

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A.No.794/PUN./2023 [E-APPEAL]
Assessment Year 2015-2016

The DCIT, Aaykar Bhavan, Plot 2 & 2A, Sector-17, Khanda Colony, PANVEL Pin - 410 206. Maharashtra.	vs.	Balaji Realtors, 6-Keshavji Bhuvan, Tilak Road, Panvel Raigad. Maharashtra. PIN - 410 206 PAN AALFM1249A
(Appellant)		(Respondent)

For Revenue :	Shri Sandeep P. Sathe,
For Assessee :	Shri Krishna V. Gujarathi

Date of Hearing :	24.06.2024
Date of Pronouncement :	29.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue's appeal for assessment year 2015-2016, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1052356158(1), dated 26.04.2023, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *“On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.3,76,62,000/- by not appreciating that the addition was made on account of enhanced sales consideration u/s. 43CA of the Act as per valuation of stamp duty authority.*
2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the AO should have referred the case to the DVO u/s.55A of the Act when the impugned Valuation Report was never part of any submissions of assessee made during assessment proceedings.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in considering the area of sold property as 7314 sq. mtrs. When the actual area as per Sale Deed is 10020 sq. mtrs.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.7,50,000/- made on account of brokerage expenses without appreciating that there was one common partner in the assessee firm and the buyer firm and hence the payment of brokerage was not justified.”*

3. We advert to the first and foremost issue of Sec.43CA addition amounting to Rs.3,76,62,000/- made in the course of assessment and deleted in the lower appellate

discussion. We make it clear that there is no dispute between the parties *inter alia* on the relevant facts that the assessee had indeed sold the land in question in the relevant previous year involving actual sale consideration of Rs.9 crore which carried stamp value of Rs.12,76,62,000/-. Faced with this situation, learned assessing authority invoked sec.43CA of the Act to make the impugned addition of Rs.3,76,62,000/-.

4. The learned CIT(A)-NFAC has reversed the same vide following detailed discussion :

5.2. Ground no. 2 challenges the addition to the Income of **Rs. 3,76,62,000** under section 43CA on account of enhanced sale consideration and **Ground no. 7** challenges the action of Ld. AO in adopting value of property at **Rs. 12,76,62,000** u/s 50C as against of **Rs. 9,00,00,000**. Both these Grounds are interrelated therefore; they are simultaneously adjudicated as under-

5.2.1 In respect of this addition, the Ld. A.O. made discussion in Para no. 4 & 5 of the assessment order. The relevant portions of the discussions are as under:

"The assessee has, vide the above filed letter dated 12/12/2017, merely put forth its commissions in order to justify as to why the value of the said land should not be taken as per the Ready Reckoner Value of Rs. 12,76,60,000 without any basis.

While trying to justify its plea, the assessee has stated that the Sale value of the said land as per the Ready Reckoner is Rs. 12,76,62,000 since the total area as per the Stamp Authority is 10020 sq. Mtrs (the rate per sq.mt. being Rs. 12,740) whereas the actual area that has been transferred by way of the sale agreement is 7064 sq. mtrs. (the rate being Rs. 12,740) which works out to Rs. 8,99,95,360 which is lower than the sale consideration as per agreement of Rs. 9,00,00,000. The assessee has stated in the said letter explaining the area difference which is once again being reproduced as under:

"please note that the physical Land area was lower than what was mentioned in Agreement due to part of Land goes under Water because of Low line Area as well as cutting for Road."

No supporting documents or evidence have been produced in support of the above

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

statement. Nor has any precedent in the past of any such instances in the adjoining area been mentioned or referred to by the assessee.

4.7 However, this contention of the assessee is found to be incorrect on the basis of the schedule of property that is part of the sale agreement whereby the said plot of land has been disposed. As per the area mentioned on page No. 10, after the schedule of property handed over, the total area of land has been mentioned at 2600 sq. mtrs. + 7420 sq. mtrs. =100520 sq mtrs. Hence the contention of the assessee on this ground too is found to be not acceptable. Hence this explanation of the assessee is rejected.

5. In view of the above discussion regarding the value of the land while determining the gain out of the sale of the said land, the provisions of the section 43CA of the Income Tax Act, 1961 are required to be taken into consideration. The provisions of Section 43CA of the Income Tax Act, 1961 state as under:

43CA (1) where the consideration received or accruing as a result of the transfer by an assessee of an asset [other than a capital asset]. Being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1)

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

5.1 Taking into consideration the provisions of section 43CA of the Income tax Act, 1961, the value of the property to be adopted for the determination of the gain on the sale of the land, assessable under the head 'Business' is adopted at Rs. 12,76,62,000."

5.2.2 In this regard, out of submission of the appellant (reproduced entirely in Para no. 4 *supra*), the relevant points for adjudication of the impugned addition of Rs. 3,76,62,000 u/s 43CA of the Act are gainfully reproduced here under:

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

i.) **That**, the said provisions is not applicable in the present case as the value which was adopted by the authority for the purpose of computing stamp duty is in accordance with the assumption that the area of land that has been transferred by the appellant is a total of 10,020 sq. mtrs.

ii.) **That**, this is because, as per the 7/12 extract, the said land is a non-agricultural land with a total area of 10,020 square meters, but in actual fact the total area of the land remained at the time of sale was 7,314.120 square meters as the balance land either went into road cutting or submerged in water making it commercially unsaleable. In order to substantiate the above assertions, the appellant would like to submit to your kind self the valuation report by an approved valuer. In the said report the valuer has clearly stated on page 2 point 12: **-Annexure 4.**

"As per the 7/12 Extract said land is non-agricultural having total area about 10,020 sq.mtrs. But as per the actual survey conducted by the architect, as per the architect is 7,314.120 sq.mtrs."

iii.) **That**, the appellant claims regarding the actual area of land, the appellant is further submitting the commencement certificate which has been issued to M/s LA MER DEVELOPER (the purchasing party of the concerned transfer) by the municipal authority which clearly signifies the Floor Space Index (FSI) as 7,314.120 sq. mtrs. In addition to that appellant is also providing the plan sanction copy of the purchaser's project which specifies the total area of the plot that is available with the party for the project. The main portion of the documents depicting the appellants assertions are attached as **Annexure 6**

iv.) **That**, appellant's Plea is that even if we consider per square meter rate adopted by the State Authority, Valuation of the said land would amount to Rs.9,31,81,889/- (Rs.12,740 * 7,314.120 square meters)

v.) **That**, as per the provisions of sec 43CA, sales consideration that has been received from such transfer will be deemed to be the actual sales consideration even if it is less than that of the value adopted by the state authority for charging stamp duty if the value adopted by the state authority is less than that of one hundred and five percent (105%) of such consideration received.

vi.) **That**, in the present case, the adopted value that is to be considered as per the aforementioned conditions i.e. Rs.9,31,81,889 is well within the stipulated threshold of one hundred and five percent (105%) of the adopted value by the authority i.e. 9,45,00,000 (9,00,00,000 * 105%)

- Thus, to summarize the aforementioned facts:

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

Particulars	Amount
Sales Consideration received	Rs. 9,00,00,000-
Ready Reckoner Rate for 10,020 sq. mtrs.	Rs. 12, 76,62,000
Revised Ready reckoner rate for 7,314.120 sq mt	Rs. 9,31, 81, 889
Allowed Threshold as per the provisions of 43CA.	Rs.9,45,00,000 (9,00,00,000*105%)
Actual sales consideration as per the provisions of 43CA.	Rs. 9,00,00,000

5.2.3 I have gone through the assessment order and written submission filed. Before going into the facts it will be imperative to quote here the Section 43CA which reads as under:

“where the consideration received or accruing as a result of the transfer by an assessee of an asst. [other than a capital asset]. Being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five percent of the consideration received or accruing as a result of the transfer the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.”

5.2.4 The main substance of the appellant's submission is as under-

The AO has calculated the land area sold at 10,020 sq. mtr. and applied ready reckoner value on same. On other hand the appellant contends as under:

