

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE
BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.600/PUN/2021

निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Gods Gift Landmark, Flat No.8, Vimal Vihar, S.No.98/1, Plot No.27, Right Bhusari Colony, Kothrud, Pune 411 038 PAN : AAKFG4105A	Vs.	ITO, Ward-3(4), Pune
(Appellant)		(Respondent)

Appellant by Shri J.R. Chandekar

Respondent by Shri Arvind Desai

Date of hearing 26-05-2022

Date of pronouncement 30-05-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2015-16 arises against the CIT(A)-3, Pune's order No. PN/CIT(A)-3/ITO.Wd.3(4)/245/2017-18 dated 24-08-2020 involving proceedings under Section 143(3) of the Income Tax Act, 1961 in short the Act.

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that both the lower authorities have erred in law and on facts in making Section 43CA(1) addition of Rs.17,42,610/-, the CIT(A)'s detailed discussion affirming the assessee's action to this effect reads as under :

"5.3 DECISION : The observations of the AO, submissions of the appellant and the material on record have been considered.

5.4 During the assessment proceedings, AO noticed from the “registered sale deeds” of land that sale consideration of the land is less than the market value of the land which comes under the purview of section 43CA of Income Tax Act, 1961. The A.R. of the appellant were confronted with the same vide order sheet noting dated 21/12/2017. AO has recorded in the assessment order that A.R. accepted the fact and did not raise any contention. Therefore, the amount of Rs. 17,42,610/- was added to the total income of the appellant. The amount was calculated as given below :

S. No.	Doc. No.	Date of Registration	Sale Value	Market Value	Difference
1	3287/2014	25/04/2014	9,00,000	14,10,750	5,10,750
2	3506/2014	02/05/2014	10,77,740	11,79,750	1,02,010
3	1784/2014	23/05/2014	8,00,000	9,07,500	1,07,500
4	1917/2014	31/05/2014	7,00,000	8,16,750	1,16,750
5	7141/2014	03/09/2014	3,55,000	12,60,600	9,05,600
Total					17,42,610

5.5 The appellant has now stated that the lands purchased and sold is a stock-in- trade of the business of the appellant. The transactions of sale and purchase are supported by registered agreements. The stamp duty paid is a deductible business expenditure under S. 37 of the Act. The appellant has also accepted that the transactions have been made by way of registered documents. The appellant has stated very meekly that the provisions of the Sec 43CA are not applicable. However, the appellant has not given any convincing reason for the same.

5.6 Then, the appellant has attempted to dispute the addition by saying that the books of accounts were not rejected by the AO. In this regard, it is relevant to refer to the decision in the case of Rallis India Ltd Vs CIT [2015] 374 ITR 462 wherein the Hon'ble High Court of Bombay has observed as given below:

"13. It is undisputed that the power of a CIT(A) is co-terminus with that of the Assessing Officer. In fact, the CIT(A) can do what the Assessing Officer can do and has failed to do as held by the Apex Court in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225 "

Therefore, it is held that though the books of accounts of the appellant are audited they do not depict the true income of the appellant and are rejected u/s 145(3) and the addition made by the AO is confirmed. Grounds No 1 & 2 are **DISMISSED.**”

3. Learned counsel could hardly dispute the impugned difference between the assessee’s actual sale price vis-à-vis SRO value to be more than 10% even if it is held that Sec.43CA(1) proviso inserted by the Finance Act, 2018 w.e.f. 01-04-2019 carries retrospective effect. I therefore uphold the impugned addition in principle.

4. Next comes equally important aspect of determination of fair market value of the assessee’s residential units sold in the relevant previous year. Learned departmental representative could hardly rebut the basic principle that Sec.43CA(2) adopts the provisions of Sec.50C(2) & (3) which require the Assessing Officer to mandatorily make reference to the DVO in light of Sunil Kumar Agarwal Vs. CIT (2014) 372 ITR 83 (Cal.) even if the taxpayer concerned does not raise such an objection. I therefore direct the Assessing Officer to determine fair market value of the assessee’s flat(s) sold forming subject matter of the impugned Sec.43CA addition after making statutory reference to the DVO as per law. Ordered accordingly.

5. Delay of 373 days in filing of the instant appeal is condoned since the CIT(A)’s has passed his lower appellate

order on 24-08-2020, i.e. during Covid-19 pandemic outbreak period.

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

Order pronounced in the Open Court on 30th May, 2022.

Sd/-

**(S.S.GODARA)
JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 30th May, 2022
Satish/Doc

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is 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, पुणे "SMC"
/ DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	26-05-2022	Sr.PS
2.	Draft placed before author	27-05-2022	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		