

No addition just because two flats were shown at lesser price than price of remaining flats in same building

Summary – The Mumbai ITAT in a recent case of Prashant Arjunrao Kolhe, (the Assessee) held that where assessee purchased and subsequently sold four flats and Assessing Officer held that assessee had suppressed sales of two flats thereby making additions on account of short term capital gains, in view of fact that said two flats had been sold at higher FMV assessed under stamp duty valuation, addition made by Assessing Officer was to be deleted

Where tax effect in appeals filed by revenue before Tribunal was less than Rs. 10 lakhs, in view of instructions of CBDT Circular No. 21/2015, dated 10-12-2015, appeals so filed by revenue were to be dismissed as not maintainable

Facts

- The assessee an individual purchased four flats in Mumbai. All the four flats were sold by the assessee during the previous year relevant to assessment year 2010-11.
- The Assessing Officer observed that, the first two flats sold to one party were sold at much higher figure, whereas, the other two flats sold after 20 days were sold at lesser prices. However, assessee could not give proper satisfactory reasons for sale of two flats at a lower price. Thus, on this premise he inferred that the assessee had suppressed the sales of subsequent two flats and, accordingly, he estimated the sale consideration of these two flats and, accordingly, worked out the short-term-capital-gains.
- On appeal, the Commissioner (Appeals) upheld the action of the Assessing Officer on the ground that, no convincing explanation had been filed by the assessee for selling second transaction of the flats at a lower price than the earlier transaction of the two flats.
- On appeal to the Tribunal:

Held

- The assessee had purchased four flats in one building. From the date of agreement for purchase, purchase consideration, date of sale, sale consideration and value as per the Stamp valuation of the four flats it could be seen that so far as two flats in dispute are concerned, the same have been sold at slightly higher price than the FMV assessed by the Stamp duty authority as per the stamp valuation. Thus, even under the deeming provisions of section 50C it cannot be held that, assessee has suppressed the sales. If the sale price of two flats sold in the second transaction was comparatively lower than the sale price of the two flats in the first transaction, then same should have been a starting point for conducting the basic enquiry by the Assessing Officer to ascertain the sale price and to controvert the sale price shown by the assessee. At least some material or information should have been brought on record by the Assessing Officer to rebut that the sale price

shown by the assessee is lower. Had there been the case where sale price shown was lower than the stamp duty valuation, then the sale price would have been deemed to be the value assessed under the stamp duty valuation in accordance with the section 50C. However, this is not the case here as the assessee's sale prices are evidenced by 'sale agreements' and is also higher than the FMV assessed. Thus, without any contrary material, there is no reason to uphold the reasoning and view taken by the authorities below that sale of the two flats sold subsequently should be taken at the same price on which two flats were sold 20 days earlier. Thus, the addition made by the Assessing Officer on account of short-term-capital-gain is deleted and sale consideration shown by the assessee as per the sale agreement of the two flats is to be taken as such. Accordingly, ground raised by the assessee is allowed.