

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 8024/Del/2019  
Asstt. Year: 2016-17

Shri Rohit Jainendra Jain, 965, Sector-15, Faridabad, Haryana 121007. PAN AAMPJ3039N (Appellant)	Vs.	ACIT CC-5, New Delhi.  (Respondent)
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Assessee by:	Shri Sanjay Jain, CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	27.10.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 07.08.2019 of the Ld. Commissioner of Income Tax (Appeals)-2 New Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2016-17.

2. The only ground taken by the assessee is as under:-

*"1. The learned Assessing Officer has erred in adding a sum of Rs. 2,28,98,878 to the income of the appellant u/s 43CA of the Income Tax Act, 1961 without referring the matter to the departmental valuation officer without considering the fact and circumstances of the case. The appellant craves leave to add, amend, alter or delete the said ground of appeal."*

3. The facts in brief are that the assessee is an individual engaged in real estate business under the name & style of M/s. Shail Associates. He e-filed his return for AY 2016-17 on 08.02.2017 declaring income of Rs. 73,48,440/-. After initial processing of the return under section 143(1) of the Income Tax Act, 1961 (**the "Act"**), his case was selected for limited scrutiny through CASS. Statutory notice(s) issued remained uncomplained with except notice issued under section 142(1) dated 02.11.2018 which was responded to by submitting details asked for.

3.1 The Ld. Assessing Officer ("**AO**") noticed that the assessee had shown capital gain of Rs. 2,70,944/- from sale of plot at 62, Okhla Industrial Estate, Phase III Delhi. The said plot was shown as closing stock on 31.03.2015 in the books of M/s. Shail Associates. The property was purchased by the assessee along with his wife, Ms. Monika Jain during Financial Year 2014-15 and the assessee being 50% shareholder of the property declared the same in his purchases and the same formed part of his closing stock on 31.03.2015. The assessee was show caused why sale proceed be not taken as business income. In the absence of any response the Ld. AO held the gain as business receipts.

3.2 The Ld. AO perused the sale deed and found that the value of the property as per circle rate is Rs. 13,41,36,000/- whereas the recorded sale value is Rs. 9,00,00,000/-. The assessee was again show caused why the sale value be not taken under section 43CA at Rs. 13,41,36,000/-.

3.3 The Ld. AO disallowed the assessee's claim of cost of improvement of Rs. 3,11,506/-, security charges of Rs. 49,500/- and House Tax and map charges of Rs. 6,62,006/- for want of documentary evidence but considered the receipt of Rs. 4,00,000/- being value of scrap sale of building.

3.4 Accordingly, the Ld. AO has redrawn the trading account of the assessee as under:-

Particulars	Amount	Particulars	Amount
To opening stock	4,81,25,691/-	By sales	6,70,68,000/-
Purchases	-	By sale of scrap	4,00,000/-
		By closing stock	37,08,141/-
To Gross profit	2,30,50,450/-		

3.5 After adjusting loss of Rs. 1,51,572/- as per P&L account, the Ld. AO determined the income of the assessee from business at Rs. 2,28,98,878/- and computed the total income of the assessee at Rs. 3,01,27,940/- vide his order dated 14.12.2018 under section 143(3) of the Act.

4. Aggrieved, the assessee appealed challenging the impugned addition of Rs. 2,28,98,878/- under section 43CA of the Act without referring the matter to Departmental Valuation Officer ("**DVO**") before the Ld. CIT(A).

4.1 During the first appellate proceedings, the assessee filed written submission dated 10.05.2019 extracted by the Ld. CIT(A) in para 4.1 of his order. This was sent to the Ld. AO for his comments which is incorporated in para 4.2 of the Ld. CIT(A)'s order on which the Ld. CIT(A) obtained rejoinder dated 02.08.2019 from the assessee reproduced at para 4.3 of the appellate order.

4.2 During the course of hearing before the Ld. CIT(A) the assessee pointed out the failure of the Ld. AO to refer the matter to DVO and contended that action of the Ld. AO in determining the value of the property as per stamp duty valuation defeats the purpose of section 50C(2) of the Act. Request was made to refer the matter to DVO to determine the actual value of property to be taxed under the law.

