

आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2602/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Shri Umesh Raosaheb Pawar Patil 102, Shree Ganga Prasad Ghantali Sainath Chowk Ram Ganesh Gadkari Road Naupada, Thane-400 602.	बनाम/ Vs.	Pr. CIT Ashar I.T. Park, B Wing, 6 th Floor Wagle Industrial Estate Thane (West)-400 604
PAN/GIR No. AAUPP-3270-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ketan Vajani- Ld. AR
Revenue by	:	Shri Ajay Kumar-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	23/11/2020
घोषणा की तारीख / Date of Pronouncement	:	16/12/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee challenges the validity of revisional jurisdiction u/s. 263 as exercised by learned Pr. Commissioner of Income-Tax-2, Thane [in short referred to as 'Pr.CIT'], for Assessment Year [in short referred to as 'AY'] 2014-15, vide order dated 25/02/2019. The effective grounds taken by the assessee read as under:-

(a) On the facts and in the circumstances of the case, the Principal Commissioner of Income-tax, hereinafter referred to as the "Pr. CIT", has erred in invoking the provisions of section 263 of the Income tax Act, 1961 in the case of the appellant.

(b) On the facts and in the circumstances of the case, the Pr. CIT has erred in concluding that the provisions of section 43CA are applicable in respect of a flat, held as stock in trade, transferred by the appellant prior to 1-4-2013 and thereby erred in concluding that the assessment order passed by the assessing officer is erroneous and also prejudicial to the interest of revenue.

(c) The appellant respectfully submits that the assessment order in his case is neither erroneous nor prejudicial to the interest of revenue and accordingly the provisions of section 263 of the Act cannot be invoked in his case. In view of this, the appellant prays that the order dated 25th February, 2019, passed u/s. 263 of the Act shall please be quashed.

(d) Without prejudice to the above, on the facts and in the circumstances of the case, the Pr. CIT has erred in not considering various alternate contentions of the appellant and thereby erred in passing an order u/s. 263 in contravention of the provisions of law.

2. We have carefully heard the rival submissions and perused relevant material on record including submissions made during assessment proceedings as well as during revisional proceedings. The judicial precedents as cited during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident individual stated to be engaged as builders & developer, was assessed u/s. 143(3) on 12/09/2016 accepting returned income of Rs.117.53 Lacs. The assessment order is a short order and there is no material discussion, whatsoever, regarding issues considered by Ld. AO during the course of assessment proceedings.

3.2 Subsequently, learned Pr.CIT, upon perusal of case records and invoking the provisions of Sec.263, observed that the assessee sold flat no. B/102 for Rs.24 Lacs as against stamp duty value (SDV) of Rs.31.45 Lacs which would attract the provisions of Sec.43CA which was not considered by Ld. AO and therefore, the order was erroneous and

prejudicial to the interest of the revenue. Accordingly, the assessee was show-caused regarding invocation of provisions of Sec.43CA.

3.3 The assessee defended the assessment order by submitting that the flat was sold in earlier year vide agreement dated 26/04/2012 and the entire sale proceeds were already received in financial year 2012-13. The occupation certificate was received on 07/09/2013. The assessee followed project completion method to offer the income to tax and therefore, this sale was shown in the books in AY 2014-15. The attention was drawn to the fact that Sec.43CA as introduced by Finance Act, 2013 and would apply to transactions of immoveable property held as stock-in-trade from 01/04/2014 i.e. from AY 2014-15 only. Various other submissions were made in support of the fact that since transfer of the property took place in earlier year, the provisions of Sec.43CA would not be applicable to the stated transaction.

3.4 However, Ld. Pr.CIT opined that what was executed on 26/04/2012 was mere agreement to sale and not registered sale deed or conveyance deed. The mere agreement does not convey any title or interest in the immoveable property. By entering into the agreement, the buyer would merely get a right to purchase the property and the same could not be equated with ownership of property. The right to purchase property, in itself, is distinct & transferable intangible asset. Since the assessee has offered the income in this year, the provision of Sec.43CA would apply to the facts of the case. It was noted in the order that the assessee had submitted details of bookings / advances wherein the assessee himself submitted agreement value and market value of all flats in which the booking was confirmed. Therefore, the provisions of Sec.43CA would apply and non-consideration of the same by Ld. AO

would make the order amenable to revision u/s 263. Finally Ld. AO was directed to redo the assessment de-novo after affording adequate opportunity to the assessee.

Aggrieved as aforesaid, the assessee is in further appeal before us challenging the validity of revisional jurisdiction as exercised by Ld. Pr.CIT u/s 263.

4. Upon perusal of document on record, it is evident that the assessee entered into registered agreement for sale of proposed flat no. B/102 in certain project on 26/04/2012 for an agreed consideration of Rs.24 Lacs as against stamp duty value of Rs.31.45 Lacs. This document is a registered document. Upon perusal of terms and conditions, it is evident that the sale consideration of the flat was fixed at Rs.24 Lacs and specific rights were created in a future property. The assessee was obligated to hand over the possession within a period of 24 months from the date of agreement. After going through the terms of the agreement, it is evident that specific purchase rights were created in favor of purchaser in a specific property. This being the case, the subsequent execution of sale / conveyance deed and handing over the possession would merely be improvement in the existing title of the purchaser. The same is supported by the fact that whole of the sale consideration was already received by the assessee by May, 2012 which fall in financial year 2012-13. The Ld. AR has made a statement that no sale deed or conveyance deed was executed in FY 2013-14. The sale has been offered in this year only due to the fact that the assessee was following project completion method. Undisputedly, the provisions of Sec.43CA were applicable only from AY 2014-15. It is another fact that details of agreement value as well as stamp duty value was already placed before

Ld. AO during the course of original assessment proceedings and Ld. AO chose not to invoke the provisions of Sec. 43CA. This being the case, the revisional jurisdiction as exercised by Ld. Pr.CIT could not be sustained in the eyes of law. The primary condition to invoke the provisions of Sec.263 remains unfulfilled. Accordingly, we quash the revisional order dated 25/02/2019 and restore the assessment framed by Ld.AO.

5. The appeal stands allowed in terms of our above order.

Order pronounced on 16th December, 2020.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/12/2020
Sr.PS:-Jaisy Varghese

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.