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

- i. As per 7/12 extract, the said land is Non-Agricultural Land with total area being 10,020 sq. mtr.
- ii. At time of sale of land the total area sold was 7,314.120 sq. mtr because the balance land was lost in road cutting or was submerged under the water.
- iii. In support the Appellant filed a Valuation Report by the Approved Valuer where on in Page 2 Para 12 clearly states that- *"As per the 7/12 Extract said land is non-agricultural having total area about 10,020 sq. mtrs. But as per the Architect Certificate given at the time of Commencement Certificate is 7,314.210sq.mtr."*
- iv. A Portion of land has gone under water making the said land marshy and unfit for construction business.
- v. Purchaser of this land was M/s La Mer Developers. They filed a commencement certificate before Municipal Authority showing FSI at 7,314.210 sq.mtr. As per the purchaser the total area available for construction is 7,314.210 sq.mtr.
- vi. As per the Plan sanction copy issued by the Municipal Authority after deduction of 1184.280 sq.mtr for Road, Set back Area Reservation, DP Road. The area of Plot is shown as 7,310.90 sq. mtr. Proposed Floor Area is 7,314.120 sq. mtr. and the total built up area proposed is 7,314.210 sq.mtr.
- vii. As per Conveyance deed dated 26/02/2014 duly notarized, executed and registered with the Sub-Registrar, Panvel it is clearly stated in Annex – 6 that though area of land in 10,020 sq. mtr. But some area of land has gone into land cutting, hence, actual usable area will be reduced. This shows that Appellant actually negotiated with the Purchase party regarding reduction in land area.
- viii. Commercially usable land actually transferred in 7,314.120 sq.mtr.
- ix. Stamp Duty Valuation works out to Rs. 9,31,81,889 (i.e. 12,740 *7,314.120sq. mtr.). This is less than the threshold limit of 105% as per provisions of sec43CA which works out to Rs. 9,45,00,000.

5.2.5 Further, once the appellant filed a Valuation report from an approved Valuer before the AO, the AO has two options:

- i. Either accepts the valuation based on reports of Approved Valuer filed by the appellant.

OR

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

ii. Refer the valuation of property to DVO as per Section 55A of Act.

5.2.6 Under section 55A of Act, the Ld. AO has power to make a reference to DVO regarding the valuation of a capital asset to ascertain the FMV of Capital Asset.

The AO did not refer the matter to DVO for Valuation. AO computed LTCG by adopting Ready reckoner rate as FMV and ignored the FMV given by the appellant or objection raised by appellant against the Ready reckoner value.

The AO is required to form an opinion that value so claimed in the registered valuer report is less than FMV and refer the matter for valuation to DVO to ascertain the correct FMV of Plot of Land.

Recently, the **Hon'ble Madras High Court in Jagannathan Sailaja Chitta Vs ITO (2019)** dated 15/02/2019 held that assessee can present Government Authorized Valuer Report before AO and Appellate Authority.

It has been held in number of judgments that reference to DVO can be made where value of Capital Asset shown by the assessee is less than FMV shown by assessee on the basis of an approved valuer report. However, in the present case no reference was made to DVO.

5.2.7 The Hon'ble Bombay High Court in CIT Vs Raman Kumar Suri vide order dated 27/11/2012 held that Valuation done by Registered Valuer takes precedence over Nabhi's Guide. Valuation done by registered valuer is with regard to a specific property and takes into consideration the advantages and disadvantages in property.

5.2.8 In the present case the property was not free from encumbrances. The property had negative covenants as to its use which would reduce its value. Part of the land was used inroad Cutting and part of land was marshy i.e. submerged in water. The actual area of the land that could have been used by the builder who had purchased the land was only 7,314.120 sq.mtr. and not 10,020 sq. mtr as held by the AO. As per the valuation report filed by the registered valuer which is based on survey by Architect the land in contention measures up to 7,314.120 sq. mtr. Purchaser of the Land was a builder named M/s La Mer Developers who filed Commencement Certificate before Municipal Authority the FSI is shown as 7,314.120 sq.mtr. and the total area available for construction is 7,314.120 sq.mtr. As per the Plan Sanction Copy of Municipal Authority the area of the plot is shown as 7,310.90 sq. mtr. after deducting 1,184.280sq.mtr. for Road, Reservation, Proposed DP Road, etc. Total Built up area proposed is 7,314.120 sq. mtr. As per Conveyance Deed duly notarized, executed and registered with the Sub Registrar Panvel it is clearly stated in Annexure-6 where the area of land is 10,020 sq. mtr. but some of the land has

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

gone into road cutting. Hence, actual saleable area is reduced. This shows that the purchaser and appellant actually negotiated with respect to usable area of 7314.120 sq. mtr. Only and the commercially usable land by Builder is 7,314.120 sq. mtr.

In view of these facts it is held as under:

Plot of Land has negative covenants with respect to its use. Plot of Land indeed has encumbrances which tend to reduce its value. Thus there is a valid ground for the property sold at price lower than Stamp Duty Value.

Since the Appellant disputed the Stamp Duty Valuation before the AO, the AO should have referred the matter to DVO to find FMV of plot of land. No such reference has been made to the A.O. Appellant has filed photographs of marshy land to prove the encumbrances in said plot of land. AO has not allowed any allowance for the encumbrances on plot of land transferred. AO was mandated to refer the matter to DVO for calculating FMV who is competent to check the encumbrances on plot of land to arrive at FMV.

