

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI KUL BHARAT, VIDE PRESIDENT  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.391/Lkw/2020  
Assessment Year: 2014-15

Shri Ganesh Dubey, S/o Shri V. K. Dubey, R/o 703 V Block, Shipra Apartment, Sector A, Gomti Nagar Extension, Lucknow. PAN:AGOPD4446K (Appellant)	Vs.	Dy.C.I.T., Circle-1, Lucknow.  (Respondent)
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Appellant by	None
Respondent by	Shri Sunil Kumar Rajwanshi, Addl. CIT (D.R.)

**ORDER**

**PER ANADEE NATH MISSHRA:A.M.**

(A) This appeal has been filed by the assessee for assessment year 2014-15 against impugned appellate order dated 23/09/2020 passed by learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. In this appeal the assessee has raised the following grounds:

- "1. Whether under facts and circumstances of the case, the learned CIT(A) was correct in confirming the addition of Rs.1,13,000/- when CIT(A) confirmed the findings of Assessing Officer that three plots were shown as stock in trade.*
- 2. Whether under facts and circumstances of the case, the CIT(A) was correct as confirming to addition of Rs.17,16,400/- on sale of plots as the plots were stock in trade and provisions of section 43 c a is not applicable.*

3. *Whether under facts and circumstances of the case, the CIT(A) was correct in ignoring the registered valuer report without allowing to assessee for a cross examination. Reliance is placed on the ratio of judgment in case of ICDS Ltd. vs. CIT and (2020) 194 DTK (SC) 18.”*

(B) In this case assessment order dated 29/12/2018 was passed u/s 143(3)/147 of the Income Tax Act, 1961 (“IT Act” for short) whereby the assessee’s total income was determined at Rs.83,96,545/- (rounded off to Rs.83,96,550/-). In the aforesaid assessment order additions amounting to Rs.22,60,000/-, Rs.20,42,525/- and Rs.22,00,000/- were made respectively on account of sale of plots, on account of difference between circle rate and sale consideration in respect of properties sold by the assessee, and on account of cash expenses u/s 40A(3) of the IT Act respectively. Vide aforesaid impugned appellate order dated 23/09/2020, the learned CIT(A) deleted an amount of Rs.21,47,000/- out of the aforesaid addition of Rs.20,60,000/-, and sustained addition amounting to Rs.1,15,000/- on estimate basis. Further out of the aforesaid addition of Rs.20,42,525/- made by the Assessing Officer u/s 43CA of the Act, the addition amounting to Rs.3,26,125/- in respect of property sold to Shri Walli Ullah, was deleted on the ground that the sale consideration was higher than the circle rate and the addition of the aforesaid amount of Rs.3,26,125/- in respect of property sold to Shri Walli Ullah was erroneous. The remaining addition, amounting to Rs.17,16,400/- out of the aforesaid addition of Rs.20,42,525/- was sustained by the learned CIT(A). The entire amount of addition of Rs.22,00,000/- made by the Assessing Officer u/s 40A(3) of the Act on account of expenses incurred in cash was deleted by the Assessing Officer.

(B.1) In the course of appellate proceedings before the Income Tax Appellate Tribunal, hearings were fixed from time to time. Vide order sheet dated 20<sup>th</sup> July, 2023, the assessee was given last opportunity and hearing was adjourned to 9<sup>th</sup> October, 2023. In subsequent hearing fixed on 9<sup>th</sup>

October, 2023 and 1<sup>st</sup> May, 2024, none was present from the assessee's side. However, taking cognizance of letter seeking adjournment from assessee's side; on 01/05/2024, hearing was adjourned to 07/08/2024. In subsequent hearing fixed on 07/08/2024 and 12/09/2024, none was present from the assessee's side. When the matter came up for hearing on 27/11/2024, once again none was present from the assessee's side. In the absence of any representation from assessee's side, we heard learned Sr. D.R. for Revenue. He relied on the orders passed by the learned CIT(A) and the Assessing Officer.

(B.1.1) As far as the dispute regarding addition on account of sale of plot is concerned, the Assessing Officer added the entire amount of sale consideration of Rs.22,60,000/- to the income of the assessee. In his impugned appellate order, the learned CIT(A) took cognizance of the fact that the assessee had shown the aforesaid plots in the closing stock and took the view that the action of the Assessing Officer in taking entire sale consideration as undisclosed income of the assessee was not justified. He proceeded to determine the assessee's income from sale of plots at Rs.1,13,000/- on estimation basis. No material has been brought for our consideration to persuade us to take a view that the estimate made by the learned CIT(A) is excessive, unreasonable, unjust, unfair or against law. As neither side has brought any material for our consideration to interfere with the decision of learned CIT(A) on this issue, the order of the learned CIT(A) on this issue is confirmed and accordingly, ground No. 1 of the appeal is dismissed.

(B.1.2) Ground No. 2 and 3 of the appeal are regarding the addition made by the Assessing Officer u/s 43CA of the Act. On perusal of the impugned appellate order dated 23/09/2020, we find that the learned CIT(A) rejected the valuation report filed by the assessee stating that it was not acceptable

as the valuer had not given any basis for his valuation. However, on perusal of records, we find that the valuer, in his valuation report, had given detailed reason for his view that market rate was less as against circle rate.

The relevant part of the valuation report is reproduced below:

*"The Residential property (plots) bearing Gata no-2369(part) is located in Vill.-Khujauli, Pargana/Tehsil- Mohanlal Ganj,Lucknow The land measuring 0.759 Hect. or 7590.00 sqmt is said to have been purchased for Rs.13,02,500.00 incld. stamp charges through registered deed dated 9.01.2014 .The market value as per circle rate being Rs.20,49,500.00. Area measuring 1059.47sqmt was sold during 2013-14 after partly developing the land by way of Roads, and diving the land into different sizes of Plots.*

*With above details, I have been approached to assess the Fair Market Value of land measuring 1059.47 sqmt. It has been observed that :-*

*(i)The assessee had purchased the land vide sale deed dated 9.01.2014 for Rs.13,02,500.00 incid. stamp duty charges against the Value of Rs.20,49,500.00 as assessed by Registration Authority on the basis of Circle Rate.*

*(ii)The Circle Rate as per purchase deed was Rs.270/sqmt (20,49,500/7590=Rs 270/sqmt). This is because of (a) the nature of land being Agriculture and (ii) The land being not developed. The factual Market Rate being Rs.171.60/sqmt (13,02,500/7590=Rs.171.60/sqmt). It is approx. 35% reduced rate to Circle Rate.*

*(iii) It is to be noted that the property is located in out-skirt village area. The land rate being less since, the adequate civic amenities are not available in the area. The market potential being thin, the prospective buyers have no attraction in the properties that is reflecting in the rates. That is the reason Market Rate is less as against Circle Rate, which are quite higher.*

*(iv) The nature of the land has been changed from Agriculture to Residential and this has abruptly changed the Circle Rate from Rs.270/sqmt to Rs 3900/sqmt in the same Financial Year. The hike is unbelievable, which is 14.44 times higher to Circle Rate. The Circle Rate appears to be hypothetical. The property is undeveloped and lacks (i)Water Supply arrangements (ii) Proper developed adequate Roads (iii) Absence of Sewerage disposal (iv) Absence of External Electrifications (v)Lack of drains etc.*

*(v) The Circle Rate Rs 3,900/sqmt is for developed Plots."*

Further, on perusal of the assessment order, we find that the Assessing Officer has also dealt with this issue in a very cursory manner. In the assessment order, the Assessing Officer has not adequately dealt with the submissions of the assessee taking plea that market rate was lower than circle rate. The fact that the Assessing Officer made an addition of Rs.3,26,125/- in respect of property sold to Shri Walli Ullah despite sale consideration being higher than circle rate shows that the matter regarding section 43CA of the Act was not decided by the Assessing Officer with due diligence and proper application of mind. In the specific facts and circumstances of the present appeal before us, therefore, the issue regarding addition u/s 43CA is restored to the file of the Assessing Officer with the direction to pass de novo order on this limited issue, in accordance with law and after providing reasonable opportunity of being heard to the assessee,

(C) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 03/12/2024)

**Sd/.  
(KUL BHARAT)  
Vice President**

**Sd/.  
(ANADEE NATH MISSHRA)  
Accountant Member**

Dated:03/12/2024

\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R. ITAT, Lucknow

Asstt. Registrar