5. The Ld. CIT(A) rejected the request of the assessee on the ground that the assessee did not make any claim before the Ld. AO that the value adopted or assessed by the Stamp Valuation Authority under section 50C(1) of the Act exceeds the fair market value of the property as on the date of

transfer. In the absence of request by the assessee, the Ld. AO did not refer the valuation of the property to DVO. The Ld. CIT(A) recorded his findings in following paras 5.2.5 and 5.2.6 as under:-

*“5.2.5 Mere submission of computation of capital gains declaring sale price as per sale deed vide letter dated 17.09.2018 and subsequent filing of copy of sale deed showing stamp duty paid as per circle rate vide letter dated 31.10.2018 cannot be considered as claim made before the AO as provided in section 50C(2) of the Act to the effect that that the value adopted or assessed by the stamp valuation authority u/s 50C(1) of the Act exceeds the fair market value of the property as on the date of transfer. In the rejoinder dated 02.08.2019 the AR has cited medical grounds of the appellant for inability to file explanation in response to show cause notice dated 14.11.2018. However, the said submission has not been substantiated with documentary evidences and cannot advance the cause of the appellant who failed to make such claim during the entire assessment proceedings although multiple opportunities were provided by the AO. The case laws cited by the AR of the appellant are not applicable to the facts of the present case wherein the appellant utterly failed to make claim before the AO that the value adopted or assessed by the stamp valuation authority u/s 50C(1) of the Act exceeds the fair market value of the property as on the date of transfer. The valuation report of the certified valuer before sale of plot is of no relevance in so far as the issue of applicability of section 43CA of the Act is concerned.*

*5.2.6 In the light of the facts stated above, I hold that the action of the AO in making addition of a sum of Rs. 2,28,98,878/- to the income of the appellant by invoking the provisions of section 43CA of the Act was fully justified. In the absence of any claim made before the AO by the appellant during the assessment proceedings that the value adopted or assessed by the stamp valuation authority u/s 50C(1) of the Act exceeds the fair market value of the property as on the date of transfer, the action of the AO of not making any reference to DVO for valuation of property is held justified. Thus, the addition of Rs. 2,28,98,878/- made by the AO to the income of the appellant by invoking the provisions of section 43CA of the Act is confirmed.”*

6. The assessee is dissatisfied and is in appeal before the Tribunal and his sole ground relates thereto.

7. The Ld. AR reiterated the same arguments which were advanced before the Ld. CIT(A). He submitted that the Ld. AO made the impugned addition representing difference between the circle rate and actual consideration without referring the matter to the DVO. According to him failure of the Ld. AO to refer the matter to valuation cell clearly shows that the action of the Ld. AO to determine the value of the property as per stamp duty valuation defeats the purpose of section 50C(2) and therefore the action

of the Ld. AO in adopting stamp duty value as the market value is not in accordance with law. It is further submitted that the failure of the assessee not to reply to the Ld. AO's show cause notice dated 14.11.2018 was explained to be his suffering from Escheria Coli (Bacterial Infection in lower spine) and his bed ridden condition which has been discarded by the Ld. CIT(A) for merely want of documentary evidence. The Ld. AR placed reliance on the decisions of Hon'ble Delhi High Court in Khoobsurat Resort (P) Ltd. (2012) 28 taxmann.com 93 (Delhi) and CIT v. Hanuman Prasad Ganeriwala (2014) 43 taxmann.com 133 (Delhi) as also on the decision of Hon'ble Calcutta High Court in Sunil Kumar Agarwal (2014) 47 taxmann.com 158 (Cal.).

7.1 The Ld. AR placed a copy of DVO's report dated 05.07.2023 on fair market value of the property in question in which the assessee's wife Ms. Monika Jain holds 50% share. Vide his report, the DVO estimated the value of the entire property as on 31.03.2016 at Rs. 9,00,00,000/- as declared by the assessee.

8. The Ld. DR had nothing to say but to support the order of the Ld CIT(A).

9. We have given careful thought to the submission of the parties and perused the records. It is an admitted fact that the property in question was purchased by the assessee along with his wife, Ms. Monika Jain and that the assessee held 50% share in the property. The full value of consideration of the entire property was declared by the assessee at Rs. 9,00,00,000/- as against the value of property at Rs. 13,41,36,000/- as per circle rate. Without reference made to DVO, the Ld. AO added Rs. 2,20,68,000/- being the difference between the circle rate and actual sale consideration declared by the assessee which was confirmed by the Ld. CIT(A). Now the controversy has been put to rest. The Ld. ACIT National e-Assessment Centre, New Delhi referred the property in question to DVO for determination of its fair market value as on 30.03.2016 in the case of assessee's wife, Ms. Monika Jain who held 50% share in the property. The valuation report dated 05.07.2023 has

been brought on record. Perusal thereof reveals that the DVO has estimated the value of the entire property as on 31.03.2016 at Rs. 9,00,00,000/-. In this view of the matter, we set aside the order of the Ld. CIT(A) and restore the matter back to the file of the Ld. AO to decide the matter afresh in the light of the DVO's report dated 05.07.2023 and amend the order accordingly after affording reasonable opportunity of being heard to the assessee. We order accordingly.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the open court on 27<sup>th</sup> October, 2023.**

**sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Dated: 27/10/2023  
**Veena**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	