

आयकर अपीलिय अधिकरण “~~आई~~” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI

श्री राजेन्द्र, लेखा सदस्य, एवं
श्री सी. नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI RAJENDRA, AM AND SHRI C.N. PRASAD, JM

आयकर अपील सं./I.T.A. No. 7545/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-2011)

M/S. JOHN FOWLER (INDIA) PVT. LTD. (merged with Sungro Seeds Private Limited) 4 th Floor, Raj Mahal building, 84, Veer Nariman Road, Mumbai – 400 020.	बनाम / Vs.	DEPUTY COMMISSIONER OF INCOME-TAX, 1(2) Aaykar Bhavan, Room No. 536, Mumbai – 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCJ4396C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Dharan V. Gandhi
प्रत्यर्थी की ओर से/Respondent by	:	Shri Asgar Zain

सुनवाई की तारीख / Date of Hearing	:	02/11/2016
घोषणा की तारीख / Date of Pronouncement	:	25/01/2017

आदेश / ORDER

Per C.N. Prasad (Judicial Member)

1. This appeal is filed by the assessee against the order of CIT(A) – 2, Mumbai, dated 10/08/2014 for the Assessment Year 2010-11. The only grievance of the assessee in its appeal is that the Ld. CIT(A) erred in confirming the addition of Rs. 33,51,812/- u/s. 50C of the Act.



ITA No.7545/Mum/2014
John Flower (India) Pvt. Ltd.

2. Briefly stated the facts are that the Assessing Officer while completing the assessment noticed that the assessee has shown Long Term Capital Gain of Rs. 103.83 Crores on sale of property at Jakkasandra, Begur Hobli, Bangalore South Taluk. He noticed that in respect of Plot in Survey No. 22(pt.) and 42(pt.) the aggregate consideration as per the sale was reported at Rs. 5,15,37,316/- and whereas the value as per stamp duty filed was at Rs. 5,48,86,000/-. Therefore, since the value of sale consideration reported by the assessee is less than the value as per the stamp duty authority the difference between the two amounting to Rs. 33,48,684/- was proposed to add back to the income of the assessee. In the course of assessment proceedings, the assessee submitted a valuation report obtained from the government approved valuer to the Assessing Officer. The Assessing Officer taking note of the fact that the registered valuer valued the total area of the property of the assessee at Rs. 1,25,94,505/- as on 01/04/1981, the Assessing Officer arrived at the indexed cost of the property for the Assessment year 2009-10 at Rs. 7,95,97,272/-. Accordingly, he revised the working of the Long Term Capital Gain and arrived at the capital gain at Rs. 104.16 crores. The difference between the sale of property shown by the assessee at Rs. 103.82 crores and the capital gain computed by him at Rs. 104.12 Crores which came to Rs. 33,51,812/- was added u/s. 50 to the computation of Short Term Capital Gain by the Assessing Officer.

3. The CIT(A) sustained the additions made u/s. 50C observing that the Assessing Officer rightly adopted the stamp duty valuation in respect of one of the properties where an actual declared sale consideration is lower than the stamp duty valuation and the methodology adopted by the Assessing Officer is strictly in accordance with the provision of Section 50C of the Act.



ITA No.7545/Mum/2014
John Flower (India) Pvt. Ltd.

4. Before us, the Ld. Counsel for the assessee submits as under:-

2.2.1 The appellant has entered into a Memorandum of Understanding with Sycamore Properties Pvt. Ltd. On 02.02.2006 for sale of the above mentioned plots of land for an aggregate consideration. It may kindly be noted that both the plots are adjacent to each other. However, due to the dispute in the title of land, the transaction could not be completed till 2010. It is only during the year under consideration, the appellant was able to get the clear title of the above mentioned land.

2.2.2 In 2010, the Consenting Party was not interested in purchasing the property and has nominated the buyer to purchase the property and has confirmed such nomination by joining as Consenting Party to the absolute sale deed. Accordingly, both the land was sold to Chalet Hotels Limited with the consent of consenting party. This is evident from the sale deed dated 11.02.2010 at Para XIV of page no. 8 and sale deed dated 24.02.2010 at Para XIV at page No. 7.

2.2.3 The appellant though intended, could not sell both the above plots at the same point of time on account of delay in obtaining the conversion order for converting the said plot from agricultural to non-agricultural. The said order of conversion was obtained only on 16/02/2010 which is evident from the sale deed dated 24/02/2010 at para B of page 8. Immediately upon receipt of the order, the sale deed has been executed on 24/02/2010 in just a gap of 13 days.

2.2.4 As both the land are adjacent to each other, the appellant, while filing return of income, has treated the sale of both the properties as one transaction and treated the entire consideration of both the properties for the purpose of calculation of capital gains. The details of actual sale consideration and stamp duty value is as under:-

Survey no.	Area in Sq. Ft.	Sale consideration	Stamp duty value at Rs. 3600 per Sq. Ft.



ITA No.7545/Mum/2014
John Flower (India) Pvt. Ltd.

21(pt) along with Site No. 1B (Survey No. 53/1)	291488	108,38,64,507	104,93,56,800
22(pt) and 42(pt)	15246	5,15,37,316	5,48,85,600
Total	306734	113,54,01,823	110,42,42,400

2.3 As the value of actual total consideration of Rs.. 113,54,01,823 is higher than the stamp value of Rs. 110,42,42,400, the appellant considered the actual consideration as 'full value of consideration' for computing 'capital gain'. Hence, provisions of section 50C of the Act do not apply in the case of appellant.

2.4 The AO, vide the assessment order, has invoked section 50C of the Act and made an addition of Rs. 33,51,812 under the head 'income from capital gains' as under:-

Particular	Amount
Long term capital gain on sale of land as calculated by the appellant	103,82,77,961
Long term capital gain on sale of land as calculated by the AO	104,16,29,773
<i>Difference</i>	33,51,812

5. The Id. Counsel for the assessee further submits that in any case the difference between the valuation as per stamp duty and the sale consideration received by the assessee is less than 15% and in such circumstances no addition can be made. For this proposition he placed reliance on the decision of Jaipur Bench of ITAT in the case of Smt. Sita Bai Khetan vs. Income Tax officer, in ITA No. 823/JP/2013 dated 27/07/2016 and the decision of the Pune Bench in the case of Rahul Constructions Vs. DCIT 38 DTR 0019.

6. The Ld. DR supported the orders of the authorities below.



ITA No.7545/Mum/2014
John Flower (India) Pvt. Ltd.

7. We have heard the rival submissions and perused the orders of the authorities below and the case law relied on. Considering the entire facts of the assessee's case, the submissions of the assessee cannot be ignored. The sale consideration of these two plots sold on the same day though be separated agreements, is more than the stamp duty valuation by Rs. 3,00,00,000/-. Even assuming for a movement that the sale consideration in respect of Plot in survey No. 22 and 42 is less than the stamp valuation it is Rs. 33,48,284/- which is less than 10% of the stamp duty valuation of the said plot. Therefore, in view of the ratio of the decisions relied on by the assessee, the assessee should succeeded in its appeal. The Jaipur Bench in the case of Smt. Sita Bai Ketan (Supra) held as under:-

4.2 *"We have heard rival contentions and perused the material available on record. We find that the Hon'ble coordinate Bench in ITA No. 1543/PN/2007 in the case of Rahul Constructions Vs. DCIT (Supra) has held as under:-*

"We find that the Pune Bench of the Tribunal in the case of Asstt. CIT vs. Harpreet Hotels (P) Ltd. Vide ITA No. 1156-1160/Pn/2007 and relied on by the learned counsel for the assessee had dismissed the appeal filed by the Revenue where the CIT(A) had deleted the unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 per cent. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO vs. Kaaddu Jayghosh Appasahebh, the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. Vs. CIT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent, the difference is liable to be ignored and the addition made by the AO cannot be sustained.

Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference is bound to occur, we are of the considered opinion that the AO in the instant case is not justified in substituting the sale consideration at Rs. 20,55,000/- as against the



ITA No.7545/Mum/2014
John Flower (India) Pvt. Ltd.

actual sale consideration of Rs. 149,00,000 disclosed by the assessee. We, therefore, set aside the order of the CIT(A) and direct the AO to take Rs. 19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed."

In the instant case, the difference between the valuation adopted by the Stamp Valuation Authority and declared by the assessee is less than 10%. Therefore, respectfully following the decision of the Hon'ble Coordinate Bench, we hereby direct the AO to adopt the value as declared by the assessee. This ground of the assessee is allowed".

8. Therefore, respectfully following the said decision we direct to AO to adopt the valuation of sale consideration as declared by the assessee. The additions made by the Assessing Officer u/s. 50C is deleted and as grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 25th January, 2017

Sd/-
(Rajendra)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 25.01.2017

PS:- Pooja K.

Sd/-
(C.N. Prasad)

न्यायिक सदस्य / Judicial Member

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

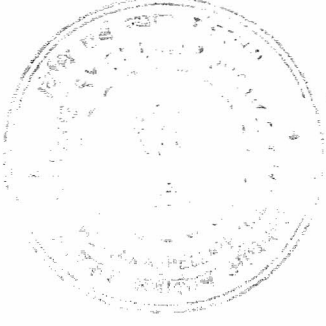
1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A) 2
4. आयकर आयुक्त / CIT - concerned I
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai



ITA No.7545/Mum/2014
John Flower (India) Pvt. Ltd.

6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,



उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai