IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR.

BEFORE SH. A.D. JAIN, JUDICIAL MEMBER
AND SH. B.P. JAIN, ACCOUNTANT MEMBER

I.T.A. No. 437(Asr)/2012
Assessment Year: 2009-10
PAN: AAACN6345A

Nitco Logistics Pvt. Ltd., Talab Tillo, Jammu	Vs.	Joint Commissioner of Income Tax, Range-2, Jammu
(Appellant)		**(Respondent)**

Appellant by: Sh. P.N. Arora, Advocate
Respondent by: Sh. Saad Kidwai, DR

Date of hearing: 28.08.2014
Date of pronouncement: 05.09.2014

ORDER

PER A.D. JAIN, J.M.

1. This is assessee's appeal against the order dated 09.10.2012 for the assessment year 2009-10 passed by learned CIT(A), Jammu.

2. The following effective grounds have been taken:

i. The learned CIT(A) has grossly erred in law and facts of the case in confirming addition of Rs. 15,99,471/- on account of Dharmarth Receipts.
ii. The learned CIT(A) has erred in law and on the facts of the case in confirming addition of Rs. 2,09,00,000/- by increasing the purchase cost of the assessee in respect of leasehold godown at Sector 26, Transport Nagar.

http://www.itatonline.org

3. Apropos ground no. 1, the Assessing Officer made an addition of Rs. 15,99,471/- on account of Dharmarth Receipts collected along with freight receipt, not reflected by the assessee in its profit and loss account.

4. The Assessing Officer observed that the receipts were directly related to the business of the assessee company; that the receipts were received not by a trust created for the purposes of charity in nature, but by a company doing business and trading; and that no evidence had been filed by the assessee that the receipts had been actually spent on charity.

5. The learned CIT(A), while upholding the addition, observed that the assessee had remained unable to establish that the object of the company, as per its memorandum and articles of association, was also to carry out charity; that its objective was commercial and there was no reason to collect Dharmarth from its clients; and that, therefore, the Assessing Officer had rightly treated this receipt as a trade receipt.

6. Before us, the learned counsel for the assessee has contended that similar receipts were allowed in earlier years, which are as follows:

http://www.itatonline.org

S. No.	Asstt. Year	Amount Recd.	Remarks
1.	2001-02	1834047/-	Allowed in assessment u/s 143(3)
2.	2002-03	1846517/-	Allowed in assessment u/s 143(1)
3.	2003-04	1730473/-	Allowed in assessment u/s 143(3)
4.	2004-05	1727683/-	Allowed in assessment u/s 143(3)
5.	2005-06	1745350/-	Allowed in assessment u/s 143(3)
6.	2006-07	1746854/-	Allowed in assessment u/s 143(3)
7.	2007-08	1662338/-	Allowed in assessment u/s 143(3)
8.	2008-09	1708967/-	Allowed in assessment u/s 143(3)

7. It has been further contended that a summarized copy of the accounts of the Dharmarth Receipt was filed. A copy thereof is at APB - 8. It has next been submitted that as per CBDT Circular No. 77-F (copy at APB - 9), dated 21st March, 1979, Dharmarth Receipts are not taxable; that this Circular is binding on the Department and has illegally not been abided by; and that while wrongly holding that the objects of the assessee company were not charitable, the learned CIT(A) has failed to take into consideration Clause no. 30 of the memorandum and articles of association of the assessee company [copy at APB 34, relevant portion at APB 34(d)].

8. The learned DR has placed strong reliance on the impugned order, contending that the objective of the assessee company is commercial and there was no reason to collect Dharmarth from its

http://www.itatonline.org

clients; and that the assessee has not been able to establish that the objective of the assessee company was to carry out charity.

9. It is not disputed that Dharmarth receipts are not taxable. This is as per the CBDT Circular (supra), as also the following decisions:

i. CIT Vs. Bijli Cotton Mills (P) Ltd., (1979) 116 ITR 60 (SC)
ii. CIT Vs. Gheru Lal Bal Chand, (1978) 111 ITR 134 (P&H)
iii. Addl. CIT Vs. Channoo Lal Damodar Dass, (1978) 113 ITR 759 (All.)
iv. Addl. CIT Vs. Dalsukhrai Jaidayal, (1979) 117 ITR 466 (All.)
v. Nathu Ram Shiv Narain Vs. CIT, (1982) 134 ITR 625 (P&H)
vi. CIT Vs. E.H. Kathawala & Co., (1982) 135 ITR 384 (Bom.)
vii. Chunnilal Onkarlal (HUF) Vs. CIT, (1982) 135 ITR 580 (MP)
viii. CIT Vs. Ratilal Popatlal Shah, (1984) 43 CTR 4 (Bom.)

10. The only dispute before us is as to whether the receipts *were, in fact,* Dharmarth receipts. The assessee's stand in this regard is that it was collecting Dharmarth in GRs and gate passes, as part of charity; that this Dharmarth collected every month was being passed on to a charitable trust; and that the receipt was neither shown as income, nor as expenditure. This stand of the assessee is entirely in line with its stand for the earlier years, right from A.Y. 2001-02 to A.Y. 2008-09. For all these years, in scrutiny assessments framed under Section 143(3) of the Income-tax Act, 1961 (for short "the Act"), but for A.Y. 2002-03, for which year, such assessment was framed under section 143(1) of the Act, the Department has never disputed such collection in GRs and gate

http://www.itatonline.org

passes and the fact that it was being passed on to a charitable trust. The objection of the authorities below in this regard, raised only for the first time, during the year 2009-10, is that the receipt is not by a charitable trust, but by the assessee company, which is doing business and trading. This, according to us, is not at all acceptable. Once the receipts are routed as such to a charitable trust by the assessee company and the nature of that trust has not been questioned, we hold that the receipts are Dharmarth receipts and nothing else. The consistent acceptance of such receipts by the Department itself, for as many as eight earlier assessment years, mandates the acceptance of such receipts of the assessee during the year under consideration also as Dharmarth receipts, when no change in facts has been pointed out by the authorities to have come about during the year under consideration.

11. That Dharmarth receipts are not taxable, has been laid down as law by the Hon'ble Supreme Court, way back in the year 1979, in the case of 'CIT Vs. Bijli Cotton Mills (P) Ltd.' , (1979) 116 ITR 60 (SC). Clause no. 30 of the memorandum and articles of association of the assessee company reads as follows:

> *"30. To donate or subscribe money for any national, charitable, benevolent or public purchase or to institutions and funds for public benefit or which have any moral and other claim on company or its*

http://www.itatonline.org

members, employees or customers and to promote such institutions and funds and to give charities and donations."

12. This clause of memorandum and articles of association of the assessee company clearly shows that one of the objectives of the assessee company is charity. The learned CIT(A) has remained oblivious of this specific clause in the memorandum and articles of association of the assessee company, while holding that 'the appellant could not establish before me that the objectives of the company as per memorandum and articles of association was also to carry out charity.'

13. Therefore, finding merit in this grievance raised by the assessee, the same is hereby accepted. The impugned order in this regard is cancelled and the addition made is deleted.

14. The Assessing Officer made another addition of Rs. 2,09,00,000/-. The assessee had acquired, during the year, a shop-cum-office No. 25, measuring 777.77 sq. metres in Sector-26, Chandigarh. As per the registration deed dated 04.12.2008 with the Sub-Registrar, Chandigarh, the assessee company had shown payment of Rs. 18,00,000/- as the purchase price of the said property. The Estate Officer, Chandigarh, however, valued the property at circle rate, based on the prevailing market rates. The assessee paid stamp duty charges @ 3%,

http://www.itatonline.org

total amounting to Rs. 6,81,500/-. The minimum value of the property at the rate adopted by the Registering Authority came to Rs. 2,27,00,000/-.

15. The Assessing Officer observed that accepting the minimum fixed rate and depositing of fees on that rate means that the assessee had accepted the rate of the property on the date of its transfer at Rs. 2,27,00,000/- only; that as such, it was a case of apparent under-valuation of the property by an amount of Rs. 2,09,00,000/-, since the assessee had shown payment of only Rs. 18,00,000/-. The Assessing Officer observed that though the assessee had contended before him, that the assessee company was a tenant of the property in question since 1976 and as per the Memorandum of Understanding executed on 18.02.2002 between the seller and the asessee, and that the purchase price was set at Rs. 18,00,000/-, payable in installments, such contention was not acceptable, since no evidence of tenancy rights had been produced by the assessee. The Assessing Officer observed that the assessee had tried to undervalue the property in the guise of tenanted property. The Assessing Officer further observed that the assessee had also shown other properties at less value, i.e., properties at Bangalore, Pathankot and New Delhi. It was also observed that it was unlikely and abnormal that a purchaser would take monthly installments in lieu of sale of property, starting in

http://www.itatonline.org

2002 and ending in 2007; and that in fact, it was a colourable device, which had been adopted by the assessee. The Assessing Officer applied the provisions of Section 50C of the Act.

16. The learned CIT(A) upheld the addition. It was held, inter alia, that the commercial property, measuring 777.8 sq. metres, situated in Sector- 26, Chandigarh, could not be purchased for a meager amount of Rs. 18,00,000/-; that even a two bed room flat could not be acquired for such an amount; that from the registration deed, it was evident that the property was free from all encumbrances, and that the transferee had been handed over the possession thereof; that the property in question was a lease-hold property and the Estate Officer was the greater lessor; that the property could not have been transferred to the assessee company without the permission of the greater lessor, who was the owner thereof; that the provisions of Section 50C of the Act prescribes for deemed addition in the case of capital gains, if the property is sold at a value lesser than the prescribed circle rate; that it was true, that this was not the case of a seller, but was that of a buyer; that, however, the intention of the legislature in enacting Section 50C of the Act was required to be considered; that the seller and the buyer are two sides of the same coin and they have to be treated at par, otherwise, an anomalous result would

http://www.itatonline.org

ensue; and that as such, the circle rate ought to be applied in the case of the purchaser also and a deemed addition under Section 50C of the Act was warranted.

17. In this regard, the learned counsel for the assessee has contended that the assessee was a tenant in the demised premises since 1976 and the premises was being used by the assessee as a godown for doing business of transportation; that the rent for such property was paid by the assessee @ Rs. 3,000/- per month in 2002; that it was due to this encumbrance by the assessee over the demised property, that the seller/owner agreed to sell the same to the assessee for Rs. 18,00,000/- by a Memorandum of Understanding, dated 18.02.2002 (APB-35); that it was specifically mentioned therein that "***Where as the first party is lease holder of plot no. 25, sector 26 transport area Chandigarh [herein called property] and the second party is the tenant of the said property.***"

18. The learned counsel for the assessee has further contended that once the assessee, who was the tenant of the demised property, was itself buying the property, obviously, the property, for such fact, was free from encumbrance; that apropos the CIT(A)'s objection, as to how the property had been transferred without the permission of the greater lessor, this, if at all, was needed to be enquired of from the Estate Officer,

http://www.itatonline.org

Chandigarh Administration; that so far as regards the objection that there was no evidence of tenancy rights, the rent account was filed before the Assessing Officer, as per which, during the A.Y. 2000-01, rent of Rs. 36,000/- had been paid and was allowed; that such rent was paid up to A.Y. 2002-03, which was also duly allowed; that the A.O. had wrongly stated that that assessee had agreed to the stamp fee rate to be 3%; that nothing had been brought on record to prove the stamp rate to be 3%; that the property at Pathankot was not undervalued by the assessee, as was accepted by the learned CIT(A); that apropos the property at New Delhi, working of capital gain stood shown in the return filed prior to the passing of the assessment order; that the capital gain/loss was accepted by the Department in the assessment order for A.Y. 2010-11; that the said property was under the lien of the Bank and it was released in A.Y. 2010-11; that the assessee company had itself shown the sale consideration at Rs. 5.5 crore for working out capital gain; that nothing has been brought on record to prove any payment over and above the claimed sum of Rs. 18 lacs, and that the provisions of Section 50C are not applicable to the case of a purchaser, i.e., the assessee company in the present case.

19. The basic issue involved herein is as to whether the provisions of Section 50C of the Act are applicable to the case of a purchaser also. If

http://www.itatonline.org

it is not so, the assessee, being the purchaser, immediately goes out of the ken of the provisions of Section 50C of the Act and the addition made would become unsustainable.

20. Section 50 C(1) of the Act, reads as follows:

> ***"50C(1)****- 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 Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."*

21. A plain reading of Section 50C of the Act shows that the income under the head "capital gains" is applicable to the sale of immovable property, and not to "purchase" thereof. Therefore, the provisions of Section 50C(1) of the Act are not applicable to the case of a purchaser. It is well settled that the legislature chooses its words with utmost care. When the words of a particular provision are explicit, clear and unambiguous, there is no room for interpretation thereof and as such, the legislative intent qua such a provision is not required to be gone into, as has been wrongly done by the learned CIT(A) in the present case. The section talks of 'consideration received or accruing'. Period.

http://www.itatonline.org

'Consideration paid' cannot be imported, when the legislature has itself not deemed it fit to incorporate anything to such effect in the section.

22. In view of the above discussion, this grievance of the assessee is also found to be justified and accepted as such. Therefore, the addition made under Section 50C of the Act and sustained by the learned CIT(A) is hereby cancelled, and the other arguments, rendered academic, are no longer required to be gone into.

23. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 5th September, 2014

Sd/-	Sd/-
(B.P. JAIN)	(A.D. JAIN)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 5th September, 2014
/RK/
Copy of the order forwarded to:

1. The Assessee: Nitco Logistics Pvt. Ltd., Talab Tillo, Jammu
2. JCIT, Range-2, Jammuv
3. The CIT(A),
4. The CIT,
5. The SR DR, I.T.A.T.,

True copy

By order

(Assistant Registrar)
Income Tax Appellate Tribunal,
Amritsar Bench: Amritsar.

http://www.itatonline.org