AO has not made any reference to DVO. AO has not rejected the contention of Appellant w.r.t. the valuation report filed by Appellant prepared by a registered and approved valuer. AO has plainly relied on stamp duty valuation on 10,020 sq. m in plot of land has not taken into consideration the following facts:

- i. Physical area of plot of land as per triangulation method is 8495.18 sq.m.(as per plan sanction copy approved by competent authority)
- ii. Reduction of 1184.280 sq.m. from the physical area of land for road, proposed D P load, Reservation, set back area etc.

As a result the net usable land area is 7,314.12059 sq.m. and balance land is used for road cutting and is marshy land and not usable for commercial /construction purposes. As per registered valuer report based on survey done by Architect the actual net usable land is 7314.120 sq.m.

Salvageable value of marshy land or land used in road cutting/construction is NIL for commercial/construction purposes.

Realistically the usable area of land is 7314.120 sq. m. which is clearly stated in Conveyance Deed that some area of land as gone into land cutting, hence, actually usable area of land is reduced.

AO should have adopted the FMV of land of 7,314.120 sq. mtr. only by taking into account the adverse factors/encumbrance in the land.

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

5.2.9 The term 'fair market value' has been explained in section 2(22B)(1) of the IT Act i.e. the price that a capital asset would ordinarily fetch if sold in open market. The FMV is a price agreed between a willing purchaser and willing seller. To ascertain the FMV one has to consider the locality where land is situated, accessibility to infrastructure facilities, comparative sale instances in the locality, potential for future development etc.

5.2.10 The Hon'ble ITAT Mumbai in case of **Nandita Khosla 11 Taxmann.com 344** laid down that where the assessee points out strong reasons that sale consideration was less than value determined for stamp duty purposes, then such cases have to be referred to the DVO. The Hon'ble ITAT Chennai has also examined this issue in case of **Shaikh Mohideen vs. ITO(2009)123 TTJ 411**. It was held that the word 'may' used in section 50(c)(2) signified that in case the AO was not satisfied with the explanation of assessee, he 'should' refer the matter to DVO. In other words, the Tribunal of the view that 'may' be read as 'should'.

5.2.11 The very purpose of the legislature behind the provisions laid down u/s 50C(2) is that DVO is an expert of the subject for such valuation and is certainly in a better position than the AO to determine the valuation. Non-compliance of the provision by the AO by not obtaining report of DVO for FMV is not valid and justified. The Hon'ble High Court of Allahabad in case of **Shashi Kant Garg** held that it is well settled that if under the provisions of the Act an authority is required to exercise power or to do an act in a particular manner, then that power has to be exercised and that act has to be performed in that manner alone and not in any other manner.

5.2.12 Therefore, the appellant has discharged the burden of proving the consideration as per deed. Now the AO was obliged to bring on record positive evidence supporting the price assessed by competent authority of State Govt. for the purpose of Stamp Duty. If the AO has failed to do so and arbitrarily adopt the stamp duty value and made the addition, then such an addition is not sustainable in the eyes of law. The circle rate would not *ipso facto* substitute the actual sale consideration in absence of any legally admissible evidence. Reliance is also placed on following judgments:

- **CIT vs. Chandani Bhuchar (2010) 323 ITR 519 (P&H)**. It was held that AO was obliged to bring on record positive evidences supporting the price fixed by State Govt. for Stamp Duty.
- **Sunil Kumar Agarwal vs. CIT (2014) 226 Taxman (Kolkata)**. It was held that

AALFM1249A- MS BALAJI REALTORS
A.Y. 2015-16
ITBA/NFAC/S/250/2023-24/1052356158(1)

AO must refer the valuation to DVO even if there is no request from assessee.

- **CIT vs. Hanuman Prasad Ganeriwal 43 Taxmann.com 133(Del)**. It was held that Circle Rate as per section 50C can become starting point of enquiry but cannot be sole concluding reason to hold that there is under statement of sale consideration.

