

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 255/JP/2019
निर्धारण वर्ष / Assessment Year : 2014-15

M/s Spytech Buildcon, 501, Geetansh Class of Pearl, K-48-49, Income Tax Colony, Durgapura, Tonk Road, Jaipur, Rajasthan.	बनाम Vs.	A.C.I.T., Circle-6, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABEFS 2767 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani (CA) &
Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 21/06/2021
उदघोषणा की तारीख / Date of Pronouncement : 14/07/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-2, Jaipur dated 25/01/2019 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

- "1. *In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in making addition of Rs. 5,39,711/- U/s 43CA of the Income Tax Act, 1961. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 5,39,711/-.*

2. *The assessee craves its right to add, amend or alter any of the grounds on or before the hearing.”*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee firm was engaged in the business of real estate including PGA club house in the name and style of Spytech Buildcon. The assessee filed its return of income for the year under consideration on 26/09/2014 declaring total income of Rs. 30,10,020/-. During the course of assessment proceedings, it was seen that the assessee firm had sold three flats for less than the value as per stamp valuation authority for which agreements and date of registration were not same. The AO proposed to make addition under section 43CA on the differential amount of consideration shown in the document and the Stamp Duty Valuation. The assessee contended before the AO that the agreement of sale of the flats in question were entered into with the customer and at that point of time section 43CA was not in the Statute Book. Thus the assessee contended that the provisions of section 43CA are not applicable when the assessee has already entered into the agreement. The AO did not accept this contention of the assessee and made the addition of the differential amount of Rs. 5,39,711/- under section 43CA of the Act.

4. Being aggrieved by the order of the A.O., the assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.
5. Against the order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT.
6. The only ground raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the action of the A.O. in making addition of Rs. 5,39,711/- U/s 43CA of the Act. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) which is contended in para 2.2. of the order of the Id. CIT(A) and the same is reproduced below:

"Provisions of Section 43CA were introduced by Finance Act 2013, w.e.f 01.04.2014 (i.e. AY 14-15). Thus, Section 43CA had applicability only on those transactions for sales, wherein both the agreement to sale and registered sale deed were executed after 1.4.2013.

It is undisputed that, in the case at hand, the assessee firm, for the purpose of sale of flats, had entered into agreement for sale prior to 1.4 2013 (Refer Table above or at Page 2 of AO Order).

It is submitted that when agreement to sale of flats were entered and the sale consideration was decided, provision of Section 43CA was not in existence. Thus, the fact that Sale Deeds were registered after 1.4.2013 would have no bearing on the applicability of Section 43CA.

In this regard, attention is drawn to Section 50C which was brought into the statute book w.e.f 01.04.2003. At the time of introduction of the said section situation, similar to the case at hand, arose wherein assessee 's had transferred their property by way of agreement to sell for a consideration mentioned therein before 01.04.2003. However the sale deed was executed after 01.04.2003. Income Tax Authorities in those cases considered the sale value as per the DLC rates, as required under section 50C, ignoring the actual sale consideration as per the agreement to sell. Additions made in this regard were subsequently deleted by the Appellate Authorities by stating that section 50C would be applied only when both agreement to sell and sale deed are entered after 01.04.2003 i.e. the date from which the section came into effect. In this regard, attention is drawn towards the below mentioned judicial pronouncements, the extracts of which have also been set out for the sake of convenience:-

Shimbhu Mehra [2016] 65 taxmann.com 142 (Allahabad) (PB: 5)

M Siva Parvathi & ors. [2010] 129 TTJ 463 (Visakhapatnam Bench)

Similar ratio is applicable to the case at hand wherein date of agreements is before 01.04.2013 i.e. the date from which Section 43CA was introduced and the sale deeds were executed on 01.04.2013.

It is submitted that at the time of executing the agreements for sale (J)Plats, the assessee firm had decided the sales consideration for each of flats to A be sold Thereafter, the assessee firm lost all its right to make any changes into the terms and conditions for the sale of flats, including the value at which the flats were to be sold.

It is submitted that the assessee firm received the entire amount of sale consideration, pertaining to Studio No. F, of Rs. 10,58,029 on 4.05.2012 i.e. at the time of booking of such flat (PB: 1). Further, the amount of consideration pertaining to J002 was to be received before 15.03.2013 as per the agreement to sale. (PB: 5)

It is trite law that any provision of the Income Tax which is introduced into statute for first time and which puts additional burden on the assessee's should have a prospective effect. Thus, in a situation where in the agreement to sale has been executed prior to introduction of 43CA even though the sale deed was executed after introduction of such section would have no bearing on transactions at hand.

In view of the above factual and legal position, addition made by the Id. AO deserves to be deleted in to-to.

Reliance is also placed on the judgment of Hon'ble ITAT, Jaipur Bench, in case of Indexone Tradecone (P.) [2018] taxmann.com 174 (Jaipur-Trib.), in which it was held that:-

"Head Notes: Sectionfavour of assessee]"

In view of the above factual and legal position, addition made by the Ld. Assessing Officer deserves to be deleted in to-to:"

The Id AR has relied on the following judicial pronouncements:

- (i) Indexone Tradecone (P) Ltd. Vs DCIT (2018) 97 taxmann.com 174(JP Trib)
- (ii) CIT Vs Shimbhu Mehra (2016) 65 taxmann.com 142 (All)
- (iii) Bajrang Lal Naredi Vs ITO, ITA No. 327/Ran/2018 order dated 02/01/2020.
- (iv) Maria Fernandes Cheryl Vs ITO (2021) 123 taxmann.com 252 (Mum Trib)

7. On the other hand, the Id. D/R has submitted that the sale deed took place after the provisions of section 43CA was brought into Statute. Thus the Id. D/R has contended that the AO

has rightly made the addition under section 43CA when the assessee has shown the sale consideration less than the Stamp duty valuation.

8. We have considered the rival contentions of both the parties and perused the material placed on record. As per facts of the present case, the assessee firm is engaged in the business of real estate development and during the relevant previous years, sold three flats No. J-001, J-002 and Studio No. 5 from its residential project Pearl Green Areas and all flats were sold at the value less than Fair Market Value (FMV)/DLC as on the date of registration of the sale deed. However, according to the Id. AR, for all these flats, the assessee firm had entered into agreement to sell prior to the start of the relevant previous year i.e. 01/04/2013. It was further argued that the provisions of Section 43CA of the Act were not made applicable for the sales undertaken by the assessee firm, as those entire sale deeds were registered during the relevant year. However, the agreement to sell wherein all the terms and conditions with respect to the sale were finalized, was entered before the relevant previous year and consideration was received through account payee cheque. The Id AR, had, although, relied upon the various judgments as mentioned above but the *pari materia*

contained in those judgments and the facts and circumstances mentioned in those judgments are altogether different and are not applicable to the facts of the present case as in most of the judgments, the entire sale consideration amount was already paid at the time of entering into agreement to sell. Whereas the Id. CIT(A) while passing the impugned order has recorded a specific finding to the effect that there is no doubt that Section 43CA of the Act was in force during the relevant previous year and the assessee had failed to establish the sale consideration was received through payee's account cheque prior to 01/04/2013 and also that the sale deeds were registered by the assessee during the relevant previous year only, therefore, we are of the view that since the assessee has disputed the applicability of provisions of Section 43CA of the Act on the ground that booking for sale of flats in question were made prior to the previous year which is prior to the date on which provisions of Section 43CA of the Act are applicable i.e. on 01/04/2013. It is pertinent to note that the Legislature has specifically provided the remedy for a situation where the property is sold by an agreement and subsequently a sale deed is executed. Thus, in case of any difference of date of registration of the transfer of asset and date of agreement, then the value assessable by the

Stamp Duty Authority in respect of such transfer, the date of the agreement shall be taken. For ready reference, provisions of Section 43CA are reproduced as under:

43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ⁹¹[ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:

(2) The provisions of sub-section (2) and sub-section (3) of [section 50C](#) shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(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 way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account ⁹³[or through such other electronic mode as may be prescribed⁹⁴] on or before the date of agreement for transfer of the asset.

As per sub-section (3) and (4) of section 43CA, the benefit of prior agreement is granted if the consideration is received at the time of agreement other than cash. In the case in hand, the booking is claimed to have been made prior to 01/04/2013 whereas the sale

deeds were executed after 01.04.2013 which falls in the previous year relevant to the assessment year under consideration, therefore, provisions of Section 43CA are applicable for the assessment year under consideration. Thus once the provisions itself has taken care of such a situation or difference in date of prior agreement, then the applicability of provisions cannot be questioned based on mere existence of prior agreement. The transfer under the provisions of section 43CA is recognized only when a registered document is executed and therefore, in view of the facts and circumstances of the case, since the transfer through sale deed is made during, the previous year relevant to the assessment year under consideration for which the provisions of Section 43CA are applicable, then merely because an agreement has taken placed prior to 01/4/2013 would not take away the transaction from the ambit of the provisions of Section 43CA of the Act. More particularly when the entire sale consideration was not made through account payee cheque at the time of entering into an agreement to sell. Thus, while relying upon the decision of the Coordinate bench of this Tribunal in the case of **M/s Spytech Realtors Pvt. Ltd. Vs ACIT in ITA No. 254/JP/2019 order dated 02/01/2020** wherein similar circumstances in the group case of the assessee itself has been decided on this issue against the assessee. Therefore, considering the

totality of facts and circumstances as discussed above, we do not find any error or illegality in the impugned orders of the authorities below.

9. In this result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 14th July, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 14/07/2021

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Spytech Buildcon, Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 255/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar