

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.137/Coch/2019 : Asst.Year 2014-2015

M/s.Reenaz Properties Private Limited Rangamani & Co. Rajarajeswari Bhavan Pazhaveedu P.O. Alappuzha – 688 009. PAN : AADCR1401Q.	Vs.	The Asst.Commissioner of Income-tax, Corporate Circle 2(2), Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.R.Krishnan

Respondent by : Sri.Sudhanshu Shekar Jha

Date of Hearing : 16.10.2019	Date of Pronouncement : 16.10.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT's order dated 10.12.2018 passed u/s 263 of the I.T.Act. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:-

"1. The order of the Principal Commissioner of Income Tax invoking the provision of Section 263 is bad in law.

2. The Assessing Officer has already taken a possible stand in the assessment and therefore, merely because she did not take the alternate possible stand, the order does not become erroneous.

3. The learned Principal Commissioner of Income Tax ought to have appreciate that in order to invoke the provisions of Section 263 of the Income Tax Act, the twin conditions of the order being erroneous and

prejudicial to the interest of revenue does not stand satisfied in this case.

4. *The learned Principal Commissioner of Income Tax ought to have appreciate that the order is incapable of being revised, as it is a subject matter of appeal before the Commissioner of Income Tax (Appeals).*

5. *The learned Principal Commissioner of Income Tax ought to have noted that the Assessing Officer having taken a position that the income is assessable a capital gains, the question of invoking Section 43CA does not arise.*

Appellant prays that the order u/s 263 may be struck down as bad in law."

3. Brief facts of the case are as follow:

The assessee is a private limited company engaged in the business of real estate. For the assessment year 2014-2015, the return of income was filed on 25.01.2016 declaring total income of Rs.1,14,85,230. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 26.12.2016 determining total income of Rs.3,64,33,100. In the return of income, the assessee had disclosed business on sale of property (stock in trade). In the assessment completed, the A.O. treated the same as transfer of long term capital asset and applied provisions of section 50C of the I.T.Act. Therefore, the sale consideration received of Rs.2,33,50,000 was replaced by Rs.6,10,00,000 by invoking the provisions of section 50C of the I.T.Act and long term capital gain was worked out accordingly.

4. The CIT issued notice u/s 263 of the I.T.Act for the reason that the Assessing Officer had not considered the impact of section 43CA of the I.T.Act. The CIT was of the view that the transfer of an asset (other than a capital asset) would be governed by the provisions of section 43CA of the I.T.Act and the value adopted / assessed by the State Government authorities for the purpose of payment of stamp duty should be deemed to be the full value of consideration received on such transfer. The assessee filed objections vide letter dated 14.12.2018 (objections of the assessee are produced at para 4 of the impugned order of the CIT). The gist of the objection is that the Assessing Officer had taken a conscious decision that income arising out of transfer of sale of land is not a business income but income from transfer of capital asset, and therefore, liable for capital gain tax. According to the assessee, the Assessing Officer has taken a possible view and issuance of notice u/s 263 of the I.T.Act is bad in law. The assessee relied on the judgments of the Hon'ble Apex Court in the case of (i) Max India Ltd. 295 ITR 282, (ii) Anal Housing & Construction Ltd. 51 taxmann.com 376, and (iii) Malabar Industrial Company Ltd.109 taxmann.com 66.

5. The objections raised by the assessee was rejected by the CIT. The CIT after reproducing the provisions of section 43CA of the I.T.Act, held that the said provision is applicable for the relevant assessment year and the Assessing Officer has not considered the impact of the introduction of section 43CA of the I.T.Act while framing the assessment. The CIT, further

reproducing the provisions of section 263 of the I.T.Act, held that order passed without making inquiries / verification is an order which is erroneous and prejudicial to the interest of the revenue and the same is amenable to revisionary jurisdiction u/s 263 of the I.T.Act. The CIT for the above conclusion relied on the following judicial pronouncements:-

M/s.The Malabar Industrial Co. 243 ITR 83 (SC)

M/s.Raja & Co. 335 ITRT 381 (Ker.)

6. In conclusion, it was held that since the Assessing Officer has failed to make inquiries and apply her mind with regard to the applicability of the provisions of section 43CA of the I.T.Act, the assessment order is erroneous and prejudicial to the interest of the revenue. Accordingly, the assessment order was set aside and the A.O. was directed to pass a speaking order in accordance with law as per the time limit specified u/s 153 of the I.T.Act.

7. Aggrieved by the order of the CIT passed u/s 263 of the I.T.Act, the assessee has filed this appeal before the Tribunal. The learned AR reiterated the submissions made before the CIT.

8. The learned Departmental Representative, on the other hand, relied on the finding of the CIT.

9. We have heard the rival submissions and perused the material on record. The assessee had filed the return of

income for assessment year 2014-2015 showing sale of property under the head `business income'. The Assessing Officer, while completing the assessment u/s 143(3) of the I.T. Act, held such disclosure by the assessee as sale of property under the head `business income' was to avoid the provisions of section 50C of the I.T.Act, which is applicable on transfer of long term capital asset. Accordingly, the Assessing Officer treated the sale of property as transfer of capital asset and calculated the long term capital gain. The Assessing Officer invoked the provisions of section 50C of the I.T.Act. Consequent to the same, the sale consideration disclosed in the sale deed amounting to Rs.2,33,50,000 was replaced by Rs.6,10,00,000 being the amount determined by the Authority of the State Government for the purpose of payment of stamp duty in respect of such transfer. The relevant finding of the Assessing Officer in this regard is from para 2.6 to para 2.8 of the assessment order. On a query from the Bench, the learned AR submitted that as against the assessment order, the assessee has filed appeal to the CIT(A) contending that the sale of property should be assessed as `income from business' and not under the head `long term capital gain'.

9.1 The provisions of section 43CA of the I.T.Act applies to income on transfer of an asset (other than a capital asset). The section 43CA of the I.T.Act clearly states the value adopted by the authority of the State Government for the purpose of payment of stamp duty in respect of transfer of an asset is deemed to be adopted for the purpose of computing

profits and gains from transfer of such asset. In the instant case, the Assessing Officer had primarily changed the head of income from business to that of long term capital gains for the reason that the assessee was trying to avoid provisions of section 50C of the I.T.Act. Provisions section 50C of the I.T.Act applies with regard to the transfer of long term capital asset, whereas section 43CA of the I.T.Act applies to transfer of asset (other than capital asset). Therefore, if the transfer of asset is to be assessed under the head 'income from business' necessarily, the provisions of section 43CA of the I.T.Act would have application and the value of asset for the purpose of stamp duty valuation under the State Government laws would be deemed to be the consideration received on account of transfer of such business asset.

9.2 The Assessing Officer had failed to take note of the provisions of section 43CA of the I.T.Act and the impact of such section in the instant case. As mentioned earlier, the assessee has already filed an appeal as against the assessment order holding the transfer of land would be assessable as income from long term capital asset. In context of the appeal filed by the assessee, the application of section 43CA of the I.T.Act assumes significance. The Assessing Officer having failed to take notice of section 43CA of the I.T.Act while framing the assessment order, would render the assessment order erroneous and prejudicial to the interest of the revenue in view of Explanation (2) clause (a) of section 263 of the I.T.Act. Therefore, since the Assessing Officer has

failed to cause any inquiry in this regard nor examined the impact of section 43CA of the I.T.Act, we are of the view that the CIT has correctly invoked his revisionary jurisdiction u/s 263 of the I.T.Act and set aside the assessment order dated 26.12.2016.

9.3 However, we make it clear that the assessee shall be at liberty to challenge the valuation fixed in accordance with law in view of section 43CA(2) of the I.T.Act. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 16th day of October, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 16th October, 2019.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The P.CIT-I, Kochi
4. The DR, ITAT, Cochin
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin