**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**
**AND**
**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.189/Del/2019
(Assessment Year : 2015-16)

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| ITO,<br>Ward-29(4),<br>New Delhi | Vs. | M/s. Sharan Svadha LLP<br>N-94, G-2,<br>Panchsheel Park,<br>New Delhi-110017,<br>PAN : ACQFS6670Q |
| Appellant | | Respondent |

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| Revenue by | Sh. Abhishek Kumar, Sr. DR |
| Assessee by | Sh. R.K.Bansal, CA |

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| Date of hearing: | 04.10.2022 |
| Date of Pronouncement: | 11.10.2022 |

## ORDER

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Revenue against order dated 05.10.2018 in appeal no. 323/2017-18, New Delhi in assessment year 2015-16 passed by Commissioner of Income Tax (Appeals)-10, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 28/12/2017 u/s 143(3) of the Income Tax Act, 1961 passed by ITO, Ward-29(4), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are the Assessee firm is a Limited Liability Partnership firm engaged in the business of Real Estate Developers and other related activities. The Assessee firm submitted its return of income at an income of Rs.8880/- by filing its return of income electronically on 28.09.2015. The Case was selected for scrutiny assessment. The necessary details and papers were submitted before the Assessing Officer from time to time. The background of issue is that Mr. Bimal Sareen & Mrs. Sony Sareen entered into partnership agreement and formed Sharan Svadha LLP vide agreement dated 25.09.2014. Subsequently M/s Greenpower Marketing & Advertising Pvt. Ltd, was admitted into to the partnership as third partner vide agreement dated 10.10.2014. The assessing Officer passed the assessment order at an income of Rs.7,84,08,880/- after adding a sum of Rs.7,84,00,000/- to the income of the assessee firm being the difference between the purchase price of the property purchased by the assessee firm during the year(Rs.l2,34,00,000-Rs.4,50,00,000) on the basis of value adopted by the Registrar of Documents for stamp duty purpose over the actual amount paid by the assessee firm for purchase of property. The assessee firm made investment by purchase of property in N- 94, Panchsheel Park, New Delhi for Rs.4,50,00,000/- during the year, which was duly reflected in the sale deed submitted before the Assessing Officer and duly recorded in the books of the assessee firm. The assessee firm paid stamp duty of Rs.72,*05*,000/- on the property value arrived by the Registrar of Documents for stamp duty value purpose. The details of property purchased and reasons for difference in value adopted by Registrar of documents and actual amount paid for purchase of property were duly furnished to the assessing officer vide our letters dated 22.11.2017, 18.12.2017, 21.12.2017 and 24.12.2017. The Assessing Officer made the addition ignoring the submissions made by the assesse firm and passed the assessment order. Aggrieved by the Assessment Order passed by the Assessing Officer, the assesse firm filed appeal before the Commissioner of Income Tax (Appeals)-10, New Delhi who has deleted the addition.

3. It was concluded by Ld. CIT(A) :-

> "6.10 In this case, apart from the value of sale consideration computed by the Registrar ffice for the purposes of calculation of stamp duty there is nothing on record to prove that the appellant has made more payment than what is stated in the sale deed. With regard to the above matter, it is noted that the facts in the above mentioned decisions of the ITAT relied upon are similar to the facts in the instant case. In this regard, the landmark decision of the Hon'ble Supreme Court in the case of K P Verghese v ITO 131 ITR 597 is relied upon in which it was held that - *"The onus of establishing that taxability are fulfilled is always on the Revenue. It is for the Revenue to show cause that there is an understatement of the consideration. It is further laid down that to throw the burden of showing that there is no understatement of the consideration on the assessee, would be to cast and almost impossible burden upon him to establish the negative". Further, it is also noted that Hon'ble Madras High Court in CGT v. R. Damodaran (2001) 247 ITR 698 held that Stamp Valuation Authorities have their own method of evaluating the property. Merely because for the purpose of stamp duty, property is valued at higher cost, it cannot be said that assessee has made more payment than what is stated in the sale deed. Further, Hon'ble Allahabad High Court in the case of Dinesh Kumar Mittal v. ITO (1992) 193 ITR 770 (All.) it was held that there is no rule of law to the effect that the value determined for the purposes of stamp duty is the actual consideration passed between the parties to the sale. Further, in the case of Harley Street Pharmaceuticals Ltd. it was held that the provisions contained in sections 69 and 69B cannot be invoked in the case of the assessee unless specific evidence of non-disclosure of any part of the investment is brought on record. Such an evidence does not exist in this case. Considering the factual matrix of the case and the above mentioned judicial pronouncements, the addition of Rs. 7,84,00,000/- is deleted. Accordingly, the above mentioned grounds of appeal are allowed."*

4. The Revenue is in appeal raising following grounds:-

*"i. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs.7,84,00,000/- made by the AO on account of difference in sale consideration of property of Rs.4,50,00,000/- and Stamp duty paid on the Circle Rate of the Property at a consideration of Rs. 12,34,00,000/-, treating the same as purchased cost of the said property paid from undisclosed sources, without appreciating the facts of the case mentioned by the AO in the assessment order.*

*ii. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating the facts of the case mentioned by the AO in details in the assessment order stating that the Circle rate of the property in question is higher than the sale consideration of Rs.4,50,00,000/- mentioned in the sale deed.*

*iii. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not appreciating the facts of the case mentioned by the AO in the assessment order that during the course of assessment proceedings, the assessee was asked to furnish concrete evidence with regard to the lesser value of the property in question but the assessee has failed to furnish any justification with concrete evidence. The assessee has simply stated that there is a family dispute between the owners.*

*iv. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal."*

5. Heard and perused the record.

6. Ld. DR submitted that Ld. CIT(A) has fallen in error in deleting the addition and when the circumstances of distress sale are not justified from record thus, the sale consideration of 4,50,00,000/- could not have been accepted. Accordingly, he defended the findings of Ld. AO.

6.1 On the other hand, ld. AR for the assessee submitted that Ld. CIT(E) has thoroughly taken into consideration various legal in factual aspects and accordingly, he referred to findings of ld. CIT(A) in para no. 6.3 to 6.10. The facts of the case have carefully been considered. It was submitted that the AO has not mentioned the section under which the addition has been made. The AO has taken the sale value determined by Registrar Office for the purpose of computation of stamp duty for computing the purchase consideration. It is seen that on the one hand the AO has not accepted the valuation of the property determined by the Registered Government Approved Valuer and on the other hand the AO has not referred the matter to the Valuation Officer in terms of section 142A of the Act to estimate the value of the property. The AO has not brought on record any material/evidence whatsoever to substantiate that the difference amount of Rs.7,84,00,000/- was paid from undisclosed sources to the seller by the appellant. In this regard Ld AR refered to the decision of the Hon'ble ITAT Delhi in the case of Anilesh Enterprises Pvt. Ltd. v ITO in ITA No.2044(Del)/2010 for A.Y. 2007-08.

7. Now giving thoughtful consideration to the matter on record, it can be observed that the assessee is purchaser of the property. Ld. AO had show caused assessee as to why fair market value of the property should not be considered contrary to property valued in valuation report without citing section under which such addition can be made. Not only this when assessee in its response referred to Section 56(2)(vii) the Ld. AO has even observed that the assessee has referred to said section suo moto whereas no notice / show cause / summons/ non-sheets has any reference of provisions of Section 56(2)(vii) of the Act. At page no. 67 paragraph (B) the Ld. AO observed *"the assessee firm has irrelevantly referred the provisions of Section 56(2)(vii) of the IT Act in its reply for the reasons best known to assessee firms"*. However, thereafter while making the addition in the assessment order vide para no. 7.3 the addition has

been made without referring as which section of the act the addition was being made and the Ld. AO merely mentioned that

> *" 7.3 Under such circumstances, keeping in view the above facts especially non preferring of any reply by the assessee firm on distress sale report by the registered valuer and in absence of any reply from the assessee firm on valuer remarks on distress sale and keeping in view the established fact that the assessee firm is body less and is existence on paper only, sale consideration of the property under consideration is taken at Rs. 12,50,00,000/- paid by assessee firm from undisclosed sources. Therefore, consideration amount computed/ valued by Registrar Ofrfice is treated as sale consideration of said property and difference amount of Rs. 784,00,000/- is added back to assessee firm total income treating the same as purchased cost of the said property paid from undisclosed sources. Since, I am satisfied that the assessee has concealed income and furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) are being initiated separately. [Addition of Rs. 7,84,00,000/-]"*

8. Ld. CIT(A) has made a direct reference to this ignorance of Ld. AO in para no. 6.8 of its order. The Bench is of considered opinion that if Ld AO was taking benefit of any presumption under law that any amount was paid from undisclosed source to the seller by purchaser then certainly that relevant section should have been mentioned in the show cause itself.

8.1 Then relevant Section 50C cannot be invoked as the said section is applicable in the case of seller of the property only while the appellant is a buyer. Section 56(2)(vii)(a) and Section 56(2)(vii)(b) of the Act are also not applicable in case of partnership firm or LLP and the assessee is a LLP. The Section 56(2)(x) which may be applicable in case of partnership firm or LLP was introduced with effect from A.Y. 2018-19 while the present case is with regard to A.Y. 2015-16. Thus, in the absence of any statutory presumption the Ld. AO was under obligation to establish by definite evidence that purchaser had made more payment then stated in sale deed. Circumstances of distress sale are on record and there was no attempt of ld. AO to discredit the same. The Ld

CIT(A) has rightly taken all these aspects into consideration while allowing the relief of deletion and no interference is required.

9. In the light of aforesaid, there is no substance in the grounds raised on behalf of revenue. **The appeal of revenue is dismissed.**

**Order pronounced in the open court on 11th October, 2022.**

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| **Sd/-** | **Sd/-** |
| **(ANIL CHATURVEDI)** | **(ANUBHAV SHARMA)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

*Date:-11.10.2022*
***Binita, SR.P.S***

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI