income is chargeable under "Income from business" head as held in **CIT vs. Neelkamal Realtors**

& Erectors India (P) Ltd. (2017) 79 taxmann.com 238 (Bom). Ld. AR submitted that though the AO has not made any reference of section 50C in assessment-order but the CIT(A) has upheld addition made by AO by resorting to section 50C by making an observation *“However, the stock in trade is not verifiable as the appellant has not provided any supporting evidence showing such asset as stock-in-trade in the books of account.”* Ld. AR drew our attention to Page No. 14-41 of Paper-Book where the copies of assessee’s ITR, Computation of Total Income, Balance-Sheet and P&L A/c are filed. Ld. AR submitted that the assessee has shown the land as stock in trade in its accounts which is evident from a simple glance of P&L A/c and Balance-Sheet at Page No. 16-17 of Paper-Book. Therefore, the observation made by CIT(A) is strange, bad, perverse and factually wrong. It seems that the CIT(A) has made observation for the sake of upholding AO’s addition.

7. Ld. DR for revenue supported the orders of lower-authorities and prayed to uphold the addition.

8. We have considered rival submissions of both sides and perused the orders of lower-authorities as well as the documents filed in Paper-Book. On a careful consideration, we find that the AO has simply substituted “actual consideration” by “stamps authority valuation” and made addition of notional income. We find that there are only two provisions in Income-tax Act for such substitution, namely Section 43CA and 50C. But none of those two provisions is applicable to assessee for the reason that section 43CA was not applicable to AY 2013-14 under consideration and section 50C

cannot apply because the land sold by assessee gave rise to income chargeable under "Income from Business" head. Therefore, in the light of decided cases cited by Ld. AR, as noted in foregoing paragraphs, we are inclined to accept that the addition made by AO in present case does not have any legal basis and cannot be sustained. Consequently, we direct the AO to delete the addition. Ordered accordingly.

9. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 25.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25.10.2023

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*