5.2.13 The appellant in its submission also relied on the following judgments in this matter where the issue has been referred to DVO-

i. The Honorable ITAT Mumbai in Mohd. Ilyas Ansari vs ITO

ii. The Hon'ble ITAT Delhi in ITO vs. Aditya Narayan HUF

iii. The Hona'ble ITAT Agra in ACIT Vs. Tarun Agarwal

iv. The Hon'ble Allahabad High Court in Chandra Narin Chaudhary V CIT

5.2.4 In view of the above facts & discussions and respectfully following the judgments outlined in the above paras of this order it is hereby held that commercially usable land which was transferred in this property transactions was 7,314.210 sq.mtr. and not 10,020 sq.mtr.

Even if the stamp duty valuation per sq. mtr. is adopted, the value of the land works out to be 9,31,81,889/- (Rs. 12,740*7314.120sq. mtr.).

As per Sec 43CA it has been held that sale consideration received from transfer of property will be deemed to be actual sale consideration even if it is less than the value adopted by stamp duty valuation authority if the value adopted by the stamp duty valuation authority is less than 105% of the actual consideration received.

In the present case the 105% of actual consideration received is Rs. 9,45,00,000 (i.e.9,00,00,000 *105%) where the stamp duty valuation as above of Rs. 9,31,81,889 which is less than the threshold limit of Rs. 9,45,00,000.

Therefore, the actual sale consideration as per the provisions of section 43CA of the Act works out to Rs. 9,00,00,000.

5.2.5 Appellant has filed valuation report of the approved valuer, conveyance deed, commencement certificate of purchaser, photos of land showing marshy land and copy of plan sanction of purchaser's project. All these facts clearly show that total usable/commercially exploitable area transferred by the appellant is 7314.120 sq.mtr. and not 10,020 sq.mtr. as held by the appellant. The balance land had encumbrance like road cutting and marshy land. The physically triangulated area of land as per the approved plan copy of competent authority as obtained by purchaser for his project

was 8495.18 sq m. From the same, further deduction of 1184.250 sq. mtr. was made for Road, proposed DP road, setback area, reservation etc. Thus the actual usable land is 7314.120 sq mtr. Hence the action of the Ld. AO in treating the sale consideration of land as deemed to be Rs. 12,76,62,000 is not sustainable in the eyes of law and the same is hereby deleted. The sale consideration should be adopted at 9,00,00,000 by the A.O. Hence the addition in sale consideration of Rs. 3,76,62,000 made by the AO is hereby deleted and **Grounds no. 2 & 7 are allowed.**

5.2. **Conclusion:**

This leaves the Revenue aggrieved.

5. Both the learned representatives reiterated their respective stands during the course of hearing before us. The assessee has vehemently supported the CIT(A)-NFAC's above extracted discussion that the land in question in fact involves an area admeasuring 7814.210 sq. metre than that taken by the Assessing Officer of 10020 sq. metres. Mr. Gujarati sought to clarify that the actual area herein is to the extent of above former measurement(s) only and therefore, the lower appellate findings have rightly granted the relief herein to that taxpayer. He further stated that the Assessing Officer had not taken into consideration all these clinching facts indicating various distressing factors regarding that land sold in the relevant previous year. He lastly buttresses the point that the assessee had filed registered valuer's report as well as its Architect's certificate duly proving the land as not usable to the extent of difference between the measurements quoted in the sale agreement deed vis-à-vis the actual area in question.

6. All these assessee's arguments failed to evoke our concurrence in principle. It prima facie emerges from the relevant tabulation in para-5.2.2 of the lower appellate discussion that the CIT(A)-NFAC has treated the entire sale consideration of Rs.9 crores for the above reduced area of 7814.2 square metres only whereas the transaction reveals the said price as pertaining to the entire parcel of the land admeasuring 10020 sq. metres (supra). He has not reduced the said consideration proportionately in other words. There is further no material before us that the learned CIT(A)-NFAC had obtained any remand report from the field authorities regarding the variation in the actual area hereinabove (supra). Faced with this situation, we are of the considered view that the Revenue's instant first and former substantive ground deserves to be restored to the assessing authority for its afresh appropriate adjudication as per law, preferably within three effective opportunities of hearing.

6.1. Learned counsel at this stage reiterated the fact that no DVO had been appointed going by the mandates of sec.43CA (2) and (3) of the Act. We find force in the assessee's instant plea in light of Sunil Kumar Agarwal vs. CIT [2015] 372 ITR 83 (Cal.) (HC) wherein their lordships' hold in the context of sec.50C, applicable *mutatis mutandis* herein, that such a reference is indeed mandatory even if the assessee concerned does not raise any such plea before the

departmental authorities. We thus direct the learned assessing authority to make a statutory reference to the DVO in very terms to be followed by further consequential proceedings as per law. This Revenue's former substantive grounds is allowed for statistical purposes. Ordered accordingly.

7. Next comes the Revenue's latter substantive grounds seeking to restore brokerage expenditure disallowance of Rs.7,50,000/- for the reason that there was a common partner between the taxpayer and the recipient firm. The lower appellate discussion in question has granted the impugned relief to the assessee as under :

5.4 Ground no. 4 challenges the addition to the Income of Rs. 18,00,000 on account of Brokerage expenses paid. This ground is adjudicated as under-

5.4.1 In respect of this addition, the Ld. A.O. made discussion in Para no. 5.2 of the assessment order as under-

"The assessee has claimed transfer expenses amounting to Rs. 18,00,000 in the form of Brokerage. However, on perusal of the details filed in this regard, it is noticed that the assessee has only filed copies of ledger account in respect of the Brokerage parties viz. Nitesh B. Munnoth, Sunita Bohra and Shaikh Abdul Rehman Kasim. However, no documentary evidences have been filed in to indicate the nature of services that were provided by the said three parties which would justify the payment of such huge amounts as brokerage. In case of the confirmation filed in respect of Shri Nilesh B. Munnoth and Shri Shaikh Abdul Rehman Kasim, the confirmation does not even bear the address of the said parties nor has the PAN being mentioned. In view of the above, the assessee's claim of deduction on account of brokerage is not allowed to the assessee."

5.4.2 In this regard, out of submission of the appellant (reproduced entirely in Para no. 4 *supra*), following points being relevant for adjudication of the impugned addition of Rs. 18,00,000 are as under:

i. That, The said brokerage was borne by the appellant with regards to searching for a competent buyer and completing the deal for the sale of the contended land.

ii. That, the amount of such brokerage was fixed at a very reasonable rate of 2% on the sale consideration (2% * 9,00,00,000/-) which was a prevailing custom & system of the market for the concerned year.

iii. That, Ledger Confirmations of the said brokers have been submitted by the appellant before the AO.

iv. That, TDS were adequately deducted and deposited by the appellant whilst making the said payments.

v. That, payments were made by the appellant via account payee cheques and the same can be reflected in the bank statements of the appellant.

5.4.3 Appellant claimed to have paid the brokerage to parties namely Nilesh B Munnoth, Sunita Bohra and Shaikh Abdul Rehman Kasim. It stated that brokerage was paid for searching competent Buyer and completing the deal of sale of that plot of land. Rate of brokerage was fixed @2% of sale consideration of Rs.9,00,00,000 which is as per prevalent market rate. Ledger Confirmations of all the three brokers was filed before the AO. TDS was duly deducted on this and deposited. Payment is made by account payee cheques and is reflected in bank a/c of appellant. AO has

made the disallowance due to following:

- i. No evidence was filed about nature of service rendered.
- ii. Confirmations filed of two brokers do not bear PAN and address of these parties.

It is seen from the ledger confirmation filed in respect of Shri Nilesh B. Munnoth and Shri Shaikh Abdul Rehman Kasim, the confirmation does not have PAN and the address of these parties. As genuineness of the transactions of these two parties is not verifiable, the brokerage expenses claimed by the appellant are disallowed. However, brokerage of Rs. 7,50,000 was paid towards land deal to Sunita Bohra to one of the three parties whose PAN and address are duly reflected on the certificates issued by deductor i.e. appellant. Transaction is via Banking channel and is duly supported by bank statement of appellant, TDS is deducted on this payment and confirmations of broker filed before the AO.

In view of above facts it is hereby held that brokerage expenses of Rs. 7,50,000 has been incurred wholly and exclusively for the purpose of business of appellant. Hence the AO is directed to allow the brokerage expenses to the extent of Rs. 7,50,000 claimed by the appellant. Hence, **Ground no. 4 is partly allowed.**

8. Suffice to say, it has come on record that the assessee had raised its claim of Rs.18 lakhs which stands accepted only to the tune of Rs.7.5 lakhs in question. Learned CIT(A)-NFAC is found to have given due consideration to all these relevant facts in the lower appellate discussion. Faced

with this situation, we find no reason to accept the Revenue's instant latter arguments seeking to disallow brokerage expenditure in real estate development activity being in the nature of routine business expenditure. Rejected accordingly.

9. This Revenue's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open Court on 29.07.2024.

Sd/-
[INTURI RAMA RAO]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 29th July, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.