

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER AND

SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA no. 5428/Mum./2010
(Assessment Year : 2007-08)

Inderlok Hotels Pvt. Ltd. (Now known as
Inderlok Infra-Agro Pvt. Ltd.)
Block no.3, Sohni Mansion
August Kranti Marg, Gowalia Tank
Mumbai 400 026 – AAACI2899A

..... Appellant

v/s

Income Tax Officer
Ward-5(2)(1), Mumbai

..... Respondent

Assessee by : Mr. A.H. Dalal
Revenue by : Mr. Sunil Kumar Singh

Date of Hearing – 12.09.2011

Date of Order –

ORDER

PER J. SUDHAKAR REDDY, A.M.

This appeal preferred by the assessee, is directed against the impugned order dated 16th June 2010, passed by the Commissioner (Appeals)-IX, Mumbai, for assessment year 2007-08.

2. Brief facts of the case, as brought out in Para-1.1 of the impugned order passed by the Commissioner (Appeals), are extracted below:-

"1.1 Briefly stated facts of the case are that, the appellant company is engaged in the business of the constructing residential flats. The appellant undertook construction of the residential building known as

"Inder Tower" Annexure A & B, at Gokhale Road (South), Dadar, Mumbai. During the previous year relevant to the assessment year 2007-08, appellant company sold two flats for Rs.80,00,000/- and for Rs.42,00,000/- respectively. However, stamp valuation authorities have taken the value of these flats, for levy of stamp duty, at Rs. 61,40,820/- and Rs.47,53,980/- respectively. Assessing Officer asked the appellant to explain why value of flat sold for Rs.42,00,000/- should not be taken at Rs.47,53,980/-, which is the value determined by stamp valuation authorities. Appellant filed written submissions on 27/10/2009, which were rejected by the Assessing Officer. Assessing Officer held that though provisions of section 50C are not applicable in case of sale of assets held as stock in trade, but this value can be a guiding factor in estimating the undervaluation. The Assessing Officer made addition of Rs.5,50,980/- which is the difference between the value declared by appellant in the sale deed and value determined by stamp valuation authorities. Appellant is in appeal."

3. The first appellate authority held that the Assessing Officer has not applied the provisions of section 50C of the Income Tax Act, 1961 (for short "*the Act*"), as this is not applicable while computing business income but has taken recourse to stamp valuation authorities for determining the sale consideration as one of the important factors. He observed that the assessee company sold two flats and in one case declared more value than the value taken by the stamp valuation authorities and in another case it declared sale value lesser than that fixed by the stamp valuation authority. He followed the earlier year's order passed by the Commissioner (Appeals) and dismissed the appeal of the assessee. Aggrieved, the assessee is in further appeal before the Tribunal.

4. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and on perusal of the papers on record, we find that a co-ordinate bench of this Tribunal in assessee's own case in ITA no.6034/Mum./2009, order dated 31st May 2010, for assessment year 2006-07, has, under similar circumstances, vide Para-2.4/Pages-6 & 7, held as follows:-

"2.4 The case of the assessee before us is that the issue was covered by the decision of the Tribunal in assessment year 2005-06 in assessee's own case in which the Tribunal decided the issue in favour of the assessee. However, we find that in that year the relief given by the Tribunal was only on the ground that provisions of section 50C were not applicable while computing the income under the head "business". In this year the authorities below have not applied

provisions of section SOC. They have only found that the sale value declared by the assessee is too low compared to the market value and the guidance regarding market value has been taken from the market value determined for stamp duty valuation. Therefore we agree with the submission of Learned DR that case is not covered by the decision of the Tribunal in assessment year 2005-06. However, we agree with the submission of the Learned AR that market value of the flat cannot be determined on the basis of valuation made for stamp duty purpose. There is no dispute that income in case of the assessee is being computed under the head 'business' and therefore sale value declared by the assessee can be rejected only if accounts are defective or not reliable. Therefore in our view the accounts can be rejected only when discrepancy is found in the sale value declared by the assessee and the purchase value shown by the buyer or if it is found that for an identical flat has been sold for a much higher value and the assessee is not able to explain the difference. In the present case there is no material with the AO to show that the sale value shown by the assessee was lower than the value for which the buyers had purchased the flat. There is also no identical third party sale instance available. However, we notice that within the flats sold by the assessee itself, there is wide variation in sale value in respect of same type of flats, particularly the flat No.20 which has been sold for Rs.43 lacs whereas the flat No.22 having same area and identical situation has been sold for Rs.62,27,500/-. The sale value of other flats in the A Wing are comparable with minor differences. There are also major differences in the sale value of flats number 1 and 2 but these are located in B Wing and are lower floor flats and therefore situation is not identical with respect to flats in A Wing and thus not comparable. However as pointed out earlier the discrepancy in sale value of Flat no.20 vis-à-vis the sale value of Flat No.22 is wide and glaring which has not been explained by the Assessing Officer satisfactorily. Only before CIT(A) the assessee made a claim that the flat had been mortgaged and mortgagee as per terms of the mortgage deed was in possession of the flat which was the reason for low sale value. CIT(A) has not accepted the claim as the same was not made before the AO. This aspect of the flat being mortgaged and mortgagee being in possession of flat had not been examined. In our view these aspects require fresh examination. In respect of other flats as we have mentioned earlier there is no material with the AO to reject the sale value declared by the assessee which has accepted. Insofar as the flat No. 20 is concerned we restore this issue to the file of A.O. for fresh order after necessary examination and after allowing opportunity of hearing to the assessee."

5. In our considered opinion, no addition can be sustained in this case, as, neither there is any investigation whatsoever made by the Assessing Officer nor was any evidence gathered by him. Merely because the market value as per the stamp valuation authorities and the sale price are at variance, no addition can be made to the business income. The Assessing Officer ought to have adduced evidence to prove that the sale consideration

was, in fact, greater than that which was mentioned in the registered documents. The Assessing Officer neither found any defects in the books of account nor has rejected the same. As already held, provisions of section 50C is not applicable to cases where income is computed under the heads "*Profits & Gains under business or Profession*". In view of these discussions, we allow the grounds raised by the assessee.

6. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 23rd September 2011

Sd/-
VIJAY PAL RAO
JUDICIAL MEMBER

Sd/-
J. SUDHAKAR REDDY
ACCOUNTANT MEMBER

MUMBAI, DATED: 23rd September 2011

Copy to:

- (1) *The Assessee;*
- (2) *The Respondent;*
- (3) *The CIT(A), Mumbai, concerned;*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, "I" Bench, ITAT, Mumbai.*

**TRUE COPY
BY ORDER**

Pradeep J. Chowdhury
Sr. Private Secretary

ASSISTANT REGISTRAR
ITAT, MUMBAI BENCHES, MUMBAI