

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 1065/Kol/2023**  
**Assessment Year : 2015-16**

Allied Enclave Pvt. Ltd.	vs	DCIT, Circle – 6(1), Kolkata
PAN: AAHCA 2222 Q		
Appellant		Respondent

Date of Hearing	13.06.2024
Date of Pronouncement	27.06.2024
For the Assessee	Shri S.M. Surana, Advocate
For the Revenue	Shri G. Ajay Robin Singh, JCIT, Sr. DR

**ORDER**

**Per Sonjoy Sarma, JM:**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre [hereinafter the “Id. CIT(A)”] dated 09.08.2023 passed u/s 250 of the Income Tax Act, 1961 (“the Act”) for the Assessment Year 2015-16.

2. Brief facts of the case are that the assessee is a company and deals in property development. During the assessment year in question, assessee sold certain flats after construction. The assessee has registered 5 nos. of flats whereas shown 3 nos. of flats as sales during the year. Out of 3 flats only one flats there was difference of Rs. 93,300/- on sale consideration and stamp duty and it was submitted that agreement of sale was executed earlier year and if stamp valuation was considered for that period. Accordingly, there was a difference of Rs. 93,300/-. Further, the assessee had shown 2 nos. of flats in A.Y. 2016-17 submitting

relevant document and paid tax in that year. However, the ld. AO did not consider the assessee's reply and added entire sale proceeds (stamp valuation) of Rs. 1,27,85,800/- with total income of the assessee.

3. Aggrieved by the order of ld. AO, assessee went in appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Dissatisfied with the above order, assessee is in appeal before this Tribunal. The 1<sup>st</sup> ground of appeal challenged before this Tribunal is in relation to addition of Rs. 93,300/-. On this context, the AR of the assessee stated that from the assessment order, assessee sold 3 flats out of which there was a difference in sale consideration & stamp value stated in item no. 3 which was sold for consideration of Rs. 37,32,000/- but the stamp value authority took the value of the said flats of Rs. 35,28,300/-. Therefore, there was a difference of Rs. 93,100/- towards sale consideration. The ld. AR on this issue stated that the first proviso to section 43C of the Act wherein leverage of 10% has been allowable. Therefore, the addition may be deleted in the hands of assessee by applying proviso to section 43C of the Act.

5. On the other hand, ld. DR supported the findings given by authorities below and did not object to prayer made by AR of the assessee.

6. We after hearing the rival submissions of the parties and perusing the material available on record find that the first proviso

to section 43C of the Act wherein leverage of 10% is allowed by the statute and in the present case a difference of value of property of only 2.5%. Therefore, alleged addition made in the hands of assessee is not sustainable. Accordingly, the addition made in the hands of assessee is hereby deleted.

7. Ground no. 2 is relating to addition of Rs. 1,27,85,800/- as made by the AO being the entire sale value of two flats as stated in paragraph 4.1 of the assessment order. On this context, the AR of the assessee submitted that the assessee has included the sale consideration of both the flats in the next year in its books of account which fact is not in dispute stated in para 4.3 of the assessment order. The profit on the sale of the said two flats thus was duly declared in the next year after reduction of the cost of construction of the two flats. In fact, possession of the flats was given in the next year. Even the second flat (flat 5C) was not even ready which is also stated in the conveyance deed itself, (copy filed), the sale was completed only when delivery was given and the assessee is following the same method regularly in earlier years also. Therefore, when the income was duly included in the next year, the addition during the year will be taxed neutral. It has been held in the case of *Realest Builders & Services Ltd.* reported in 307 ITR page 202 (Supreme Court) that when the addition is tax neutral than no double addition should be made.

8. On the other hand, ld. AR supported the decision rendered by the authorities below.

9. We after hearing the rival submissions of the parties and perusing the material available on record find that tax neutrality is

essential to prevent double addition and ensure that income is tax fairly and equitable. In the context of Income-tax Act this principle is applying law consistent rules, adhering to judicial precedent and ensuring that income is added to the total income only once double addition is generally contrary to the principles of equity in taxation. The tax authorities must ensure that the same income is not taxed in different hands or periods. From the facts as stated by the parties, we find that assessee had shown the alleged income the next financial year as the income of assessee. Therefore, applying the principle of neutrality the addition cannot be sustained in the hands of assessee. Accordingly, we direct the AO to delete the alleged addition in the hands of assessee since assessee has already shown the alleged income in the next financial year for the purpose of calculating tax applying the analogy has held in the case of Realest Builders & Services Ltd. reported in 307 ITR Page 202 (Supreme Court) that when the addition is tax neutral than no double addition should be made. Accordingly, instant ground is allowed directing the AO to delete the addition in the hands of assessee. In terms of the above, the appeal of the assessee is hereby allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.06.2024.

Sd/-

Sd/-

(Dr. Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 27.06.2024  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Allied Enclave Pvt. Ltd., A-9, Diamond Park, Joka, Kolkata-700104.
2. Respondent – DCIT, Circle-6(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata

1. Date of Dictation.....
2. Date on which the typed order is placed before the dictating Member and other Member.....
3. Date on which the order came back to Sr. PS.....
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6. Date of dispatch of the order.....