



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "ए" न्यायपीठ, पुणे में ॥  
**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "A" BENCH, PUNE**  
**BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**  
**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 234/PUN/2020

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Harmony Construction

'Rim' Bungalow, Nr Taran Talav,

Gaikhe Colony, Nashik Rd, Nashik – 422101

PAN: AAFHH4263F

..... अपीलार्थी / **Appellant**

**बनाम / V/s**

Income Tax Officer,

Ward 1(3), Nashik

..... प्रत्यर्थी / **Respondent**

**द्वारा / Appearances**

Assessee by : Shri Sanket Joshi

Revenue by : Shri Ramnath Murkude

सुनवाई की तारीख / Date of conclusive Hearing : 14/10/2022

घोषणा की तारीख / Date of Pronouncement : 21/11/2022

**आदेश / ORDER**

**PER G. D. PADMAHSHALI, AM;**

This appeal challenges the order of Commissioner of Income Tax (Appeals)-1, Nashik [for short "**CIT(A)**"] dt. 13/11/2019 passed u/s 250 of the Income-tax Act, 1961 [for short "**the Act**"], which arose from assessment order dt. 22/12/2016 passed u/s 143(3) by the Income Tax Officer, Ward-1(3), Nashik [for short "**AO**"] for assessment year [for short "**AY**"] 2014-15.

2. The appellant assessee raised following **grounds**;



- 1) *The learned CIT(A) erred in upholding the addition u/s 43CA of Rs.68,27,500/- made by the A.O. in hands of the appellant without appreciating that the said addition was not justified on facts and in law.*
- 2) *The learned CIT(A) erred in confirming the addition u/s 43CA of Rs.68,27,500/- by holding that the govt. Valuation in respect of transfer of certain units recognized as sales during this year was higher than the actual sale consideration by Rs.68,27,500/- and therefore, the said difference was to be taxed as income u/s 43CA of the Act.*
- 3) *The learned CIT(A) failed to appreciate that all the agreement to sale in respect of the impugned transactions were executed and registered prior to 31.03.2013 i.e. when the provisions of section 43CA were not enacted by the Legislature and therefore, no addition u/s 43CA could have been made in respect of the above transactions entered much prior to the introduction of the above provisions.*
- 4) *Without prejudice to the above grounds, it is submitted that the agreements to sale in respect of the impugned units were registered before 31.03.2013 and substantial revenue thereon was also booked in earlier*



*years on the basis of percentage completion method followed by assessee and therefore, the A.O. was not justified in taxing the entire difference of Rs.68,27,500/- in A.Y. 2014-15 when the possession of units was transferred to the customers.*

*5) Without prejudice to the above grounds, the appellant submits that the actual sale consideration of units sold during the year was Rs.9,37,80,000/- whereas the govt. Valuation of such units sold was Rs.10,06,07,500/- and hence, the said difference of Rs.68,27,500/- was within the range of 10% of the govt. Valuation and hence, there was no reason to make any addition u/s 43CA for A.Y. 2014-15 and thus, the addition of Rs.68,27,500/- may be deleted.*

*6) The appellant craves, leave to add, alter, amend and delete any of the above grounds of appeal.*

3. The sole and substantive ground to be adjudicated relates to chargeability of difference of SDV over sale consideration where agreement fixing the value was executed prior to date of transfer agreement.

4. Concisely stated the facts of the case are;



**4.1** The appellant assessee is a resident partnership firm engaged in the business as builders and property developers, has for AY 2014-15 filed its return of income [for short **"ITR"**] on 30/09/2014 declaring total income of ₹14,27,970/-. The return of the firm was selected for scrutiny under **'CASS'** and on due scrutiny of financial statements, books of accounts and other submission tendered by the appellant during the 143(3) proceedings, the Ld. AO referred the matter to Ld. JCIT u/s 144A of the Act, who in turn after considering the representation of the appellant, directed the Ld. AO to bring to tax an amount of ₹68,27,500/- being the difference of stamp duty value [for short **"SDV"**] of 11 units found higher than the sale consideration recorded in transfer agreement u/s 43CA, consequently following the direction the assessment was framed with the aforestated solitary addition.



**4.2** Aggrieved by the action of the Ld. AO, the appellant firm carried the matter before first appellate authority [for short "**FAA**"] and reiterated its contention put before tax authorities below [for short "**TAB**"], however same did not inspire any confidence, consequently Ld. CIT(A) confirmed the addition vide para 5.1 (Page 12/12) holding the case of the appellant falling within the ambit of proviso (3) and (4) to section 43CA of the Act.

**4.3** Disputing the action of Ld. TAB, the assessee firm on the grounds of appeal laid hereinbefore at para 2 is in appeal before us.

5. During the course of physical hearing, the learned representative for the assessee [for short "**AR**"] at the outset referring to affidavit and application filed for condonation of delay in instituting the present appeal, reiterated its contents and prayed for condonation, which the learned departmental representative [for



short "**DR**") did not object. Insofar as the substantive ground is concerned, the Ld. AR recapped his arguments that, the provisions of section 43CA(1) was not in the statute book when the agreement of sale [for short "**ATS**"] was entered, thus the provision of (3) & (4) to section 43CA should have an application for computing the differential value consideration instead of agreement to transfer effected in the impugned year. **Per contra**, the Ld. DR adverted to meagre percentage of profit 1.52% declared on turnover of ₹9.37Crores solidified the application of section 43CA and placing strong reliance on the orders of Ld. TAB prayed for dismissal of the appeal.

6. After hearing to rival contentions of both the parties; and subject to the provisions of rule 18 of **ITAT, Rules** perused the material placed on record, case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to parties present.



7. **First thing first**, in so far as the delay of 21 days in instituting the present appeal is concerned, we having regards to facts & circumstance, find force in the submission of the appellant in establishing the sufficiency of reasons in belated filing, consequently in the light of decision of Hon'ble Apex Court in **"Collector Land Acquisition Vs MST Katiji and Others"** reported at 167 ITR 5 (SC) and Hon'ble Bombay High Court in **"CIT Vs Velingkar Brothers"** reported at 289 ITR 382 (Bom), the delay stands condoned in the larger interest of justice.

8. Coming to short issue of adjudication on applicability of provisions of section 43CA, on the perusal of the records it palpably transpired that, the appellant during the course of its business in relation to 11 identified units has entered into registered ATS **fixing the value of consideration for transfer** prior to execution of actual transfer of 10 units (as against 11) by further registered agreement, however the Ld. TAB based on the information received from annual



information return [for short "**AIR**"], has brought to tax the difference of SDV over sale consideration recorded in actual transfer agreement executed in respect of identified units u/s 43CA of the Act.

9. Without reproducing the text of section 43CA in verbatim, it shall be enough to state that, the legislature by s/s 3 to section 43CA has specifically provided a remedy for a situation where an asset is subjected to an **agreement fixing the value of consideration** for transfer which subsequently transferred by executing an agreement, thus representing difference in **date of agreement** and **date of transfer**, then the value assessable by the Stamp Duty Authority in respect of such transfer on the **date of the agreement** fixing the value consideration shall form basis for invoking the provisions of section 43CA, subject to a rider that, on or before the date of transfer, the consideration or part thereof has been received in any mode otherwise than in cash as contemplated in s/s 4 of section 43CA.



10. In the present case, Ld. TAB perfunctorily carried out the addition merely on the basis of agreement of transfer executed in respect of 11 units in the impugned year without reference to s/s 3 to section 43CA and disregarding the registered ATS entered fixing the value consideration in respect of 11 units (as against 10 units) prior to the date of actual transfer agreement, which in our considered view ***contra-legem***, hence deserves vacation. The correct difference of SDV over sale consideration in such cases have to be worked out on the basis and with reference to registered ATS entered fixing the value consideration in respect of 11 identified units prior to the date of agreement of actual transfer i.e. sale deed, for the reason we deem fit to remand the matter back to the file of the Ld. FAA to determine the differential value of 11 units in terms of s/s 3 with reference to the registered ATS executed prior to the execution of transfer agreement subject to the receipt of consideration or part thereof in any mode otherwise than in cash as envisaged by s/s 4 thereto.



11. Resultantly, the appeal of the assessee is **ALLOWED FOR STATISTICAL PURPOSE** in aforesaid terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this MONDAY 21<sup>st</sup> day of November, 2022.

S/d-

**S. S. VISWANETHRA RAVI**  
**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 21<sup>st</sup> day of November, 2022.

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

- |                                     |                                    |
|-------------------------------------|------------------------------------|
| 1. अपीलार्थी / The Appellant.       | 2. प्रत्यर्थी / The Respondent.    |
| 3. The Pr. CIT-1, Nashik (MH-India) | 4. The CIT(A)-1, Nashik (MH-India) |
| 5. DR, ITAT, Pune Bench 'A', Pune   | 6. गार्डफ़ाइल / Guard File.        |

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.