

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
G.D. PADMAHALI, ACCOUNTANT MEMBER**

ITA No.221/PUN/2021
(Assessment Year:2016-17)

M/s. Shivtara Associates
114/115 First Floor
Connaught Place
Bund Garden
Pune 411001

Pr., CIT, Central
Aayakar Sadan
Vs. Bodhi Towers, Salisbury Park
Gultekadi, Pune 411037

PAN –ABUFS6026K

Appellant

Respondent

Appellant by: Shri Abhay Avachat
Respondent by: Shri Sardar Singh Meena

Date of Hearing: 18.08.2022
Date of Pronouncement: 26.08.2022

ORDER

Per S.S. Godara, JM

This assessee’s appeal for AY 2016-17 arises against the PCIT (Central), Pune’s order dated 31.03.2021 passed in case No. PCIT (Central), Pune/Revision-263/100000195682/2021, involving proceedings under Section 263 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 the PCIT (Central) herein has erred in law and on facts in exercising his Section 263 revision jurisdiction thereby holding the corresponding Section 144 assessment dated 26.12.2018 as an erroneous one causing prejudice to the interest of Revenue, we note at the outset that the impugned detailed discussion to this fact reads as under: -

“1.1 On verification of the case records, it was noticed that during the F.Y. 2015-16, assessee has undertaken a housing project called Tara City at Loni Kalbhor, Pune. On going through the Tax Audit report for the year under consideration, it is seen that during the F.Y. 2015-16 assessee had sold the flats in the said project to various customers for consideration less than the stamp duty value.

1.2 According to section 43CA, if the consideration received on transfer of immovable property is less than the stamp duty value, then, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration for the purposes of computing income under the head "Profits & Gains of Business or Profession". During the F.Y. 2015-16 the assessee sold total 54 properties in the project Tara City for a consideration less than the value adopted for Stamp Duty. The difference in the amount of the consideration received or accrued and Value adopted or assessed or assessable is Rs. 1,41,45,317/-(Rs. 11,12,33,100-9,70,87,783/-). The difference in these amounts attracts provisions of Sec. 43CA of the Act which stipulated that.

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 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.

1.3 Thus, from verification of assessment order, it is seen that neither any discussion on the above said issue, nor any submission in this regard are found from the record. Therefore remedial action is proposed by initiating the action u/s. 263 of the Act, as order of AO is erroneous and prejudicial to the interest of revenue.

2.0 Accordingly, a show-cause notice dated 19.03.2021 detailing the above was issued to the assessee seeking the response to the above proposal while providing personal hearing to the assessee on 24.03.2021 at 3.30 pm to appear in person or through the authorized representative.

3.0 However, in response to the statutory notice, neither the assessee attended nor the authorized representative attended or filed any reply. Therefore, the issue is hereby decided on merits.

4.0 Considering above, it is apparent that the A.O has failed to take into considerations all perspectives of the case while passing the order u/s. 144 on 26/12/2018 for A.Y. 2016-17. as erroneous & prejudicial to the interest of revenue. There was no cooperation from the assessee either, as the assessment had to be finally drafted u/Section 144 of the IT Act.

5.0 Accordingly, the assessment order u/s. 144 on 26/12/2018 for A.Y. 2016-17 is hereby set aside to the file of the assessing officer to be framed de-novo. While making fresh assessment order the Assessing Officer shall take into account the issues already considered/ additions made in the order dated 26/12/2018 and complete the assessment after making necessary verification of issues discussed supra."

3. We have given our thoughtful consideration to the vehement rival contentions against the in support of the impugned revision directions and find no merit in Revenue's stand. We first of all note from a perusal of page 26 in assessee's paper book containing it's reply in the impugned revision proceedings that it had already disallowed/added back a sum of

Rs.1,59,27,917/- under Section 43CA in its computation on suo moto basis. Pages 28 & 29 forming part of the case reference contain all the relevant details regarding the concerned sale of residential flats.

4. This is indeed coupled with the fact that the learned PCIT has invoked his revision jurisdiction whilst concluding that the assessee's sale of 54 properties involve difference between actual sale price and stamp value thereon without even indicating as to whether the same was taken into consideration unit-wise or not. Learned D.R. could hardly rebut that the PCIT herein has rather proceeded on aggregation basis than assessee's unit-wise sale which is not permissible in Section 43CA of the Act as the legislature has used the clinching statutory expression "where the consideration received or accruing as a result of the transfer by an assessee of an asset" only. We thus are of the opinion that the PCIT's exercise of revision jurisdiction in the given facts and circumstances hardly confirms to the stricter interpretation principle in light of Commissioner of Customs vs. Dilipkumar & Co. (2018) 9 SCC1 (SC) (FB). We thus reverse the learned PCIT's revision directions on both these aspects. Ordered accordingly.

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

Order pronounced in the open court on 26th August, 2022.

Sd/-
(G.D. Padmahshali)
Accountant Member

Sd/-
(S.S.Godara)
Judicial Member

Pune, Dated: 26th August, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The Pr. CIT-(Central) , Pune*
4. *The DR, "B" Bench, ITAT,*

By Order

//True Copy//

Assistant Registrar
ITAT, Pune Benches, Pune

n.p.