

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 536/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

AJD Developers Pvt. Ltd., Opp. Chaksu Thana, Tonk Road, Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKCA 8845 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Shailesh Mantri
राजस्व की ओर से / Revenue by : Sh. Anup Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 18/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 25/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of this appeal the above named assessee challenges the order of the National Faceless Appeal Centre, Delhi dated 05/03/2024 [for short CIT(A)]. The appeal relates to the assessment year 2017-18. The said order of the Id. CIT(A)/NFAC arise because the assessee filed first appeal before Id. CIT(A) against the order dated 26.12.2019 passed under section 143(3) of the Income Tax Act, [for short Act] by the Assistant Commissioner of Income Tax, Circle-j, Jaipur [for short AO].

2. In this appeal, the assessee has raised following grounds: -

“1. That the Ld. CIT(A)-NFAC, has erred in facts and in law in confirming the addition of Rs. 36.20 Lacs u/s 43CA without considering the facts and circumstances of the case.

2. That the appellant craves to add, amend, and alter the grounds before or at the time of appellate hearing.”

3. As we note that the solitary ground raised by the assessee in this appeal challenging the addition of Rs. 36.20 lac made in this case u/s. 43CA of the Act. The brief facts related to the disputes are that the assessee e-filed its income tax return for the A.Y. 2017-18, on 01.11.2017 by declaring total income of Rs. 26,53,820/-. Thereafter, the case was selected for scrutiny under CASS. Therefore, notice u/s 143(2) of the Act was issued on 13.08.2018, which was duly served upon the assessee. Thereafter, notices u/s 142(1) of the Act along with query letter was issued to the assessee. In response to the notices issued, assessee has filed his submission through online portal from time to time and furnished the required detail / information along with necessary supporting other documents to the Id. AO. For the year under consideration the assessee company is engaged in the business of property development. The assessee declared gross turnover of Rs. 8,34,13,952/- and net profit of Rs. 16,56,658/- in the year under consideration. The books of the assessee

have been duly audited as required u/s 44AB of the Act. After considering the audited final accounts, return of income and other information furnished by the assessee from time to time the Id. AO observed that the assessee has sold 76 properties in the year under consideration. The sale consideration shown by the assessee is less than the stamp duty value of properties and thus, the sale consideration declared was less by Rs. 36,19,708/- which is chargeable to tax as per provision of section 43CA of the Act. As the assessee has not offered the income vide notice dated 02.12.2019 assessee was asked to show cause as to why the addition of that amount could not be made in the hands of the assessee company. The assessee vide submission dated 04.12.2019 submitted the reply. The Id. AO considered the reply carefully but did not found acceptable. The Id. AO noted that the assessee has not ground for declaring the value less. The Id. AO thus referred the matter to DVO. The valuation report was not received by the Id. AO, he has added as sum of Rs. 36,19,708/- in hands of the assessee considering the provision of section 43CA of the Act.

4. Aggrieved from the order of the National Faceless Assessment Center, assessee preferred an appeal before the Id. CIT(A). Apropos to the

grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“5. Decision

The appellant in its ground of appeal has assailed the addition of Rs.36,19,708/- u/s 43CA of the Act. The AO in the assessment order held that the appellant is engaged in the business of property development. During the year the appellant had sold 76 properties and declared sale consideration less than the stamp value. The AO rejected the reply filed by the appellant and added the difference of stamp value and sale consideration of Rs.36,19,708/- to the income of the appellant.

5.1 It is pertinent that in order to decide this appeal in a timely manner a number of notices/ communications through ITBA portal were sent to the appellant, viz. communications dated 27.01.2021, 23.08.2022 18.04.2023 and 15.02.2024, However, there evidently has been no response from the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co- operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant's compliance or rather lack of it, the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance/non prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis documentation available on record.

5.2 Firstly, it is stated at the outset, that in the situation as obtained in the instant case, as evidently seen from the above, this appeal is liable to be dismissed in terms of the ratio of the judgements of the Hon'ble Apex Court and the various High Courts including the Hon'ble Apex Court which held in CIT v. B. N. Bhattacharjee and Another (10 CTR 354) that an appeal means an effective appeal and that to "prefer an appeal would mean effectively prosecuting an appeal. "Purposefully and constructively interpreted, preferring an appeal means more than formally filing it but effectively pursuing it and if a party retreats before the contest begins, it is as good as not having entered the fray.

5.3 It is pertinent to add here that laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus non dormientibusjurasubveniunt". It means equity comes to the aid of the vigilant and not the slumbering In all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff is favoured and prejudicial of him who is careless. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. It is trite that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities (Assessing Officers/Appellate Authorities) lies with the assessee/appellant. In the

present case, the appellant has not been able to even discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made in the grounds of appeal in spite of adequate time and opportunities given as brought out in the foregoing paras.

5.4 It is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments/averments, constraining me to, therefore, go through the extremely brief non-speaking submission appearing in the grounds of appeal and statement of facts filed along with the impugned appeal to decide on the merits while adjudicating the same. But the narrative submission/contention made vide the statement of facts/grounds of appeal is by and large on the very same made at the time of instant assessment which the AO after considering, has duly rejected or found without much merit leading him/her to add the same i.e., the disallowance/additions made in the said assessment order and enumerated in the impugned grounds against which I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the absence of any meaningful and worthwhile submissions/documentations even during the instant appellate proceedings in this case to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order. Therefore, I find no infirmity in the action of the AO in making addition of Rs.36, 19,708/- on the appellant. In this view of the matter, the decision of the AO is upheld. Consequently, the Ground of appeal are dismissed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal challenging the solitary addition sustained by the Id. CIT(A). To support the ground so raised by the Id. AR of the assessee, has filed the written submissions which reads as follows:

“Ground 1

That the Ld. CIT(A)- NFAC, has erred in facts and in law in confirming the addition of Rs.36.20 Lacs for the short declaration of sales consideration.

Facts of the case:

1. The Assessee Company is engaged in the business of real estate. The assessee has filed its return of income on 01.11.2017. In the tax audit report the

auditor at point no 17 of the report, reported that there are 76 registries in which the transaction value is lower as compare to the value calculated /assessed by the sub registrar.

2. During the assessment proceedings the AO made the addition of Rs.36,19,708.00/- considering the sales value of properties being sold by assessee was less than the Stamp Duty Value.

3. The CIT(A) has dismissed the appeal without considering the complete facts of the case and confirmed the said addition.

Submission:

1. The Assessee Company is engaged in the business of real estate. The total sale declared by the company is Rs. 8,34,13,952/- on which it declared profit of Rs.16,56,658/-. There was total 850 no of sales deed executed by the company. Out of which in 76 registries the sales consideration mentioned in the registry was below the Stamp Duty Value calculated by the sub-registrar u/s 54 of Stamp duty Act. The auditor of the company reported these all transactions in the tax audit report at Clause No. 17 of the tax audit report (PB-I Pg. 24-26).

2. The AO calculated the total difference between Sale value and stamp duty value amounting to Rs. 36,19,708/- whereas there was a calculation error and the total of these transactions is amounting to Rs.31,93,708/- only. A complete list of the all transactions being reported by the Auditor in the clause 17 of the audit report is at Annexure A.

As a result of this miscalculation an amount of Rs. 4,26,000/- is a calculation error and required to be deleted.

3. The AO during the assessment hasn't considered that the properties Report are sold lesser then the Stamp Duty Value, but the Stamp Duty Value was not in excess of one hundred and ten percent of the Sale Value for the Properties quoted at Sr No. 1, 24 to 30, 35 to 37, 39, 40, 42 to 52, 54, 56 to 67, 69, and 71 to 73 at Clause 17 of Tax Audit, hence addition in respect of these properties is not justified.

The provision of Section 43 CA states 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 ten per cent 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.

The detailed calculation of the same is at Annexure-B. The total of these additions come to Rs. 2,31,055/-, and the same is against the Law and required to be deleted.

4. The properties reported at Sr. No. 38, 75 and 76 (Annexure- C) in tax audit report it is to submit that, the company has received the payment by cheque in advance and was received before the date of actual sale, hence as per Section 43CA(3) the stamp duty value to be considered as on date when first instalment/payment was received.

As per Section 43CA(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 section 43CA(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.

The property wise details are as following:

(i) For Property at Sr. No. 75, situated at Ward 21 Chaksu, the sale deed was executed on 29th August 2016, however the first payment of was received on 15.11.2012 (through Cheque no. 069062) PB-I-Pg.48, hence the Stamp Duty Value to be considered as on 15.11.2012 i.e. Rs.1000/- per sq.yd. and the same can be verified through Sub Registrar Rates List on PB-II Pg.15, whereas the company has executed a sale at Rs. 2,327 per sq.yd. Hence this property is sold at a value which is allowable to be considered as Sales Consideration as per the provisions of Section 43CA (3).

(ii) For Property at Sr. No. 76, situated at Ward 21 Chaksu, the sale deed was executed on 29th August 2016, however the first payment of was received on 23.11.2012 (through Cheque no. 757756) PB-I Pg. 59, hence the Stamp Duty Value to be considered as on 23.11.2012 i.e. Rs.1000/- per sq.yd. and the same can be verified through Sub Registrar Rates List on PB-II Pg.15, whereas the company has executed a sale at Rs. 2,539 per sq.yd. Hence this property is sold at a value which is allowable to be considered as Sales Consideration as per the provisions of Section 43CA (3).

(iii) For Property at Sr. No. 38, situated at Sawaliya (Greenpark-CHAKSU) the sale deed was executed on 04th April 2016, however the first payment was received on 20.02.2014 (through Cheque no.085046), hence the Stamp Duty Value to be considered as on 20.02.2014 i.e. Rs.430 per sq.yd. (PB-I- Pg 70) and the same can be verified through Sub Registrar Rates on PB-II Pg.14., whereas the company has executed the sale at Rs. 470 per sq.yd. Hence this property is sold at a value which is allowable to be considered as Sales Consideration as per the provisions of Section 43CA (3).

The total addition made by the AO is Rs.86,134/-, and which is against the law and required to be deleted. The calculation of this amount can be verified through Annexure C enclosed herewith.

5. Furthermore, it is to submit that while filling Form 3CD (Tax Audit Report) the Auditor has made a minor mistake while quoting stamp duty value for Sr. no. 23 and Sr. No. 53 (Annexure-D) . For property at Sr. No. 23 at PB I 78-83 the actual Stamp Duty Value was Rs.2,90,400/- and the quoted value in Form 3CD was Rs. 3,00,000/- which resulted in unrequired addition of Rs.9,600/-. For property at Sr. No. 53 the stamp duty value was Rs. 43,200/- but this value was wrongly declared as Rs.54,000/-, which resulted in an unrequired addition of Rs. 10,800/- The same can be verified through registry being enclosed.

As a result of this error made by Auditor an amount of Rs. 20,400/- became an part of additions and required to be deleted.

6. For the properties with Sr. No. 31 and 34 (Annexure-E) referred in clause 17 of Tax Audit Report, it is to provide that the Sub-Registrar has considered the wrong value as Stamp Duty Value, the actual sale consideration is equal to the correct Stamp Duty Value. This resulted in an addition of Rs. 17,000 which should be deleted.

7. In respect of remaining properties it is to submit that during the year under consideration the assessee developed one town ship at Bhirawati (Nooh), Haryana). The major reasons that caused the sales value, lesser than the stamp duty value are being provided in following points:

(a) The DLC Rates fixed by the State Government is same for existing developed area and newly developed residential colonies, but in real circumstances the values of properties at newly developed areas are significantly lesser in comparison to the properties situated at already developed areas. Due to which DLC rate of areas where company has operations (rural areas) is already overvalued than the actual prevailing rates in the market.

(b) Due to which not only company but also other land owners in that area face this problem, In this regard company has tried to bring this anomaly in the notice of various authorities but still no concrete action has been taken by the State Government. Even Company has got the valuation report from government executives as well as private surveyor who have reported that there is large gap in the DLC rates and actual market price of the plots. Actual market rate is much lesser than what the government has prescribed as DLC rates. The report of approved valuer is at PB-II Pg1 to 4.

Considering the fact that the DLC Rates are substantially higher than the actual marketable rates of property the assessee has requested to Tehsildar- Nooh (PB-II-16), Haryana about the relevant value of property at Bhirawati and in response

the officer conducted a "Tasdiq" i.e. inquiry and evaluated the reasonable market value to be Rs. 3800 to Rs. 4000 per sq.yd. The transactions incurred by the assessee company was at average rate of 3900/- or above it which is reasonable market rate and therefore the transactions incurred by the company at village Bhirawati -Nooh, Haryana, is at fair market value, and same should be allowed. The value being added by the AO pertaining to Village Bhirawati-Nooh, Haryana is amounting to Rs.26,89,550/-. However, these properties were sold at prevailing market values. In case DLC rates are being considered it would be an totally unfair and unjustified basis as no one would be willing to buy property exceeding the market value and in case company didn't sold such properties at Market Rates it might lead to excessive inventory holding, incurring business losses, negative cash flows and that might affect business continuance of company.

The company has also got the valuation reports from the registered Valuer and the same is enclosed at PB-II-1-4. The registered valuer has also given a fair value which is also 3900/- and the transaction done by the company is also at this value only. It is further submitted that the DVO Haryana has not raised any query.

Prayer:-

Considering the all facts and details it is requested kindly delete the addition being made by the AO and oblige."

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records:

Sr. No.	Particulars	Page No.
1.	Valuation Report of approved valuer:- a. Land at Village Bhirawati, Haryana b. Land at village Kaliyaka, Haryana c. Land at village Silani , Haryana	1-4 5-8 9-12
2.	DLC Rates as per Sub Registrar Office, Chaksu, Jaipur	13-15
3.	Request letter for verification of market rate of Village Nuhu along with "Tasdiq" clarification.	16

Sr. No.	Particulars	Page No.
1	ITR V and Computation	1-4
2	Financial Statements	5-19

3	Tax Audit Report	20-38
4	Reply submitted to District valuation officer	39-44
5	Copies of registries	
	Plot C-54A Chaksu	45-55
	Plot C-47 Chaksu	56-66
	Plot B130 Greenpark	67-77
	Plot A125 (Haryana)	78-83

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the in respect of 43CA only addition of Rs. 1,59,169/- is sustainable and for the rest of the figure he submitted that addition of Rs. 4,26,000/- is required to be deleted on account of the error in the calculation of figure for making the addition. As per provision of section 43CA of the Act 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 ten per cent 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 and therefore, this aspect of the matter has not been appreciated by the lower authority and that 10 % leverage is required to be available to the assessee for the each of the property sold and that amount comes to Rs. 2,31,055/-. Rs. 86,134/- is

required to be deducted from the addition on account of the fact the assessee has received the money in advance and therefore, the stamp duty value to adopted at the time of receipt of the money by cheque. The Id. AR of the assessee submitted that for an amount of Rs. 17,000/- there has been calculation error on the part of the registrar registering the property and Rs. 26,79,950/- for the assessee disputed the valuation and the matter was referred to the DVO by the AO but that DVO report has not been submitted. Against that the assessee has submitted comparable valuation report and based on that report of independent valuer there is no alleged difference.

8. The Id. DR is heard who relied on the findings of the lower authorities. Ld. DR submitted that the order of the Id. CIT(A) is ex-parte. The assessee has not submitted the details as contended. So, there is no fault on the part of the revenue. The assessee has not challenged that they have not been given opportunity of hearing before the Id. CIT(A) and now therefore, the appeal of the assessee is required to be dismissed. The Id. DR also submitted that the addition so made is within the four corner of the law. While making the disputed addition the Id. AO has given specific show cause notice to the assessee and the assessee what has been argued has

not been contended before the Id. AO. The Id. AO has co-operated with the assessee and has referred the matter to the DVO and the same was not received therefore, the addition was made in accordance with the provision of section 43CA of the Act. As regards the third party valuation and 10 % range of each of property as contended is subjected to the verification of the Id.AO.

9. The Id. AR of the assessee in the rejoinder relied upon the affidavit of the director of the assessee company declaring the fact as to why the notices issued by the Id. CIT(A) were remained non compliant. The content of the affidavit reads as under :

Affidavit of Mr. Aareef Khan S/o Chhotu Khan Aged 32 years, R/o Ward No.25. Meer Khan Ki Dhani Sheetla Mata Chaksu,Jaipur, Rajasthan-303901. Director, AJD DEVELOPERS PRIVATE LIMITED.

The Deponent Mr. Aareef Khan has well conversant with the facts deposed to below:

1. That the assessment for the AY 2017-18 was completed on 26-12-2019. Against which we have filed an appeal before CIT(A) on 15-01-2020.
2. That our accountant Shri Mohammad Irshad s/o Mohammad Iqbal Aged 32 Years,R/o Ward No.- 4. Kararkhaniyan Ka Mohalla, Chaksu.Jaipur.Rajasthan-303901 was the person who was taking care the all these proceedings. Therefore, we mention the e-mail ID ashyanag@gmail.com for communication of notices to be issued by the CIT(A) during the proceedings, which was in control of the Accountants Manager and operated by him only.

3. Shri Mohammad Irshad s/o Mohammad Iqbal (accounts manager) resigned on 31-03-2021 and the email id ashianag@gmail.c which was mentioned for communication purpose in the CIT(A) was become inoperative and the communication notices issued on email was not came in the knowledge of the company.

4. The CIT(A) order was also served on the alternate email id which is registered at Income Tax portal. As and when we received the order, we filed an appeal before Hon'ble ITAT which is within time.”

As is evident from the order of the Id. CIT(A) that three notices were issued in the covid 19 period and the notices were issued on the inoperative email id of the accountant who left the job was given for communication. Thus, as such the assessee has no intention for non compliance. On receipt of the order on the alternate email id the assessee has preferred the present appeal which is well within time.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that in this appeal the assessee has challenged the solitary addition of Rs. 36,19,708/- made by the Id. AO and sustained by the Id. CIT(A) as per provision of section 43CA of the Act. The brief facts related to the issue on hand are that the assessee after filling the return of income by the assessee the case was selected for scrutiny under CASS. Therefore, notices u/s 143(2) and 142(1) were issued and were complied by the assessee. Based on the details placed on record by the assessee Id.

AO noted that for the year under consideration the assessee company is engaged in the business of property development wherein gross turnover of Rs. 8,34,13,952/- and net profit of Rs. 16,56,658/- was reported by the assessee. The books of the assessee have been duly audited as required u/s 44AB of the Act. After considering the audited final accounts, return of income and other information furnished by the assessee Id. AO observed that the assessee has sold 76 properties in the year under consideration. The sale consideration shown by the assessee is less than the stamp duty value of properties and thus, the sale consideration declared was less by Rs. 36,19,708/- which is chargeable to tax as per provision of section 43CA of the Act. Since that income was not offered by the assessee, a show cause notice was issued on 02.12.2019 and reply was filed on 04.12.2019. The Id. AO considered the reply carefully but did not found acceptable. The Id. AO noted that the assessee has not ground for declaring the value less. The Id. AO thus referred the matter to DVO. The valuation report was not received by the Id. AO, and therefore, he has added a sum of Rs. 36,19,708/- in hands of the assessee considering the provision of section 43CA of the Act. When the matter carried before the Id. CIT(A) the same was not attended on account of the fact that out of the four notices so issued 3 were issued in covid-19 period and fourth also remained non

compliant as the email id mentioned was of the accountant who left the job and therefore, the assessee could not advanced the arguments on the merits of the case. Before us Id. AR of the assessee submitted that while filling the tax audit report already on record the tax auditor has placed on record all the details duly verified and certified at point no 17 of the report, reported that there are 76 registries in which the transaction value is lower as compared to the value calculated /assessed by the sub registrar and based on that disclosure already made in the tax audit report the Id. AO made the addition of Rs. Rs.36,19,708.00/- considering the sales value of properties being sold by assessee was less than the Stamp Duty Value as per provision of section 43CA of the Act. Id. CIT(A) has dismissed the appeal without considering the complete facts of the case and confirmed the said addition. As regards the merits of the addition we note from the submission so made available in the order of the assessment wherein the assessee contended that the matter be referred to valuation cell as the assessee is engaged in the business of converting the agricultural land into small plots and thereby develop the area out of the town. Obviously for this reasons the DLC rate of the developed area cannot be compared with the underdeveloped area. The assessee therefore, prayed the Id. AO to refer to the valuation cell of the Department. The valuation cell asked the assessee

to submit the details vide letter dated 31.12.2019 and the same was supplied by the assessee vide letter dated 04.02.2020. In the meantime without waiting for the DVO's report Id. AO made the assessment order on 26.12.2019 without waiting for the report of the DVO. The Id. AO referred the matter to DVO vide letter dated 27.11.2019 which was served to the office of the DVO on 23.12.2019 (APB-39). The Id. AO passed the assessment order on 26.12.2019 i.e. within 3 days of the matter referred to DVO. Thus, the order of the assessment has been passed without considering the principles of natural justice. The contention raised before us by the assessee are based on the information already on record and therefore, we are considering the contention raised by the assessee one by one. As is evident that total 850 no of sales deed executed by the company. Out of which in 76 registries the sales consideration mentioned in the registry was below the Stamp Duty Value calculated by the sub-registrar u/s 54 of Stamp duty Act. The auditor of the company fairly reported these all transactions in the tax audit report at Clause No. 17 of the tax audit report (PB-I Pg. 24-26) which is not disputed by the revenue. Ld. AO calculated the total difference between Sale value and stamp duty value amounting to Rs. 36,19,708/- whereas there was a calculation error and the total of these transactions is amounting to Rs.31,93,708/- only. A complete list of the all

transactions being reported by the Auditor in the clause 17 of the audit report was filed as Annexure A. Thus, the calculation error has resulted an extra addition for an amount of Rs. 4,26,000/- which is based on these facts required to be deleted from the overall addition made by the Id. AO. We also take note of the fact that provision of section 43CA of the Act provide 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 ten per cent 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. So based on that provision in the law the properties sold lesser then the Stamp Duty Value, but the Stamp Duty Value was not in excess of one hundred and ten percent of the Sale Value for the Properties quoted at Sr No. 1, 24 to 30, 35 to 37, 39, 40, 42 to 52, 54, 56 to 67, 69, and 71 to 73 at Clause 17 of Tax Audit, hence addition in respect of these properties for an amount of Rs. 2,31,055 is not justified. The detailed working has been placed on record as Annexure-B. The total of these additions come to Rs. 2,31,055/-, and the same is against the provision of section 43CA and thus required to be deleted. The properties reported at Sr. No. 38, 75 and 76 (Annexure- C) in

tax audit report it is to submit that, the company has received the payment by cheque in advance and was received before the date of actual sale, hence as per Section 43CA(3) the stamp duty value to be considered as on date when first installment / payment was received. As per provision of Section 43CA(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 section 43CA(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. For Property at Sr. No. 75, situated at Ward 21 Chaksu, we note from the records that the sale deed was executed on 29th August 2016, however the first payment of was received on 15.11.2012 (through Cheque no. 069062) PB-I-Pg.48, hence the Stamp Duty Value to be considered as on 15.11.2012 i.e. Rs.1000/- per sq.yd. and the same can be verified through Sub Registrar Rates List on PB-II Pg.15, whereas the company has executed a sale at Rs. 2,327 per sq.yd. Hence this property is sold at a value which is allowable to be considered as Sales Consideration as per the provisions of Section 43CA (3). For Property at Sr. No. 76, situated at Ward 21 Chaksu, the sale deed was executed on 29th August 2016, however the first payment of was received on 23.11.2012

(through Cheque no. 757756) PB-I Pg. 59, hence the Stamp Duty Value to be considered as on 23.11.2012 i.e. Rs.1000/- per sq.yd. and the same can be verified through Sub Registrar Rates List on PB-II Pg.15, whereas the company has executed a sale at Rs. 2,539 per sq.yd. Hence this property is sold at a value which is allowable to be considered as Sales Consideration as per the provisions of Section 43CA (3). For Property at Sr. No. 38, situated at Sawaliya (Greenpark-CHAKSU) the sale deed was executed on 04th April 2016, however the first payment was received on 20.02.2014 (through Cheque no.085046), hence the Stamp Duty Value to be considered as on 20.02.2014 i.e. Rs.430 per sq.yd. (PB-I- Pg 70) and the same can be verified through Sub Registrar Rates on PB-II Pg.14., whereas the company has executed the sale at Rs. 470 per sq.yd. Hence this property is sold at a value which is allowable to be considered as Sales Consideration as per the provisions of Section 43CA (3). Thus, the total addition made by the AO is Rs.86,134/- and thus, when these facts already on record not disputed the assessee should be given the benefit of that amount wrongly added based on these facts.

Furthermore, as submitted by the Id. AR of the assessee that while filling Form 3CD (Tax Audit Report) the Auditor has made a minor mistake while quoting stamp duty value for Sr. no. 23 and Sr. No. 53 (Annexure-D) .

For property at Sr. No. 23 at PB I 78-83 the actual Stamp Duty Value was Rs.2,90,400/- and the quoted value in Form 3CD was Rs. 3,00,000/- which resulted in unrequired addition of Rs.9,600/-. For property at Sr. No. 53 the stamp duty value was Rs. 43,200/- but this value was wrongly declared as Rs.54,000/-, which resulted in an unrequired addition of Rs. 10,800/-. This being the apparent mistake the assessee should be given the benefit of that error crept. As a result of this error made by Auditor an amount of Rs. 20,400/- became an part of additions does not warranted and thus we order to delete that part also. So, far as the properties listed at Sr. No. 31 and 34 (Annexure-E) referred in clause 17 of Tax Audit Report, it is to provide that the Sub-Registrar has considered the wrong value as Stamp Duty Value, the actual sale consideration is equal to the correct Stamp Duty Value. This resulted in an addition of Rs. 17,000 which should be deleted. This error being factual in nature the same is also required to be deleted.

For the remaining party of the property sold by the assessee it was submitted before us that during the year under consideration the assessee developed one town ship at Bhirawati (Nooh, Haryana). The major reasons that caused the sales value, lesser than the stamp duty value because the DLC Rates fixed by the State Government is same for existing developed area and newly developed residential colonies, but in real circumstances

the values of properties at newly developed areas are significantly lesser in comparison to the properties situated at already developed areas. Due to which DLC rate of areas where company has operations (rural areas) is already overvalued than the actual prevailing rates in the market. For that reasons the assessee could not fetch the rates as provided in the DLC. To support this contention in absence of the DVO's report the assessee company has got the valuation report from government executives as well as private surveyor who have reported that there is large gap in the DLC rates and actual market price of the plots. Actual market rate is much lesser than what the government has prescribed as DLC rates. The report of approved valuer is at PB-II Pg1 to 4. Considering the fact that the DLC Rates are substantially higher than the actual marketable rates of property the assessee has requested to Tehsildar- Nooh (PB-II-16), Haryana about the relevant value of property at Bhirawati and in response the officer conducted a "Tasdiq" i.e. inquiry and evaluated the reasonable market value to be Rs. 3800 to Rs. 4000 per sq.yd. The transactions incurred by the assessee company was at average rate of 3900/- or above it which is reasonable market rate and therefore the transactions incurred by the company at village Bhirawati -Nooh, Haryana, is at fair market value, and same should be allowed.

The value being added by the AO pertaining to Village Bhirawati-Nooh, Haryana is amounting to Rs.26,89,550/-. However, these properties were sold at prevailing market values. Thus, in the absence of the DVO's report the other two evidence submitted by the assessee cannot be ignored. The assessee also submitted valuation reports from the registered Valuer and the same is enclosed at PB-II-1-4. The registered valuer has also given a fair value which is also 3900/- and the transaction done by the company is also at this value only. It is further submitted that the DVO Haryana has not raised any query on the details so submitted by the assessee. Considering that factum the addition so made is directed to be deleted. Considering all these aspect of the matter the summarized addition in the case of the assessee remained to be sustained is calculated herein below:

Addition made by AO	[A]	Rs. 36,19,708/-
Less :		
i. Calculation error		Rs. 4,26,000/-
ii. Difference upto 10%		Rs. 2,31,055/-
iii. Payment recovered in each order by cheque		Rs. 86,134/-
iv. Difference in Actual value that wrong taken in 3CD		Rs. 20,400/-
v. Error of calculation is done by Registrar		Rs. 17,000/-
vi. Difference of higher DLC based on independent value report		Rs. 26,79,950/-
Total [B]		Rs. 34,94,539/-

Difference addition to be sustained [A-B]

Rs. 1,59,169/-

While dealing with the above contentions as we note that the evidences which were placed on record by the assessee is in furtherance to the facts already on record and therefore the same is considered. Based on the above finding, we sustain addition of Rs. 1,59,169/- in hands of the assessee. Based on that set of facts ground No. 1 raised by the assessee is partly allowed.

In the result, the appeal of the assessee is Partly Allowed.

Order pronounced in the open court on 25/10/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/10/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- AJD Developers Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-07, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 536/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar