

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 4540/Mum/2018 (Assessment Year 2014-15)

Rajprabha Developers Pvt. Ltd. 9, Rajprabha Udyog Nagar Near Syndicate Bank Waliv, Vasai East-410 208. PAN : AACCV4277D (Appellant)	Vs.	ACIT Circle -4 Thane (Respondent)
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Assessee by	Ms. Champa Purohit
Department by	Shri Chaitanya Anjaria
Date of Hearing	8.7.2019
Date of Pronouncement	20.8.2019

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 4.16.2018 and pertains to A.Y. 2014-15.

2. The issue raised is learned CIT(A) erred in dismissing the appeal and confirming the addition of Rs. 19,36,400/- u/s. 43CA of the Act that learned CIT(A) failed to appreciate that section 43CA has been inserted w.e.f. 1.4.2013 and is applicable only to agreements entered into during FY 2013-14.

3. Brief facts of the case are as under :-

Return of income declaring total income of Rs.16,52,890/- was filed on 29.11.2014. The appellant is engaged in the business of real estate and land development. During the course of assessment proceedings, the AO noticed that the appellant has sold some galas at value lower than the ready reckoner rate. Therefore, the AO, vide order sheet entry dated 01.12.2016 show caused assessee as to why the difference should not be added as per the provisions of section 43CA of the Act. In response, the AR of the assessee submitted that the said section is applicable only to agreements entered into during F.Y. 2013-14,

since the said section has been inserted w.e.f. 01.04.2014. Moreover, the market position was also dull and hence the assessee had to sell the galas at lower rate than the rate prescribed by the Stamp Valuation Authorities. The AO, however, rejected the reply of the assessee and added the difference on sale of 3 galas totaling to Rs.19,36,500/- to the total income of the assessee.

4. Upon assessee's appeal learned CIT(A) confirmed the addition by holding as under :-

“On perusal of the above submission, I am of the opinion that the AO has rightly made addition u/s.43CA of the Act on the following grounds (a) The final date of registration of sale agreement is to be considered as it proves the fulfillment of the contractual obligation. Even if reference is done in A.Y. 2013-14 but the Valuation is based on sale agreement (b) Section 43CA has come into effect from A.Y.2014-15 and it is applicable in the case of builder/developer, who hold the land or building or both as a stock in trade. Therefore, the introduction of section 43CA is to control the evasion of tax in real estate business, where the involvement of on money is rampant and cannot justify that only the sale agreement value is the final consideration, therefore, the addition of the differential amount is justified, if it is not excessive and the component of cheque and cash cannot be ruled out in real estate business, (c) The appellant argued that, the AO should have referred to DVO, but such plea was not taken before the AO in the assessment proceedings. However, normally, in the real estate business, the registered sale agreement value is always suppressed and it is a well known fact to on real estate business with regard to buying and selling of immovable assets. Therefore, the addition of the differential amount of Rs.19,36,500/- is not excessive and reasonable as the differential is not more than 10% of stamp duty value.

In view of the above stated facts, the appeal of the appellant is dismissed and the addition made by the AO u/s.43CA is sustained”.

5. Upon careful consideration I note that agreement for sale was made in financial year 2012-13. That stamp duty was also paid during financial year 2012-13. However, sale of gala was registered during F.Y. 2013-14. In this regard the assessee's submission is that final registration of sale agreement was only of fulfillment of contractual obligation and provisions of section 43CA, which did not apply at the time of entered into transaction. In this

regard assessee placed reliance upon several Tribunal decision for the proposition that section 43CA came into effect from 1.4.2014 and hence applies for F.Y. 2013-14 and the same would not be applicable in the case of the present assessee when agreement was entered during F.Y. 2012-13. I find considerable cogency in the submission of learned Counsel of the assessee. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

6. In the result, assessee's appeal stands allowed.

Order has been pronounced in the Court on 20.8.2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/8/2019

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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