

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.1694/Mum/2019
(Assessment Year: 2014-15)**

Kavya Mira Realty 99C, Sitaram Ghadigaokar Marg, Tulsiwadi, Tardeo Mumbai-400 034	Vs.	ACIT-19(2) Room No.207, 2 nd Floor Matru Mandir Tardeo Mumbai-400 007
PAN/GIR No.AAKFK0038J		
Appellant)	..	Respondent)

Assessee by	Shri Satish R. Mody, AR
Revenue by	Shri R.Bhoopati, DR
Date of Hearing	05/03/2020
Date of Pronouncement	20/05/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai, dated 28/09/2018 and it pertains to Assessment Year 2014-15

2. The assessee has raised the following grounds of appeal:-

1) *The Learned Commissioner of Income Tax (Appeals)-51 erred in confirming the addition made by learned Asst. Commissioner of Income-tax. Circle-19(2). Mumbai of Rs. 4,78,000/- u/s. 50C of the I.T. Act. 1961 being difference in value of sale of Flats below the market value taken by an authority of a State Government for the purpose of stamp duty at prevailing market rate at the time of registration of property without appreciating the fact when the property was booked by the buyer and the stamp authority rate as on date of booking of property should have been compared with the agreement price as per provision of Sec. 43CA of the I.T.Act, 1961.*

3. The brief facts of the case are that the assessee is engaged in the business of builder and developer, filed its return of income for AY 2014-15 on 29/11/2014, declaring total income at Rs.61,53,740/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that during the year under consideration, the assessee has sold flat No.B/903 in Kavya Residency building to Shri Joseph Alex. The assessee has also sold one more flat No.A/907 in Kavya Residency building to Shri Chuharamal A Ludhani and Rahul C Ludhani. The Ld. AO, further noted that ready reckoner rate of both flats as on the date of registration is more than the sale consideration received for sale of flats and accordingly, called upon the assessee to explain as to why, the provisions of section 43CA of the I.T.Act, 1961 should not be invoked to bring to tax the difference between sale consideration received for sale of property and guidance value of the property as on the date of registration. In response to notice, the assessee submitted that it has agreed to sell the property in the year 2010 and as per ready reckoner rate, the market value of the property as on the date of agreement between the parties is less than the sale consideration received for sale of flats, therefore, the provisions of section 43CA cannot be invoked to tax difference between agreed sale consideration and guidance value of the property. The Ld. AO was not convinced with the explanation furnished by the assessee and according to him, any difference between ready reckoner value and agreed consideration for transfer property needs to be taxed, as per provisions of section 43CA of the I.T.Act, 1961 and accordingly, made additions of Rs.4,78,000/- being difference between sale consideration received for sale of two flats and ready reckoner value of flats as on the date of registration.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue, which has been reproduced at para 5.1 on pages 2 to 7 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that the provisions of section 43CA of the I.T.Act, 1961 cannot be invoked in the given facts and circumstances of this case, because the ready reckoner value of the flats, when sold in the year 2010 is less than the amount of consideration received for sale of properties and if, the date of agreement fixing the value of consideration for transfer of the asset and the registration of such transfer of asset are not the same, the value of the asset for the purpose of stamp duty, as on the date of agreement should be considered. The Ld.CIT(A) after considering relevant submissions of the assessee and also, by taken note of provisions of section 43CA of the I.T.Act, 1961 held that although, the assessee claims to have sold the properties in the year 2010 by a letter of allotment, but the same cannot be considered as agreement of sale so as to give the benefit of provisions of section 43CA of the I.T.Act, 1961. Therefore, he opined that there is no reasons to interfere with the findings recorded by the Ld. AO, while making additions towards difference in value of the property, as per agreement of sale and, as per ready reckoner value of the properties as on the date of registration. The relevant findings of the Ld.CIT(A) order are as under;-

5.4 The contentions of the assessee have been duly considered. Sub-section 3 & 4 to Sec. 43CA are being reproduced for ready reference:-

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such

transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.

5.5 The relevant provisions of Sec. 43CA stipulate that if the date of agreement is prior to the date of its registration and if some consideration or part thereof has been paid by mode other than cash, then the stamp duty value of the property as on the date of sale agreement is to be applied. It is noted that in these relevant provisions, there is no mention that the date of allotment also has to be considered. The allotment letter and "the sale agreement are two separate documents and cannot be considered to mean one and the same. Therefore, the contention of the assessee that the stamp duty value of the said two flats on the dates of allotment letters should have been applied by the AO, is not correct. The assessee wants the stamp duty value as on the dates of allotments to be considered since, the dates of allotments are much prior to the dates of sale agreements when the stamp duty value of the said two flats was lower than the value as per the said 2 sale agreements.

5.6 It is further observed that the offer letter for allotment in respect of Mr. Joseph Alex is dated 22.09.2012 whereas the actual allotment is dated 03.06.2010 which is surprising since normally the offer of allotment is always prior to the actual allotment. Similarly, the offer letter for allotment in respect of Shri Chuharmal A. Ludhani is dated 15.07.2010 which again is subsequent to the actual allotment dated 20.05.2010. Moreover, it is also observed that the said allotments dated 03.06.2010 and 20.05.2010 have only been signed by the buyers and not by the assessee, therefore, these allotments cannot be termed as sale agreements between the assessee and the said buyers for fixing the value of consideration for transfer of the property.

5.7 The assessee has also argued that during the relevant year no sales have been booked since, the possession of the said two flats was not given and the project was under construction and therefore, the provisions of Sec. 43CA cannot be invoked for the relevant year. On this contention, it is noted that the provisions of Sec. 43CA come into force at the time of registration of the sale agreement. If at the time of registration of the sale agreement, the stamp duty value of the property is found to be more than the amount as per the sale agreement, then the stamp duty value of the property is to be adopted for the purposes of computing profits and gains from transfer of such asset. In the instant case, it is observed that at the time of registration of the said two sale agreements during the relevant year, the stamp duty values of the said two flats was found to be more than the values as per the sale agreements and therefore, the AO has rightly proceeded to add the difference u/s. 43CA. However, the value as per the sale agreement will be considered for

taxation in the relevant year when the sale is booked as per the system of accounting followed by the assessee.

*5.8 In view of the aforesaid discussion, no infirmity is found in the action of the AO in making an addition of Rs. 4,78,000/-. **Accordingly, this ground of appeal is dismissed.***

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in confirming the additions made by the Ld. AO u/s 50C of the I.T.Act, 1961, being difference in value of sale of flats below the market value taken by an authority of a State Government for the purpose of stamp duty at prevailing market rate at the time of registration of property without appreciating the fact that when, the property booked by the buyer and the stamp authority rate as on the date of booking of property should have been compared with the agreement price, as per provisions of section 43CA of the I.T.Act, 1961.

6. The Ld. DR, on the other hand strongly supporting order of the Ld.CIT(A) submitted that where, there is difference between sale consideration and ready reckoner value of the property, then the difference should be brought to tax u/s 43CA of the I.T.Act, 1961 and accordingly, the Ld. AO, as well as the Ld.CIT(A) have brought out clear facts to the effect that the sale consideration received for sale of flats is less than the ready reckoner rate fixed for payment of stamp duty and accordingly, difference needs to be taxed.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assessee has sold two flats to one Mr.Jospeh Alex on 03/06/2010 and the other one to Mr.Chuharamal A Ludhani on 20/05/2010 by way of a letter of allotment. The assessee has entered into sale

agreement and registered the same on 26/06/2013 and 31/12/2013 respectively for both flats and ready reckoner rate as per stamp duty authority was higher than the sale consideration received for sale of flats. Therefore, the Ld. AO has made additions towards difference being sale consideration received from two flats and ready reckoner rate of two flats as on the date of registration. In this factual background, if you examine the case of the assessee, in light of provisions of section 43CA of the I.T.Act, 1961, one has to see whether, the Ld. AO was right in making additions towards difference in sale consideration and ready reckoner rate. The provisions of section 43CA of the I.T.Act, 1961 deals with a cases, where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub- section (1) may taken, as the value assessable by the any authority of a state government for the purpose of payment of stamp duty, in respect of such transfer on the date of the agreement. The provisions of sub section (4) provides for a cases, where the amount of consideration or part thereon has been received by any mode, other than cash on or before the date of agreement for transfer of the asset, then the provisions of sub-section (3) shall apply and accordingly, the agreed sale consideration and ready reckoner value of the property should be compared as on the date of the agreement. In this case, on perusal of details available on record, we find that the assessee has agreed to sell two flats in the year 2010 and has collected booking advance by cheques. The assessee has also, collected substantial amount of sale consideration before the date of registration of sale agreement in the year 2013. Therefore, as per the provisions of sub-section (4), for the purpose of comparison of agreed consideration

and ready reckoner rate, the ready reckoner rate as on the date of agreement should be considered. In this case, the assessee has agreed to sell the flats by way of a booking and has collected advance amount. Further, whether booking form is considered to be an agreement for sale or not is to be examined, in light of prevailing practice, in line of the business. It is an admitted fact that the flats have been agreed to sell by way of a booking and letter of allotment and rate will be agreed as on the date of booking. Therefore, once there is relevant documents are with the assessee to demonstrate that it has agreed to sell the property for a specified consideration and has collected advance amount, then for the purpose of section 43CA of the I.T.Act, 1961, the provisions of sub-section (3) has to be considered and accordingly, the ready reckoner rate, in respect of such transfer shall be considered as on the date of the agreement. In this case, the agreement for sale of property was executed in the year 2010 although, the same has been registered in the year 2013 and as per the ready reckoner rate as on the date of agreement, there is no difference between consideration received for sale of property and ready reckoner rate for the purpose of payment of stamp duty. Therefore, no addition could be made on the basis of ready reckoner rate at the time of registration of sale agreement. Accordingly, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in making additions towards difference between sale consideration received for sale of flats and ready reckoner rate of the flats, as on the date of registration of sale agreement. Hence, we direct the Ld. AO to delete additions made u/s 43CA /50C of the I.T.Act, 1961.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 20/05/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/05/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai