

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

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

आयकरअपीलसं. / ITA No.21/PUN/2021
निर्धारणवर्ष / Assessment Year : 2015-16

Bhujbal Brothers Construction Company, Bhujbal House, S.No.28 , Karve Nagar, Pune – 411052. PAN: AAGFB 7974 A	Vs	The Income Tax Officer, Ward-3(5), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri S P Walimbe – DR
Date of hearing	24/06/2022
Date of pronouncement	07/07/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This Assessee's appeal for Assessment Year 2015-16 is directed against the Commissioner of Income Tax(Appeals)-3, Pune's order dated 04.11.2019 passed in case no.PN/CIT(A)-3ITO Wd. 3(5)/388/2018-19 in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short "the Act"].

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

2. It transpires during the course of hearing with the able assistance coming from Revenue side that the assessee's sole

substantive grievance raised herein challenges correctness of both the lower authorities action making section 43CA addition of Rs.45,56,287/- during the course of assessment dated 26.12.2017 as upheld in the CIT(A) lower appellate order under challenge.

3. Mr.S.P.Walimbe invited our attention to Assessing Officer's detailed tabulation in page 2 of the assessment order indicating the impugned difference between the assessee's actual consideration vis-à-vis SRO price thereto involving nine residential properties. He could hardly rebut the clinching fact that section 43CA(1) [first proviso] inserted by the Finance Act, 2018 w.e.f 01.04.2019 had introduced tolerance margin of 5%, as increased to 10% vide Finance Act, 2010 w.e.f 01.04.2021. And further that the assessee's residential units sold at S.No.3 to 6 having index numbers 8489, 7126, 2900 and 30745 had witnessed difference between the foregoing twin rates as less than 10% only. Mr.Walimbe at this stage strongly contended that we are in A.Y. 2015-16 whereas the above stated twin tolerance margins came to be introduced it later.

4. We find no merit in the Revenue's instant arguments as the legislature has introduced these pari-materia provision in section 43CA, section 50C and 56(2)(vii) of the Act applicable in case of the transfer of the specified asset on account of their "transfer" involving vendor and purchasers thereto ; as the case may be. The CBDT's

explanatory memorandum to Finance Bill, 2013 also reiterates the very factual proposition.

5. Faced with this situation, we quote Dharamshibhai Sonam Vs. ACIT [2016] 75 taxmann.com 141 (AhdP) and [2021] 123 taxmann.com 252 (Mum) to conclude that the forgoing twin margins of 5% and 10% are curative in nature having retrospective effect; under section 50C(1) as well as section 43CA(1) 1st proviso of the Act. We, thus adopt the said reasoning mutatis-mutandis and direct the Assessing Officer to first make reference to the DVO in light of section 43CA(2); held as mandatory in Sunil Kumar Aggarwal Vs. CIT [2015] 373 ITR 83 (Kolkata), to determine FMV of the corresponding assets and then make the impugned addition only in case the differential value between the actual sale price and FMV determined turns out it to be more than 10% only, as per law in consequential proceedings. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purpose in above terms.

Order pronounced in the open Court on 7th July, 2022.

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

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

पुणे / Pune; दिनांक / Dated : 7th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.