

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.75/PUN/2023
निर्धारण वर्ष / Assessment Year : 2015-16

Dugad Properties,
Pushpa Heights,
Seth Narayandas Dugad Chowk,
Pune - 411037

PAN : AAHFD9372K

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle - 5,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suhas P. Bora
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 06-04-2023

घोषणा की तारीख / Date of Pronouncement : 11-04-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 29-11-2022 passed by the Commissioner of Income Tax (Appeals)-11, Pune [‘CIT(A)'] for assessment year 2015-16.

2. Ground Nos. 1 and 2 raised by the assessee challenging the action of CIT(A) in not considering the effect of proviso to section 43CA of the Act in

terms of difference between stamp duty valuation consideration is less than 10% in the facts and circumstances of the case.

3. We note that the assessee is firm engaged in the business of builder and promoter. The AO found the difference of value between sale consideration and stamp duty value. The AO asked the assessee to give the details of transactions. The assessee provided the said details which are reproduced by the AO in his order at pages 2 and 3 which are as under:

S. No.	Name of Buyer	Date of Transaction	Consideration	Stamp duty value	Difference
1	Durkar Mugdha	05/06/2014	40,00,000	46,13,500	6,13,500
2	Telangi Sudarshan Narayan	21/03/2013	35,00,000	37,61,500	2,61,500
3	Trivedi Piyush	28/03/2013	36,50,000	39,49,500	2,99,500
4	Kulkarni Laxmikant	16/11/2013	38,05,000	38,06,000	1,000
5	Limaya Rashmi Prakash	06/12/2013	39,10,000	39,79,500	69,500
6	Mane Prakash	12/03/2014	40,80,000	42,55,000	1,75,000
7	Shinde Shivaji P.	09/07/2014	37,00,000	43,94,000	6,94,000
8	Bale Vinaya B.	08/10/2014	41,53,600	42,36,500	82,900
9	Tupe Santosh P.	23/02/2015	45,00,000	45,96,000	96,000
Total			352,98,600	375,91,500	22,92,900

4. On an examination of the above details, the AO show caused the assessee why the addition should not be made by invoking the provisions of section 43CA of the Act. The assessee vehemently contended that the addition is not maintainable as the difference between the sale consideration and stamp duty value is less than 10% by taking support from proviso to sub-section (1) of section 43CA of the Act. The AO did not accept the said submissions of the assessee and added an amount of Rs.22,92,900/- u/s. 43CA of the Act. We note that the AO passed assessment order, pending DVO report in respect of fair market value.

5. Further, having not satisfied with the order of AO, the assessee filed an appeal before the CIT(A). We note that the objection of the addition is not maintainable being the difference less than 10% was raised before the CIT(A) also. The CIT(A) was of the opinion the first proviso to section 43CA(1) of the Act is available only if the stamp duty value is considered and since the matter was referred to DVO for determination of fair market value, the fair market value as determined by the DVO is to be considered. In view of the same he directed the AO to adopt value worked out by the DVO for each flat for the purpose of section 43CA of the Act vide paras 11,12 and 13 of the impugned order. Before us, the ld. AR drew our attention to page 59 of the paper book, wherein, the details of difference being less than 10% in terms of proviso to section 43CA of the Act is provided. On perusal of the same, we note that the difference between sale consideration and stamp duty value in respect of properties at Sr. Nos. 1 and 7 are more than 10% and we proposed to disallow the same and to give relief to the properties at Sr. Nos. 2 to 6, 8 and 9 in terms of proviso to section 43CA(1) of the Act by taking support from the orders of this Tribunal in the case of V.K. Developers in ITA No. 923/PUN/2019 for A.Y.

2016-17 and in the case of Sai Bhargavanath Infra in ITA No. 1332/PUN/2019 for A.Y. 2015-16, but however, the ld. AR did not agree for the said proposal and agreed for remand of the issue to the file of AO for its fresh consideration in terms of value determined by the DVO in this regard. As discussed above, we confirm the order of CIT(A) and direct the AO to determine the addition if any in terms of fair market value determined by the DVO. Thus, ground Nos. 1 and 2 raised by the assessee are allowed for statistical purpose.

6. Ground Nos. 3, 4, 5 and 6 raised by the assessee challenging the action of CIT(A) in confirming the order of AO by invoking deemed rent u/s. 23(4) of the Act on unsold flats under stock-in-trade in the facts and circumstances of the case.

7. We note that the assessee has shown closing stock of Rs.4,17,41,686/- as on 31-03-2015. According to the AO, the assessee has shown value of 9 unsold flats at Rs.1,81,18,000/- with total area at 9059 sq. ft. The AO was of the opinion that the assessee completed construction of the said flats and possession also given to the flat owners, but did not offer deemed rent on completed and unsold 9 flats. The CIT(A) confirmed the order of AO in making addition of Rs.8,84,234/- on account of deemed rent u/s. 23(4) of the Act. Before us, the ld. AR drew our attention to orders of this Tribunal in support of its contention that no addition is maintainable on deemed rent on unsold flats which are shown as stock-in-trade. We note that this Tribunal in the case of M/s. Cosmopolis Constructions in ITA No. 191/PUN/2022 for A.Y. 2015-16 held no addition is maintainable on account of deemed rent on unsold flats

which are treated at stock-in-trade. The relevant portion of the said order at para 3 is reproduced as under for ready reference :

“3. At the outset, the ld. AR and ld. DR fairly conceded that the issue raised in the present appeal is covered by the orders of this Tribunal in assessee’s own case which are on record in ITA Nos.230 & 231/PUN/2018 for A.Ys. 2013-14 and 2014-15 vide order dated 12-09-2018. The relevant portions of the said order are reproduced here-in-below for ready reference:

“8. In the case of Commissioner of Income Tax Vs. Ansal Housing Finance And Leasing Co. Ltd. (supra) the Hon’ble Delhi High Court taking a contrary view has held that annual rental value on unsold flats built by assessee engaged in construction business is assessable as income from house property. It is a well settled law that when two divergent views of non-jurisdictional High Courts are available and there is no decision on the issue from the Jurisdictional High Court, the view in favour of the assessee has to be adopted [Commissioner of Income Tax Vs. Vegetable Products Ltd.(supra)].

9. In so far as the decision of Hon’ble Bombay High Court in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) is concerned we find that the facts in the said case are at variance. In the said case the assessee was engaged in construction business. The assessee rented out unsold flats and suo-motu offered rental income from the flats under the head ‘Income from House Property’. On the contrary the Revenue wanted to tax rental income under the head ‘Business Income’. The matter travelled to the Tribunal. The Tribunal held that the income earned by the assessee from renting of flats is to be assessed under the head ‘Income from House Property’. The Department carried the matter in appeal before the Hon’ble High Court. The Hon’ble High Court confirmed the findings of Tribunal and held that rental income received from unsold portion of property constructed by the assessee, is assessable as income from house property. The core difference between the case of the assessee and in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) is that in the case of assessee, it is notional annual rental income on flats held as stock which is sought to be taxed, whereas in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) it was the case of actual rental income earned by the assessee from renting of flats constructed by it. Hence, the decision rendered in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) would not apply in the facts of the present case.

10. We further find that Mumbai Bench of the Tribunal in M/s. C.R. Developments Pvt. Ltd. Vs. JCIT (supra), M/s. Runwal Constructions Vs. ACIT (supra) and Shri Girdharilal K. Lulla Vs. DCIT (supra) under similar set of facts have taken a consistent view in holding notional annual rental value on unsold flats held as stock-in-trade by the assessee engaged in construction and development activities as ‘Business Income’.”

8. We note that the facts and circumstances in the above case are similar to the facts of the present case. We find no contrary view or order

brought on record by the ld. DR in this regard. Therefore, in the light of the above, we hold the no addition is justified under deemed rent u/s. 23(4) of the Act. Accordingly, addition made by the AO as confirmed by the CIT(A) is not justified and it is deleted. Thus, ground Nos. 3, 4, 5 and 6 are allowed.

9. In ground No. 7 the assessee has assailed charging of interest u/s. 234B of the Act. The charging of interest u/s. 234B is mandatory and consequential. Accordingly, ground No. 7 is dismissed.

10. In the result, the appeal of assessee is partly allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on 11th April, 2023.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th April, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune
4. The Pr. CIT (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune