

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

**BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / **ITA No.430/PUN/2020**
निर्धारण वर्ष / Assessment Year : 2016-17

Anand Developers,
C.S.No.365/2/2,
Sharayu, Nagraj Colony,
Vishrambhaug,
Sangli – 416 415

PAN : AAQFA4833M

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle 2, Sangli

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 21.06.2022
घोषणा की तारीख / Date of Pronouncement : 29.08.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee’s appeal for A.Y. 2016-17 is directed against the CIT(A), Pune’s order dated 04/03/2020 passed in case No. ITBA/APL/S/250/2019-20/1026127927(1) involving proceeding u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears on assessee’s behest. It is accordingly proceeded ex-parte. We have heard the Revenue. Case file perused.

2. Coming to the assessee's sole substantive grievance in the instant appeal challenging the correctness both the lower authorities action making section 43 CA addition of Rs.26,79,000 in both the lower proceedings, it inter alia emerges at the outset from a perusal of the CIT(A)'s detailed discussion that the corresponding actual sale consideration figure was Rs.5,58,00,000/-, SRO price at Rs.8,50,20,000/- and DVO had determined the sum to the tune of Rs.5,84,79,000/- ; respectively. Meaning thereby that the difference between DVO and actual rate turns out to be less than 10% as per section 43 CA(1) first proviso stipulating tolerance margin of 5% vide Finance Act, 2018 w.e.f. 01.04.2019; as increased to 10% by the Finance Act 2020 w.e.f. 01.04.2021; respectively.

Mr. Desai vehemently argued that we are in assessment year 2016-17 whereas foregoing statutory amendment(s) do not carry any retrospective effect. We find no merit in the Revenue's instant argument as tribunal co-ordinate bench in Dharamshibhai Sonani V/s ACIT(2016) 161 ITD 627(Ahd) and Maria Fernandes Cheryl V/s. ITO (2021) 123 taxmann.com 252(Mum) hold the foregoing tolerance similar tolerance margin(s) in section 50C as carrying retrospective effect being curative in nature. We also wish to make it clear that the legislature has introduced pari materia provision both at section 43CA (2)(4) and section 50C(1) 1st and 2nd proviso, applicable in specified circumstances. We therefore hold that tribunal's foregoing co-ordinate benches' decisions very much apply in the facts of the instant case as well where the differential rate in actual sale consideration vis-à-vis SRO

prices is less than 10% (supra) u/s. 43CA(1) 1st proviso The assessee succeeds in his sole substantive ground in very terms.

3. This assessee's appeal is allowed.

Order pronounced in the Open Court on this 29th day of August, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 29th August, 2022.

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/ **JUDICIAL MEMBER**

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Kolhapur.
4. The Pr.CIT, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" 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.

S.No.	Details	Date	Initials
1	Draft dictated on	21.06.2022	
2	Draft placed before author	24.08.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		