

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER  
AND  
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.57/PUN/2020  
निर्धारण वर्ष / Assessment Year: 2015-16

M/s. Nisarg Developers, S.No.84/3B, Gund Vasti, Pune Solapur Road, Manjari, Pune- 412307. PAN : AAGFN9362G	Vs.	DCIT, Circle-14, Pune.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri S. P. Walimbe

Date of hearing : 13.06.2022  
Date of pronouncement : 20.06.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM:**

This assessee's appeal for assessment year 2015-16 arises against the CIT(A)- 7, Pune's order dated 08.11.2019 passed in case no. PN/CIT(A)-7/10338/2017-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short the Act.

Heard both the parties. Case files perused.

2. We note at the outset that the CIT(A)'s lower appellate order affirming the Assessing Officer's action making section 43CA addition of Rs.19,10,334/- in assessment order dated 14.11.2017;

has been passed *ex-parte*. A perusal of the Assessing Officer's detailed discussion in para 3 of the foregoing assessment and more particularly in para 3.2 making tabulation of the assessee's nine properties sold during the year to as many customers indicates that the corresponding difference between actual and market value(s) thereof was less than 10% in eight of the sale instances *per se*.

3. Learned counsel vehemently argued that such a difference of less than 10% itself stands condoned as per the Finance Act, 2020 w.e.f. 1.4.2021 substituting the earlier range of 5% in section 43CA(1) 1<sup>st</sup> proviso. The Revenue has drawn strong support from the impugned addition. We find in this factual backdrop that this tribunal's recent co-ordinate bench decision in Mahesh Properties vs. ITO vide ITA No. 1134/PUN/2019 for A.Y. 2015-16 order dated 26.05.2022 decides the instant issue against the department as under :-

*“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) 1<sup>st</sup> 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.”*

4. So far as the assessee’s 9<sup>th</sup> properties sold to Smt. Kalpana S. Gavli is concerned, the difference between the foregoing twin rates is admittedly more than 10% wherein the learned lower authorities have not made any reference to the DVO in light of section 43CA(2) adopting section 50C(2)&(3) of the Act. Case law Sunil Kumar Agarwal vs. CIT (2015) 372 ITR 83 (Calcutta) holds the same to be mandatory even if the assessee concerned does not raise any such contention. We accordingly conclude that the Assessing Officer herein requires to re-adjudicate the entire issue afresh in light of our preceding detailed discussion. It is further made clear that the impugned addition made u/s 43CA would not be repeated in case of the assessee’s actual and SRO price(s) of the property(ies)

sold is less than the 10% tolerance margin in above terms. Ordered accordingly.

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

Order pronounced on this 20<sup>th</sup> day of June, 2022.

Sd/-  
**(DR. DIPAK P. RIPOTE)**  
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 20<sup>th</sup> June, 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)-7, Pune.
4. The Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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