

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'C' AHMEDABAD**

**ITA No.2051/Ahd/2009
Assessment Year: 2006-07**

**DEPUTY COMMISSIONER OF INCOME TAX
(OSD), CIRCLE-8, 4th FLOOR AJANTA COMMERCIAL
CENTRE, 'A' WING, ASHRAM ROAD, AHMEDABAD**

Vs

**SUNDERDEEP INFRASTRUCTURE PVT LTD
406, SANIDHYA APARTMENTS
NR ROSEWOOD APARTMENTS
JODHPUR CHAR RASTA, SATELLITE
AHMEDABAD
PAN NO:AAHCS3754K**

Bhavnesht Saini, JM and D C Agrawal, AM

Dated: June 17, 2011

Appellant Rep by: Shri G S Souryavanshi, Sr. DR
Respondent Rep by: Paunil Shah, AR

ORDER

Per: Bhavnesht Saini:

This appeal by the revenue is directed against the order of the learned CIT(A)-XIV, Ahmedabad dated 17-04-2009, for assessment year 2006-07, challenging the deletion of addition of Rs.12,20,000/- u/s 69 of the IT Act.

2. Briefly, the facts of the case are that the AO noted that the assessee has purchased a plot of land of Survey No.295, Jodhpur Char Rasta, Ahmedabad for a sum of Rs.47,97,470/- including stamp duty and other charges. The assessee was asked to explain whether land has been purchased at circle rate or at lower rate because it was seen that land was registered for a sum of Rs.54,90,000/- against purchase price. The assessee was asked why the difference should not be added u/s 69 read with section 50C of the IT Act. The assessee in reply furnished the details of PAN of 11 persons from whom the property was purchased. It was submitted that though for the purpose of stamp duty valuation has been shown at higher price but no additional amount has been paid by the assessee company. No evidence has been brought on record to make the addition with the help of section 50C of the IT Act. The AO however, did not accept the explanation of the assessee and made addition of Rs.12,20,000/-. The addition was challenged before the learned CIT(A) and it was submitted that section 50C of the IT Act is applicable to determine sale value for the purpose of working out capital gain and it is not applicable to the purchase of properties. No evidence is brought on record to prove any undisclosed investment in the property. The assessee also explained that fair market value has been shown in

the sale deed. The value for the purpose of stamp duty should not be taken as the base for making the addition. There are several factors i.e. locality of the property and commercial use etc. which determine the value of the property, therefore, addition cannot be made in such circumstances. It was also submitted that DVO's blind reference of circle rate is unjustified. The assessee relied upon certain decisions in support of the contention. The learned CIT(A) considering the explanation of the assessee deleted the addition. The findings of the learned CIT(A) in Para 2.3 are reproduced as under:

"2.3 I have considered the facts of the case and the submissions as advanced by the A. R. of the appellant. It is seen from the details furnished that provisions of Sec. 50C are applicable only where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Govt. for the payment of stamp duty in respect of such transfer and the value so adopted or assessed shall, for the purpose of sec. 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Further, the AO did not bring any material or evidence on record to establish any payment made over and above the payment shown as purchase value by the appellant and has merely proceeded to apply the deeming provisions of Sec. 50C of the Act. I find force in the submission of the A. R. that as there was a dispute in the said property purchased by the appellant, the market value was fully justified and the rate as per the Stamp Valuation Authority cannot be blindly applied even to the purchase consideration so as to conclude that the appellant had made unexplained investment u/s. 69 of the Act. There is also force in the argument of the A. R. that if the circle rate fixed by the stamp valuation authorities was to be adopted in all situations, there was no need of reference to the DVO under sec. 50C (2) and the blind reliance on DVO on circle rate was not justified as such report should be based on consideration stated in the registration documents for comparable transactions, as also factors such as inputs from other sources about the market rates. I am also in agreement with the argument of the A. R. that since the A. O. did not refer the case to the DVO for valuation, the addition made was not warranted, which finds support from the decision in the case of Meghraj Baid Vs ITO (2008) 23 SOT 25 (Jodh). The value adopted by the stamp duty authority cannot be taken as purchase price in the hands of the purchaser. In fact wherever the legislature wanted, stamp duty value is adopted as value of the transaction. Sec. 50C is one such example where stamp duty valuation is taken as sales consideration in the hands of the seller. However, the same cannot be applied for making addition u/s. 69 of the Act. It is not open to anybody to rewrite the terms and conditions of the agreement entered into by the appellant. This view is supported by the direct decisions of the Hon. Gujarat High Court dt. 21-04-2005 in the case of Mohit Marketing Ltd. Vs DCIT (Tax appeal No.157 of 2000) wherein it is held that it is not open to any third party including the revenue to rewrite the agreement entered into between the parties. The appellant has further submitted that there is no such provision under the scheme of the Act to adjust the purchase price of the land so purchased by the appellant. On actual and real income, based on the nature and character of the same, has to be taken into consideration, unless it is established by Revenue that the assessee had received the income outside the books of accounts maintained by the assessee. In the instant case, there is no such evidence brought on record. Therefore, the addition regarding notional income which should have been charged or earned must fail. In this connection, reliance is placed on the following decisions: -

i) CIT v. Calcutta Discount Co. Ltd. 91 ITR 8 (SC)

- ii) CIT V. A. Raman & Co., 67 ITR 11 (SC)
- iii) CIT V. Shivakami Co. (P) Ltd., 159 ITR 71 (SC)
- iv) Shoorji Vallabhdas & Co., 46 ITR 144 (SC)
- v) CIT V. Chamanlal Mangaldas & Co., 39 ITR 8 (SC)
- vi) CIT V. Birla Gwalior Ltd., 89 ITR 266 (SC)
- vii) Godhra Electricity Co. Ltd. V. CIT 225 ITR 746 (SC)

After the introduction of sec. 50C of Income tax Act, the market value as per the stamp duty payable has to be taken only for calculation of capital gain, on sale consideration in the hands of the seller. This cannot be applied to the purchase price in the hands of the purchaser and the addition cannot be made u/s. 69 of the Act, as it is a deeming section and it is to be applied only for the capital gain and not for any other purpose. I also find that the Hon'ble Rajasthan High Court has held in the case of CIT V. Kishan Kumar reported in 215 CTR 181 (Raj) if the consideration shown in the conveyance document is a deflated figure, then it is for the department to lead positive evidence about the fair market value of the pr

.Operty and further to show that the property was undervalued in the document of sale and that stamp value authority's rate can. Onot be taken as the purchase price for which the property was purchased by the purchaser. I have also gone through the page no. 16 of the purchase deed wherein there is a mention about the objections raised by one Shri Rajubhai Amrutbhai Desai regarding his claim in the said land. In view of above facts and circumstances and relying on the above cited case laws, I hold that the addition made of Rs. 12,20,000/- u/s. 69 is not as per law and therefore the same is directed to be deleted."

3. The learned DR relied upon the order of the AO. On the other hand, the learned Counsel for the assessee reiterated the submissions made before the learned CIT(A) and relied upon unreported order of the Hon'ble Gujarat High Court in the case of *Mohit Marketing Ltd. Vs. DCIT in Tax Appeal No. 157/2000 dated 21-04-2005* in which it was held that parties are bound by the terms of the contract and it is not open to the third party including the revenue to rewrite the terms of contract. Copy of the order is placed on record.

4. We have considered the rival submissions and the material available on record and do not find any justification to interfere with the order of the learned CIT(A). It is admitted fact that the assessee is a purchaser of the land in question. ITAT Ahmedabad Bench in the case of *ITO Vs Venu Proteins Industries 4 ITR (Trib.) 602 (Ahd)* considering its earlier decision held that "the provisions of section 50C are not applicable in the case of the purchaser. Departmental appeal was accordingly dismissed." On consideration of the facts of the case, we find that there is no foundation in making the addition against the assessee. The AO has not brought any evidence on record to show that the assessee made excess payment over and above the sale consideration shown in the registered documents. The AO merely on the basis of circle rate presumed higher value of the property. The above provisions were applicable in capital gains only. In the absence of any evidence or material on record

to justify the findings of the AO, the learned CIT(A) on proper appreciation of the facts rightly deleted the addition. In the absence of any evidence or material before us and further that the findings of the learned CIT(A) have not been rebutted through any material on record, we do not find any justification to interfere with the order of the learned CIT(A). We confirm the findings of the learned CIT(A) and dismiss this ground of appeal of the revenue.

5. In the result, the departmental appeal is dismissed.

(Order pronounced in the open Court on 17.6.2011)