

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.1814/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2015-16**

M/s. Anandtara Properties,
133-Anandtara Villa Mundhwa Road,
Pune-411036.

PAN : AANFA5208P

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-14,
Pune.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishor Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 13.02.2019	घोषणा की तारीख / Date of Pronouncement: 01.03.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-7, Pune dated 05.09.2018 for the Assessment Year 2015-16.

2. The grounds raised by the assessee are as under :-

“1) The learned A.O. and learned CIT(A)-7, Pune erred in law and on facts in making addition amounting to Rs.18,76,957/- u/s 43CA of ITA, 1961 and thereby assessing total income of the assessee to the tune of Rs.38,25,517/- as against returned income of Rs.19,48,560/-.

2) The learned A.O. and learned CIT(A)-7, Pune erred in law and on facts in making addition amounting to Rs.18,76,957/- on account of difference between Stamp duty & Agreement Value u/s 43CA of ITA, 1961 without appreciating fact that, said difference is less than 5% to 10% of stamp duty value in most of the instances.

3) The learned IT authorities erred in law and on facts in invoking the provisions of section 43CA of ITA, 1961 and making addition without substantiating fact that, appellant is in receipt of consideration higher than agreement value.

4) Without prejudice to Ground No.1 to 3, the learned IT authorities erred in law and on facts in not referring the matter to DVO before making addition u/s 43CA of ITA, 1961.

5) Appellant craves leave to add / modify / amend / delete all / any of the grounds of appeal.”

3. Briefly stated the relevant facts include that the assessee is engaged in the business of construction and its related activities. The assessee filed the return of income declaring total income of Rs.19,48,560/-. In the assessment proceedings, the Assessing Officer noticed that some of the flats were sold at their price, less than the stamp duty value. The Assessing Officer invoking the provisions of section 43CA of the Act adopted the said registration prices in place of sale agreement value. Accordingly, the Assessing Officer made addition of Rs.18,76,957/-. The said addition was confirmed by the CIT(A) and dismissed the appeal of the assessee. In these backgrounds of facts, ld. Counsel for the assessee filed the present appeal with the above extracted grounds of appeal.

4. At the outset, ld. Counsel submitted that this is a case where the appeal was adjudicated by the CIT(A) *ex-parte*. Referring to ground no.1 to 4, ld. Counsel submitted that Income Tax Authorities failed to refer the matter to the DVO. It is allegation of the CIT(A) that the notices issued on various dates. However, the assessee did not comply with the said notices of hearing. However, there is no evidence the said notice was served on the assessee on 30.08.2018. Within a week from the said date of last notice, the CIT(A) dismissed the appeal of the assessee without intimating the assessee to respond in any manner.

5. On the other hand, ld. DR for the Revenue relied on the orders of the authorities below.

6. On hearing both the sides, I find this is a case where the said flats (stock-in-trade) were not referred to the DVO for demonstrating the values stated by the stamp duty authorities. It is the demand of the assessee before the authorities below that the matter needs to be referred to the DVO which was not done at the end of the appellate proceedings. However, it is

a case where the CIT(A) hurriedly completed the appeal dismissing the same without having the assistance of the assessee or his authorized representative. Considering the same, I am of the opinion, as requested by the assessee, the matter should be remanded to the file of the CIT(A) for deciding the issue afresh after giving a reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Thus, the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 01st day of March, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 01st March, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune;
4. The CCIT, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलार्थी अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलार्थी अधिकरण, पुणे / ITAT, Pune