

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 4308/MUM/2019 : A.Y : 2014-15

Ranjana Construction Pvt. Ltd.,
31/A, Laxmi Industrial Estate,
New Link Road, Mumbai 400 053.
PAN : AADCR5043C (Appellant)

Vs. Principal Commissioner of
Income Tax – 11,
Mumbai. (Respondent)

Appellant by : Shri N.R. Agrawal
Respondent by : Shri Bharat Andhle

Date of Hearing : 05/01/2021
Date of Pronouncement : 11/01/2021

ORDER

PER RAJESH KUMAR, AM

The only issue raised by the assessee is against the order of Principal Commissioner of Income Tax – 11, Mumbai (in short 'the PCIT') passed under Section 263 of the Income Tax Act, 1961 (in short 'the Act') setting aside the order of Assessing Officer passed under Section 143(3) of the Act on the ground that the builder has sold Flat No. A-302 at Kailash Heights to Shri Vasant Kumar Pujari for Rs.36,65,000/- while the stamp duty valuation was Rs.57,48,160/-.

2. At the outset, the learned representative of the assessee submitted that there is a delay of 38 days in filing the appeal. He further submitted that the Director of assessee has filed an Affidavit for condonation of delay giving the

reasons for delayed filing of the appeal and prayed that the delay in filing of appeal be condoned and the matters be adjudicated on merits. We have perused the Affidavit for condonation of delay filed by the assessee. We find that the assessee had not filed the appeal in time as its Chartered Accountant had advised not to file appeal as fresh opportunity would be granted by the Assessing Officer while passing order u/s 143(3)/263 of the Act. We find that the assessee was under bona fide belief and hence delay in filing the present appeal. The assessee immediately filed appeal after it was advised by the new counsel. We, therefore, condone the delay in the interest of justice in filing the appeal and proceed to adjudicate the appeal on merits.

3. The facts in brief are that assessee filed e-return of income on 27.09.2014 declaring total income of Rs.1,60,260/-. The case of assessee was selected for scrutiny under CASS and assessment was made under Section 143(3) of the Act vide order dated 08.09.2016 accepting the returned income. Thereafter, on verification of the record, learned PCIT noted that Flat no. A-302 at Kailash Heights has been sold to Shri Vasant Kumar Pujari for Rs.36,65,000/- while the stamp duty valuation as per the Stamp Duty authority was Rs.57,48,160/-. The learned PCIT noted that as per Section 43CA of the Act where the consideration for transfer of any asset being land or building is less than the stamp duty value, in that event, the stamp duty value shall be deemed to be the value of the consideration for computing the income from the head 'Profits and gains from business and profession'. Accordingly, show cause notice u/s 263 dated 07.01.2019 was issued to the assessee to show cause as to why the assessment framed under Section 143(3) dated 08.09.2016 should not be set-aside/cancelled as being erroneous and prejudicial to the interest of the Revenue, which was replied by the assessee vide letter dated

23.01.2019. The learned PCIT, however, rejected the submissions of the assessee and set-aside the order passed under Section 143(3) of the Act and directed the Assessing Officer to examine this issue after giving sufficient opportunity of being heard to the assessee by observing and holding as under:-

“6. The submissions made by the assessee company have been considered carefully and placed on record. On perusal of the agreement for sale dated 24.06.2013 entered into with Vasant Pujari which is registered on 26.06.2013, it is seen that there is no mention in the agreement, of the allotment of the flat No. A/302 to Vasant Pujari in 2010 vide allotment letter dated 12.06.2010. It is also noted that the allotment letter dated 12.06.2010 is not forming part of the registered agreement. The assessee company has not filed any evidence of the allotment letter filed with the Stamp Duty Authority.

7. It is further seen that vide clause 4 of the registered agreement, the booking amount on booking of the flat is shown at Rs.3,66,500/- which is shown as payable and there is no mention in the agreement of the booking amount of Rs.2,50,000/- paid by Vasant Poojari, as claimed by the assessee company vide letter dated 21.06.2010. It is further seen from clause 37 of para 1 (page 9/10) of the agreement that the commencement certificate to construct the proposed building has been issued on 28.06.2010 and, in clause 39 and 40, it is mentioned that the purchasers have demanded and to his satisfaction perused all the documents of title relating to the said property including that of the sanctioned plans, IOD and commencement certificate and such other documents and approached the promoters for allotment of flat. However, it is seen that the allotment letter dated 12.06.2010 is issued prior to the date of commencement certificate i.e. 28.06.2010 which contradicts the aforesaid clauses mentioned in the agreement.

