

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2630/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Suman Properties,
C 405-406, Kumar Business Court,
Mukundnagar, Pune-411037

PAN : ABRFS1252N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 5(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Vaze
Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 09-09-2019

घोषणा की तारीख / Date of Pronouncement : 13-09-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 27-06-2017 passed by the Commissioner of Income Tax (Appeals)-4, Pune for assessment year 2014-15.

2. Heard both parties and perused the materials available on record. The brief facts of the case as emanating from the records are that the assessee is a firm and is a builder and developer. The assessee conducts

its business in the name and style of “M/s. Suman Properties”. During the course of limited scrutiny proceedings, the Assessing Officer found that the difference in agreed sale consideration and market value as determined by the Stamp Valuation Authority in respect of five properties to the extent of Rs.72,20,568/-. According to the Assessing Officer the provisions of section 43CA of the Act is applicable to the facts and circumstances of the case, as the agreed sale consideration received by the assessee is less than the market value determined by the Stamp Valuation Authority. The assessee was asked to explain why provision u/s. 43CA should not be made applicable. According to Assessing Officer, the assessee filed reply, but no justification whatsoever submitted by the assessee in respect of applicability of provisions of section 43CA of the Act. Thereby, the Assessing Officer held the market value as determined by the Stamp Valuation Authority is deemed to be full value of consideration received or accruing as a result of transfer of an asset and added the abovesaid amount to the total income of the assessee vide his order dated 06-12-2016 passed u/s. 143 of the Act.

3. Before Commissioner of Income Tax (Appeals), it was contended by the assessee that the Assessing Officer has erred in law as well as in facts by not referring the valuation of flat sales to the Departmental Valuation Officer in terms of section 43CA(2) r.w.s. 50C(2) of the Act. The Commissioner of Income Tax (Appeals) in its impugned order in paras 5.3 and 5.3.3 held that the grounds raised by the assessee in respect of challenging the action of Assessing Officer in referring the matter to DVO for determination of fair market value is not maintainable in the absence of specific ground raised praying to delete the addition made by Assessing Officer in terms of section 43CA of the Act and upheld the order of Assessing Officer.

4. As aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee before us challenging the action of Commissioner of Income Tax (Appeals) by raising grounds of appeal annexed to Form No. 36 and raised additional ground by way of application dated 22-08-2019 which is placed on record. The main contention of Shri Sharad Vaze, the ld. AR is that the Assessing Officer failed to refer the matter to the DVO for determination of fair market value of the properties in terms of sub-section (2) of section 43CA of the Act.

5. Admittedly, the value said to have been received by the assessee or agreed to receive on the transfer of properties is less than the value adopted by the Stamp Valuation Authority. The sub-section (1) of section 43CA explains if the consideration received or accruing as a result of transfer of an asset by the assessee is less than the value adopted or assessed or assessable by any authority of State Government is deemed to be full value of consideration received or accruing as a result of such transfer. Further, the sub-section (2) of section 43CA explains that the provisions of sub-section (2) and (3) of section 50C is applicable if the value so adopted or assessed or assessable under sub-section (1) of section 43CA of the Act.

6. It is pertinent to note that sub-section (2) of section 50C provides jurisdiction to the Assessing Officer to refer the valuation of capital asset to Valuation Officer if the assessee claimed that value adopted or assessed by the Stamp Valuation Authority under sub-section (1) exceeds the fair market value of properties as on the date of transfer. Therefore, it is clear the Assessing Officer ought to have exercised its jurisdiction in referring the valuation of capital asset to a Valuation Officer under sub-section (2) of section 43CA of the Act. We note that the said challenge was not made

before the Assessing Officer, though raised before the Commissioner of Income Tax (Appeals) was not considered in proper perspective. Therefore, we find force in the arguments of ld. AR, that the Assessing Officer ought to have referred for valuation of capital asset to Valuation Officer. Thereby, taking into consideration the facts and circumstances of the case and submissions of ld. AR and ld. DR, we deem it proper to remand the matter to the file of Assessing Officer for its fresh consideration in terms of observations indicated above. Thus, ground Nos. 1 to 4 and additional ground raised before us are allowed for statistical purpose.

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

Order pronounced in the open court on 13th September, 2019.

Sd/-
(R.S. Syal)
VICE PRESIDENT

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

पुणे / Pune; दिनांक / Dated : 13th September, 2019

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-4, Pune
4. The Pr. Commissioner of Income Tax-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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