

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1244/Mum/2019
(Assessment Year :2014-15)**

&

**ITA No.2603/Mum/2019
(Assessment Year :2014-15)**

| | | |
|--|-----|---|
| Shri Harish H Gandhi 6, Anant Apartment Thakur Complex Kandivalie (E) Mumbai – 400 101 | Vs. | ACIT 33(1) C-12, Pratyakshakar Bhavan BKC, Bandra (E) Mumbai – 400 051 |
| PAN/GIR No.AADPG1721F | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|--|
| Assessee by | Shri Aditya Kumar Sharma / Ms. Taanishka Sharma |
| Revenue by | Shri Vivek Anand Ojha |
| Date of Hearing | 24/05/2022 |
| Date of Pronouncement | 28/06/2022 |
| | |

आदेश / O R D E R

PER M. BALAGANESH (A.M):

ITA No.1244/Mum/2019 (A.Y.2014-15)

This appeal in ITA No.1244/Mum/2019 for A.Y.2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-45, Mumbai in appeal No.CIT(A)-45/ACIT-33(1)/ITA-421/2016-17 dated 10/10/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2016 by the Id. Asst. Commissioner of Income Tax 33(1), Mumbai (hereinafter referred to as Id. AO).

ITA No.2603/Mum/2019 (A.Y.2014-15)

This appeal in ITA No.2603/Mum/2019 for A.Y.2014-15 preferred by the order against the revision order of the Id. Pr. Commissioner of Income Tax-33, Mumbai u/s.263 of the Act dated 28/03/2019 for the A.Y.2014-15.

Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order.

2. Let us take up the appeal of the assessee in ITA No.1244/Mum.2019 first.

3. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made u/s.43CA of the Act in the sum of Rs.4,42,460/- in the facts and circumstances of the instant case.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee is a builder / developer and running a proprietary concern M/s. Mavji Estate Developers. The assessee sold a property bearing flat No.405, Meera Empire, Subhash Nagar, Teen Dongri, Goregaon (W), Mumbai on 22/02/2014 for Rs.62,55,000/- to Mr. Babasaheb Rajaram Waghambare and others. The assessee had actually entered into an agreement with the said party on 08/02/2011 itself pursuant to which the assessee had received the first payment of Rs.2,50,000/- by account payee cheque. Hence, the assessee pleaded that the allotment of this flat No.405 was indeed made to the buyer on 08/02/2011 itself, at which point in time, the provisions of Section 43CA of the Act were not at all in the statute. This was the reply given by the assessee in response to show-cause notice issued by the Id. AO for

applying the stamp duty value on the date of agreement in 2011 in terms of Section 43CA of the Act. The Id. AO however, disregarded the contentions of the assessee and applied the stamp duty value prevailing in February 2011 at Rs.66,97,460/- and since the said value was more than the registered value in 2014 by the assessee at Rs.62,55,000/-, the Id. AO brought to tax the differential sum of Rs.4,42,460/- (Rs.66,97,460/- - Rs.62,55,000/-) as an addition u/s.43CA of the Act while completing the assessment. This action was confirmed by the Id. CIT(A).

3.2. At the outset, the assessee had pleaded that allotment of Flat No.405 was made to the prospective buyer way back in February 2011 itself. It was pleaded that the provisions of Section 43CA of the Act was introduced in the statute only w.e.f. A.Y.2014-15. Hence, the stamp duty value in terms of Section 43CA of the Act could not be applied in respect of subject mentioned transaction where the allotment was made in February 2011 whereas the property was ultimately sold by way of registered sale deed in February 2014. We find from the copy of sale deed registered on 22/02/2014 that flat No.405 was ultimately sold for Rs.62,55,000/-. The copy of sale deed is enclosed from pages 56 to 90 of the paper book. It is not in dispute that assessee had received a sum of Rs.2,50,000/- as advance for flat No.405 vide cheque No.502157 dated 08/02/2011 drawn on Central Bank of India, Ulhasnagar- 421 003 from the prospective buyer. The fact that initial allotment was made by the assessee for flat No.405 in February 2011 itself is further evident and fortified by the Act of the Id. AO itself, wherein the Id. AO had resorted to apply the stamp duty value prevailing in February 2011. This consciously goes to prove that the Id. AO had indeed accepted the fact that allotment of the flat has been made in February 2011 itself. Moreover, we find from

the perusal of the sale deed dated 22/02/2014 that the assessee had further received Rs.3,93,246/- from the prospective buyer before handing over the possession of the flat, the details of which are enclosed in page 75 of the paper book containing the sale deed. The break-up of Rs.3,93,246/- received by the assessee from the prospective buyer are as under:-

| | | | |
|--------------|---|---|----------------------|
| i) | Towards legal charges | - | Rs.25,000/- |
| ii) | Towards share money and entrance fees | - | Rs. 1,001/- |
| iii) | Towards formation and registration of the said association | - | Rs.10,000/- |
| iv) | Towards due performance of this agreement, | | |
| v) | Water meter and electric meter deposits and Miscellaneous expenses for obtaining such Connections | - | Rs.25,000/- |
| vi) | Towards proportionate share of development Charges and other charges of service charges | - | Rs.78,925/- |
| vii) | Towards corpus fund for up-keep and maintenance And facilities | - | Rs.1,03,320/- |
| viii) | Towards club house charges | - | Rs.1,50,000/- |
| Total | | | Rs.3,93,246/- |
| ===== | | | |

3.3. It was pleaded by the Id. AR that this is an additional sum of Rs.3,93,246/- received from the buyer of the flat and hence the same also is required to be treated as consideration as ultimately it is left to the discretion of the builder i.e. assessee herein to bifurcate the total consideration into several parts as detailed supra. Hence, if this Rs.3,93,246/- is also added to the sale consideration mentioned in the sales deed to Rs.62,55,000/- then the total consideration of the property would be Rs.66,48,246/- and that when the said sum is compared with the stamp duty value of Rs.66,97,460/- then the difference would be only a meager sum of Rs.49,214/-. We feel this aspect need not be gone into by us to address the dispute. Admittedly, as stated earlier, the initial

advance received in the sum of Rs.2,50,000/- on 08/02/2011 pursuant to allotment of flat No.405 made by the assessee to the builder was received by account payee cheque. Hence, the stamp duty value prevailing on the date of initial agreement or allotment would have to be seen which has been rightly considered by the Id. AO also in the instant case. But we find that there is a proviso introduced by the Finance Act 2018 w.e.f. A.Y.2019-20 onwards and which was later amended by the Finance Act 2020 applicable from A.Y.2021-22, which states that if the difference between the stamp duty value and the reported sale consideration is not more than 10% then, the reported sale consideration shall have to be accepted and no addition in terms of 43CA is required to be made. We find that this amendment has been held to be retrospective in operation by the Co-ordinate Bench decision of this Tribunal in the case of Maria Fernandez Cheryl vs. ITO reported in 123 taxmann.com 252 wherein it was held that amendment made in scheme to Section 50C(1) of the Act by inserting the proviso thereto and by enhancing tolerance band for variations between sale consideration vis a vis stamp duty valuation from 5% to 10% are effective from date on which section 50C itself was introduced i.e. from 01/04/2003 and therefore, having retrospective applicability thereon. The language of provisions of Section 50C are exactly pari materia with provisions of Section 43CA of the Act. Hence, though the aforesaid decision was rendered in the context of Section 50C of the Act, the same analogy would apply for provisions of Section 43CA of the Act also as similar proviso is available in Section 43CA of the Act also. Hence, respectively following the aforesaid decision of this Tribunal, we hold that the difference of Rs.4,42,460/- added by the Id. AO in the assessment falls below the tolerance band of 10% and hence, by applying the proviso to Section 43CA of the Act, no addition is required to be made in the instant case u/s.43CA of the Act. Accordingly, the Id. AO is hereby

directed to delete the addition of Rs.4,42,460/- made by him in the assessment. Accordingly, the grounds raised by the assessee are allowed.

4. Let us take up the appeal of the assessee for A.Y.2014-15 in ITA No.2603/Mum/2019.

5. We find that the Id. PCIT had invoked revision jurisdiction u/s.263 of the Act against the order passed by the Id. AO u/s.143(3) of the Act dated 30/12/2016. The assessment order framed u/s.143(3) of the Act dated 30/12/2016 was subject matter of challenge before us in ITA No.1244/Mum/2019 which has been adjudicated hereinabove. In the said assessment order, the Id. PCIT had applied the provisions of Section 43CA of the Act by adopting the stamp duty value prevailing on the date of initial allotment i.e. in February 2011 and thereby making an addition of Rs.4,42,460/- in the assessment in respect of Flat No. 405. This order was sought to be treated by the Id. PCIT as erroneous and prejudicial to the interest of the Revenue on the ground that since the sale deed was registered in February 2014 for Rs.62,55,000/-, the Id. AO ought to have adopted the stamp duty value prevailing in February 2014 and brought the differential sum to tax. Moreover, the Id. PCIT also wants to apply the stamp duty value in respect of 4 other flats which were sold during the year. We find from the adjudication of the aforesaid issues in ITA No. 1244/Mum/2019 supra , very clearly go to prove that adequate enquiries on the impugned issue of applicability of provisions of Section 43CA of the Act had been duly made by the Id. AO in the assessment proceedings itself. Hence, it cannot be said that the Id. AO had not made any enquiry on the impugned issue. The Id. AO was fully conscious of the fact while framing the assessment that though the sale deed was registered in February 2014, the initial allotment was made in February 2011 itself by

the assessee in respect of flat No.405. Hence, in respect of flat No.405 and other flats, as the case may be, the Id. AO was also conscious of the fact that the five flats were sold during the assessment year 2014-15 by the assessee. After understanding and perusal of all the sale deeds which were placed on record by the assessee vide page No.55-216 of the paper book, the Id. AO was satisfied with the sale consideration reported by the assessee in respect of flat Nos.1001,501,102 and 202 and thereby did not resort to make any addition thereon. It is a fact on record that the Id. AO had indeed asked for a specific query vide letter dated 11/05/2016 alongwith notices u/s.142(1) of the Act directing the assessee to furnish the details of flats sold projectwise in a tabular form as prescribed by him, during the course of original assessment proceedings. The evidence in this regard is enclosed in page 1 of the paper book. The assessee had vide reply dated 22/07/2016 furnished the same which is enclosed in page Nos.3,6 & 7 of the paper book. Further replies were given in respect of very same project Meera Empire vide letter dated 09/12/2016 which is enclosed in pages 8-13 of the paper book. Further reply was also filed by the assessee vide letter dated 22/12/2016 before the Id. AO for a specific query of applicability of provisions of Section 43CA of the Act in respect of all the five properties sold by the assessee together with a tabulation clearly mentioning the initial date of booking / allotment and the ready reckoner rate at the time of booking. In the said working given by the assessee, the ready reckoner rate /circle rate at the time of booking was lesser than the reported sale consideration in respect of flat Nos.1004,102,202 and 501. The details of these workings are enclosed in page 16 of the paper book filed. Hence, the Id. AO did not resort to make any addition u/s.43CA of the Act in respect of these four flats. Whereas in respect of flat No.405, the ready reckoner rate at the time of initial booking was higher than the reported sale consideration. Hence, an

addition of Rs.4,42,460/- was made by the Id. AO in respect of Flat No. 405 alone in the assessment. Hence, it could not be said that the Id. AO had not made any enquiry in this regard. In the instant case, the Id. AO had duly applied the provisions of the Act more particularly the provisions of Section 43CA(3) and 43CA(4) of the Act. We find that the Id. PCIT in the instant case is proceeding on incorrect application of provisions of Section 43CA of the Act by directing the Id. AO to adopt the ready reckoner rates on the date of sale ignoring the fact that the ready reckoner rate is to be considered on the date of initial booking / allotment as per the provisions of section 43CA of the Act itself.

5.1. In view of the aforesaid observations, we hold that the Id. AO had made due enquiries in the instant case while framing the assessment and the Id. PCIT is only trying to substitute his incorrect view by incorrect application of law and we hold that the order passed by the Id. AO in the instant case is neither erroneous nor prejudicial to the interest of the Revenue and hence there is no question of invocation of revisionary jurisdiction by the Id. PCIT u/s.263 of the Act. Hence, the revision order passed u/s.263 of the Act by the Id. PCIT is hereby quashed. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, both the appeals of the assessee are allowed.

Order pronounced on
in the notice board.

28/06/2022 by way of proper mentioning

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 28/06/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai