

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
“A” BENCH  
MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1254/MUM/2021  
(A. Y.:2015-16)**

Laxmina Ventures, 103, VardhmanMarket, Opp: Andhra Bank Sector-17,Vashi, Navi Mumbai-400703	Vs.	Principal Commissioner of Income Tax,3 rd floor, I T Department, Vashi Railway station, Commercial complex, NaviMumbai-400703
<b>Pan No.AAEFL3415G</b>		
<b>Appellant</b>		<b>Respondent</b>

Appellant by	Shri.KhushiramJadhvani.AR
Respondent by	Smt.Shailja Rai.DR

Date of Hearing	20.09.2022
Date of Pronouncement	26.09.2022

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the Principal Commissioner of Income Tax(Pr.CIT) Mumbai-28 passed under Section 263 of the Income Tax Act, 1961(hereinafter in short “the Act”).

At the time of hearing, the Ld.AR has submitted the application for condonation of delay of 39 days in filing the appeal before the Hon'ble Tribunal and explained that the filling was delayed and relied on the decision of Hon'ble Supreme Court in respect of extension of period of limitation. We find the registry has issued defect notice to the assessee mentioning the delay of 39 days in filling the appeal. On application of the ratio of decision of the Honble Supreme court in respect of extension of limitation period the delay can be condoned and the Ld.DR has no specific objections. Further we are satisfied with the reasonable cause explained for delay in filling the appeal and accordingly we condone the delay and admit the appeal.

The assessee has raised following grounds of appeal.

*1. That the impugned order dated 18/03/2020 issued u/s. 263 of the Act, 1961 for AY 2015 - 16 is erroneous, without jurisdiction, illegal, void-ab-initio and devoid of the fact that the alleged original assessment order u/s. 143(3) for AY 2015 - 16 has ever been properly served on assessee.*

*2. That the impugned order dated 18/03/2020 issued u/s. 263 of the Act, 1961 is based on mere change of opinion and ignorance of fact that all the documentary evidences for issue raised in notice under section 263 were duly submitted during original assessment proceedings and the same are adjudicated*

*by Assessing Officer before passing order u/s. 143(3) of the Act, 1961.*

*3. That the appellant craves, leave to add, alter, amend or vary and/or withdraw any or all of the aforesaid grounds of Appeal or at time of hearing of the above appeal.*

2. The brief facts of the case that the assessee is a partnership firm engaged in business as builders and developers. The assessee has filed the return of income for the assessment year 2015-16 on 26.12.2015 disclosing a total income of Rs. Nil and the return of income was processed under Section 143(1) of the Act. Subsequently, the case was selected for limited scrutiny and notice under Section 143(2) and 142 of the Act along with questionnaire were issued. In compliance to notice, the Ld. AR of the assessee attended from time to time and submitted the details and the case was discussed. The Assessing Officer after considering the details filed discussions has accepted the total income of the assessee as per the return of income filed and passed the assessment order U/sec143(3) of the Act dated 15-12-2017 determining a total income of Rs. Nil.

3. Subsequently, the Pr.CIT on verification of the assessment details and the assessment record found that the assessment order passed by the A.O. is without verification and non application of the mind. The Pr.CIT find that the assessee has sold the four flats in violation of provisions of Section 43CA of the Act and there is a difference in the market value and the agreement value of the flats aggregated to Rs.18,52,885/- and the AO has not verified these facts

and also failed to verify the receipts from the prospective buyers are before the date of agreement and observed that the order passed by the A.O. is erroneous and prejudicial to the interest of the revenue and issued notice under Section 263 of the Act. In-compliance to notice, the Ld. AR of the assessee appeared and filed details by letter dated 04.02.2019 along with the booking receipts, agreement copies, details of ready reckoner of the properties dealt at page 2 Para 3 of the order read as under:

*“In respect of the properties under consideration for the Scrutiny your assessee had made the booking of said properties in the year 2012. At the time of booking the flat, fair market value as per ready reckoner of 2012 was considered. But due to unavoidable situations the parties under scrutiny of properties got them self registered in the year 2014.*

*With the above submission, your assessee request your kind self that the value of the flat time of booking for the prospective buyers under consideration was before 2014 i.e. in the year 2012 and the value was higher than the Fair market value so there was no violation of the sec. 43CA of the I.T. Act.”*

*The submission made by the assessee has been perused, however, the same is not found tenable as bank statement reflecting payments received from the purchasers of Flats has not been produced by the assessee. Merely submitting the receipts doesn't establish the payment received from the purchaser.*

4. The Pr.CIT was not satisfied with the explanations and the assessee has not submitted the information before

the A.O on the applicability of Section 43CA of the Act. The Pr.CIT is of the opinion that the assessment order passed U/sec143(3) of the Act is erroneous and prejudicial to the interest of Revenue and invoked the explanation 2 sub section 1 of 263 of the Act and has set-aside the assessment order and issued the directions to the A.O. to pass a fresh assessment order after due verification of the submissions of the assessee and also after conducting proper verification/inquiries, investigation and examination of working furnished by the assessee and the assessee should also provided adequate opportunity of hearing and passed the order under Section 263 dated 18.03.2020. Aggrieved by the order of the Pr.CIT, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing the Ld. AR submitted that the Pr.CIT has erred in treating the assessment order passed under Section 143(3) of the Act as erroneous and prejudicial interest of the Revenue overlooking the facts that the case was selected for limited scrutiny and the A.O has called for the information and the assessee has filed the details and there is proper compliance to the notices. Further, the assessee has substantiated the details /information with the vital evidences. The Ld.AR has supported the submissions with the factual paper book and judicial decisions. Per Contra, the Ld. DR supported the order of the Pr.CIT.

6. We heard the rival submissions and perused the material available on record. The Ld.AR contentions are that the order passed by the A.O. does not

satisfy the twin conditions that (i) erroneous and (ii) prejudicial to the interest of the revenue. The Ld. AR further submitted that the Pr.CIT only considered the fact that the AO has not conducted enquiry but there are no specific reasons and findings are recorded. The Ld.AR submitted that the assessee firm is following the completion method of accounting and the A.O has issued notice under Section 143(2) of the Act for limited scrutiny and referred to the page 12 of the paper book to examine miss match in income / capital of gain on sale of land or building. Further, the A.O. has issued notice under Section 142(1) of the Act placed at Page 14 of the paper book and where the details were called and in particular clause (vi) The details of advance booking in the format in particular to the Flats. The contentions of the Ld. AR are that the assessee has filed the details on these aspects and demonstrated page 82&83 of the paper book with the registration details of customer in F.Y.2014-15 disclosing the market value amount and agreement amount. Further the AO after verifying these facts and the information has accepted the return of income. The Ld. AR also submitted that the AO after satisfying with the evidences and the submissions duly supported with the information has passed the order and

referred to various facts and the audited report. The Ld. DR referred to page 83 of the paper book, where the assessee has filed the details with reference to difference in registration details only.

7. When a query was raised to the Ld. AR that whether the AO has raised this point with respect to applicability of provisions of section 43CA of the Act in the course of assessment proceedings, the Ld AR submitted that since the AO has issued notice 142(1) of the Act and the assessee has complied with the directions with substantial material information and which covers the disputed issue also. The Ld. AR emphasized on the details submitted by the assessee before the Pr.CIT on 4-12-2019 which includes agreement copies, booking receipts, ready reckoner, and calculation sheet of value as of flat with ready reckoner value placed at page 92 and the bank statements highlighting payments received from flat owners was filed first time before the Honble Tribunal as per the certificate of the assessee. Whereas the Pr.CIT at page 3 Para 3 has observed that the Bank statement reflecting payments received from the flats was not produced by the assessee in the revision proceedings. So it is clear that the A.O. has never verified the payments received from the flats. We find the A.O has called for

the information, but there is no examination and verification of the facts or findings by the A.O on the applicability of provisions U/sec43CA of the Act. Accordingly, We do not find infirmity in the order of the Pr.CIT on the directions to A.O. for verification, examination of working submitted by the assessee and up hold the same and dismiss grounds of appeal of the assessee.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on  
26.09.2022

Sd/-

**(BASKARAN BR)**

**ACCOUNTANT MEMBER**

Mumbai, Dated: 26/09/2022

M. Sonavane

Sd/-

**(PAVAN KUMAR GADALE)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

By Order,  
(Dy./Asstt.Registrar)ITAT,  
Mumbai