

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1134/PUN/2019
निर्धारण वर्ष / Assessment Year: 2015-16

Mahesh Properties, Ganesh Gruharachana Sanstha CTS No.15, Final Plot No.17/A/3 Karve Road Erandawane, Pune- 411004. PAN : AAPFM5247G	Vs.	ITO, Ward-3(1), Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Arvind Desai
Date of hearing : 23.05.2022
Date of pronouncement : 26.05.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee's appeal for assessment year 2015-16 arises against the CIT(A)-3 Pune's order dated 21.05.2019 passed in case no.PN/CIT(A)-3/Wd-3(1),Pn/289/2017-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short the Act.

Case called twice. None appears at assessee's behest. It is accordingly proceeded *ex-parte*.

2. Coming to the assessee's sole substantive ground challenging correctness of both the lower authorities' action invoking section

43CA addition of Rs.20,22,807/-, it emerges that the same pertains to sale of its flats in “Crystal Avenue” and “Sindhu Palace” involving five and two flats; respectively.

3. I find with the able assistance coming from Revenue side as well as from a perusal of the Assessing Officer’s corresponding tabulation(s) that assessee’s all five flats in former project involve difference of less than “5%” tolerance margin in light of section 43CA(1) 1st proviso inserted by the Finance Act, 2018 w.e.f. 1.4.2019. This is coupled with the fact that the assessee’s former flat in latter project (supra) had less than “10%” differential margin as per the substitution made in the foregoing proviso vide Finance Act, 2020 w.e.f. 1.4.2021.

4. Mr. Desai vehemently argued at the Revenue’s behest that the foregoing twin tolerance margins do not carry any retrospective effect. I find no reason to accept the instant argument as section 43CA applies in an instance of “transfer of assets other than capital assets in certain cases” which is *pari materia* to section 50C applicable when a capital asset is transferred. The legislature appears to have introduced the foregoing twin tolerance margins of “5%” and “10%” vide Finance Act, 2018 w.e.f. 1.4.2019 as substituted in the Finance Act, 2020 w.e.f. 1.4.2021; respectively in

section 50C of the Act. This tribunal's co-ordinate bench(es) in Sri Himmatbhai Dharamshibhai Sonani vs. ACIT (2016) 75 taxmann.com 141 (Ahd) and Maria Fernandes Cheryl vs. ITO ITA No.4850/Mum/2019 dated 15.01.2021 hold the same to be having retrospective effect. Mr. Desai could hardly dispute the clinching fact that the CBDT Circular No.8 of 2018 titled "Explanatory Notes to the provisions of the Finance Act, 2011" treated both section 43CA as well as section 50C as *pari materia* only. I therefore adopt the very reasoning herein as well to delete the impugned addition(s) made u/s 43CA of the Act *qua* the assessee's five units in "Crystal Avenue" and formal unit in "Sindhu Palace" since involving difference actual sale price and SRO value as less than 5% and 10%; as the case may be.

5. Next comes the assessee's flat no.6 in latter housing project i.e. "Sindhu Palace". Mr. Desai could hardly dispute the fact that the learned lower authorities have nowhere made the statutory reference u/s 43CA(2) r.w.s. 50C(2) which has been held to be a mandatory exercise in Sunil Kumar Agarwal vs. CIT (2014) 372 ITR 83 (Cal.). I accordingly restore the assessee's instant substantive grievance back to the Assessing Officer for his afresh

adjudication as per law regarding assessee's flats no.6 sold to Shri Sanjay Daulatrao Patil for Rs.40 lakhs. Ordered accordingly.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced on this 26th day of May, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th May, 2022.

Sujeet (DOC)

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Pune
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.