8. On perusal of the various agreements for sale available on record, it is seen that the assessee company has sold another flat No. A/202 on 2nd floor with same area i.e. 660 sq. ft. carpet/builtup area (which is inclusive of flowerbed & dry balcony & Nich area) vide agreement dated 14.05.2013 to Pooja G. Teckchandani for total sale consideration of Rs.57,49,000/- for which the stamp duty value is assessed at Rs.57,48,160/-. It is further seen

that the assessee company has sold another flat No. A/203 on 2nd floor with same are i.e. 660 sq.ft. carpet/builtup area (which is inclusive of flowerbed & dry balcony & Nich area) vide agreement dated 17.10.2013 to Urmila Anil Gor for total sale consideration of Rs.70,00,000/- for which the stamp duty value is assessed at Rs.57,48,160/-.

9. *In view of the above facts, the submission made by the assessee is not acceptable. Without prejudice to the above, regarding the contention of the assessee to value the flat on the basis of ready reckoner rates, it is noted that the provisions of section 43CA are not complied with as the stamp duty value assessed by the Stamp Duty Authority has to be taken for the purpose of computation as mentioned in the provisions of section 43CA.*

10. *In view of the facts as narrated above, since the Assessing Officer has failed to carry out proper investigation of the issues discussed above, thereby causing revenue loss to the department, the assessment order passed by the A.O u/s. 143(3) of the Act dated 08/09/2016 is bad in law, erroneous and prejudicial to the interest of Revenue.*

11. *In view of the discussion supra, the order u/s. 143(3) of the Act dated 08/09/2016 passed by the Income Tax Officer, 11(1)-(1), Mumbai has become erroneous in so far as it is prejudicial to the interest of revenue and is accordingly set-aside u/s 263 of the Act on the limited issue. The A.O is directed to examine the limited issues discussed above after giving sufficient opportunity of being heard to the assessee and pass a speaking order as per the provisions of law.”*

4. The learned representative of the assessee vehemently submitted before us that jurisdiction under Section 263 of the Act has been wrongly and invalidly exercised by the learned PCIT as the issue sought to be raised in the revisionary proceedings has been examined by the Assessing Officer at the time of assessment proceedings. The learned representative of assessee drew our attention to notice under Section 142(1) of the Act dated 23.06.2016 addressed to the assessee by the Assessing Officer and vide para 13 of the said notice, assessee was specifically called upon to furnish date of property

purchase/sold, details whereof is contained in the AIR information generated from ITES by the Department. Thereafter, the learned representative of the assessee drew our attention to the sale of flat by the assessee at Sr. No. 2 of the AIR information wherein the transaction amount is mentioned as Rs.57,48,160/- on 26.06.2013. The assessee filed AIR reconciliation in respect to the query by the Assessing Officer vide letter dated 24.08.2016, copy of which is filed at pages 19 and 20 and also details of purchase of above property comprising copy of sale agreement. The learned representative of the assessee also drew our attention to the allotment letter cum agreement dated 21.06.2010 wherein the assessee has acknowledged receipt of Rs.2,50,000/- vide cheque no. 981842 dated 22.06.2010 drawn on Bharat Co-operative Bank as token advance and the said letter of allotment is signed by the assessee as well as by the purchaser. Thereafter, the learned representative of the assessee submitted that the assessee has received payment from the said party to the tune of Rs.18,32,500/- upto 20.12.2012, the details whereof is filed at page 24 of the appeal set. The learned representative of the assessee contended that since the agreement to sell was executed in 2010, therefore, the learned PCIT has no locus standi to take the stamp value of 2013. The learned representative of the assessee also submitted that since the issue has been examined by the Assessing Officer in the original assessment proceedings and after thorough inquiry and examining the sale agreement and all other documents furnished by the assessee, arrived at a possible view which is not contrary to the facts or against the law. Therefore, it is not open to the learned PCIT to revise the assessment merely on the ground that he does not agree with the view taken by the Assessing Officer. The learned representative of the assessee submitted that the view taken by the Assessing Officer is correct and in consonance with the provisions of the Act and, therefore, the

learned PCIT has no jurisdiction to set-aside the order of the Assessing Officer. In defence of his argument, he relied on the decision of the Hon'ble Bombay High Court in the case of *ACIT vs Nirav Modi, 390 ITR 292 (Bom.)* wherein the same ratio has been laid down by the jurisdictional High Court. On merits, the learned representative of the assessee submitted that even considering the merits of the case, the view taken by the Assessing Officer was the correct view as in this case, the agreement to sell was executed on 12.06.2010 and the sale of flat was finally registered on 26.06.2013. The learned representative of the assessee submitted that when the dates of agreement and registration are not the same, then, as per Sub-sections (3) and (4) of Section 43CA of the Act, the date of the agreement fixing value of consideration for transfer of asset has to be taken. In this case, the agreement to sell/allotment letter was executed and duly signed by both the parties, the flat was identified and the sale consideration was also ascertained at Rs.36,65,000/-. Besides, substantial sum of money was paid before 20.12.2012. On this count also, the jurisdiction of learned PCIT is bad in law as the learned PCIT has proposed a revision which is contrary to the provisions of the Act. The learned DR, on the other hand, relied on the order of the learned PCIT.

5. Having heard the rival submissions and perused the material on record, we find that in this case the learned PCIT has exercised revisionary jurisdiction under Section 263 of the Act in order to set-aside the assessment framed under Section 143(3) of the Act by the Assessing Officer holding the same to be erroneous and prejudicial to the interest of the Revenue. In this case, the assessee has entered into an agreement to sell with the buyer, Shri Vasant Kumar Pujari whereby Flat No. A-302 in Kailash Heights was agreed to be sold at Rs.36,65,000/-. On the date of agreement, assessee has received

Rs.2,50,000/- by way of account payee cheque as token advance vide cheque no. 981842 dated 22.06.2010 drawn on Bharat Co-operative Bank. Thereafter, assessee received Rs.18,32,500/- upto 20.12.2012. The said agreement was registered on 26.6.2013. On the date of registration, the stamp value of the said flat was Rs.57,48,160/- which was reflecting in the AIR on department website. According to the learned PCIT, the business income should have been computed by taking the deemed consideration as on the date of registration and not on the date of agreement to sell as per the observations in the revisionary order. Besides, we find that this issue has been specifically raised by the Assessing Officer in the notice issued under Section 142(1) dated 23.06.2016 wherein copy of AIR as generated by ITES was attached and assessee was called upon to reconcile the entries appearing therein. The assessee has duly filed reconciliation vide letter dated 24.08.2016 submitting copy of sale agreement and also furnishing necessary details for the said deal. The Assessing Officer after examining such details accepted the business income of the assessee based on the stamp value as on the date of the agreement to sell. In our view, the Assessing Officer has taken a possible view after inquiring into the matter and appreciating the facts and documents filed by the assessee before the Assessing Officer. Since the Assessing Officer has taken a possible view, the learned PCIT has no jurisdiction to set-aside the assessment. The case of the assessee is squarely covered by the decision of the jurisdictional High Court in the case of Nirav Modi (supra) wherein the Hon'ble High Court has held that where the Assessing Officer has taken possible view after inquiring into the matter and after appreciating all the evidences on record, it is not open to CIT to exercise revisionary jurisdiction on the ground that he does not agree with the conclusion drawn by the Assessing Officer. On this count alone, the order passed by the learned PCIT under

Section 263 of the Act cannot be sustained and we are inclined to quash the revisionary proceedings. Even on merits, the assessee has a fool-proof case as the income has been assessed pursuant to Section 43CA(3) and (4) of the Act, which clearly provides that if the date of agreement and the date of registration are not the same, the stamp value as on the date of agreement shall be taken for the purpose of computing the income of the assessee and not the date of registration. Accordingly, we allow the appeal of the assessee by setting aside the order of learned PCIT.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th January, 2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Date : 11th January, 2021

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai