

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.183/Ind/2022
Assessment Year: 2013-14

Mrs. Pramila Pandya Indore	बनाम/ Vs.	ACIT, 5(1) Indore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AHFPP 7519 K		
Assessee by	Shri Vinay Kawadia, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.10.2022	
Date of Pronouncement	07.12.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 26.05.2022 passed by learned Commissioner of Income-Tax (Appeals)-National Faceless Appeal Centre, Delhi [**Ld. CIT(A)**], which in turn arises out of assessment-order dated 26.12.2019 passed by learned ACIT, Circle-5(1), Indore [**Ld. AO**] u/s 144 of Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2013-14, the assessee has filed this appeal on following grounds:

“(1) In the absence of conditions precedent for issuance of notice u/s 148 of the I.T. Act 1961, the Ld. CIT(A), NFAC erred in law in upholding the validity of notice u/s 148 issued by ACIT, Circle 5(1), Indore (The AO) on the basis of reappraisal of original assessment record.

2. Under the facts and in the circumstances of the case and in law the Ld. CIT(A), NFAC erred in upholding the validity of notice u/s 148 issued on the basis of reasons recorded in violation of first proviso to section 147 of the Act.

3. Under the facts and in the circumstances of the case and in law the Ld. CIT(A), NFAC grossly erred in confirming the addition of Rs.22,20,000/- u/s 43CA of the Act which was originally made by applying S. 50C of the Act by the AO to the transaction of sale of land held as stock in trade.”

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts leading to present appeal are such that the assessee is engaged in the business of brokerage, finance and trading of plots. The original assessment of assessee for the relevant AY 2013-14 was completed on 15.02.2016 by way of scrutiny u/s 143(3) of the act. Subsequently, the Ld. AO came to know that the assessee has sold a land for Rs. 54,00,000/- which was valued by stamps authority at Rs. 76,20,000/-. Observing that the difference of Rs. 22,20,000/- (Rs. 76,20,000 – Rs. 54,00,000) was taxable by virtue of section 50C and the assessee had not declared the same, the Ld. AO made a reason to believe that the income to that extent had escaped assessment. Accordingly, Ld. AO re-opened assessment u/s 147 by issuing notice u/s 148 dated 16.11.2018. Ld. AO also issued statutory notice u/s 142(1). Finding no response from assessee, Ld. AO completed assessment u/s 144 of the act after making an addition of Rs. 22,20,000/- as aforesaid u/s 50C. Aggrieved by assessment-order, the assessee filed appeal to Ld. CIT(A). During first-appeal, the Ld. CIT(A) upheld the addition but changed section from 50C to 43CA. Now the assessee has come in appeal before us assailing the order of Ld. CIT(A).

4. Although the assessee has raised as many as three grounds in the appeal-memo to challenge the issuance of notice u/s 148 as well as the addition of Rs. 22,20,000/-, but the assessee is mainly aggrieved by the

addition of Rs. 22,20,000/- and prays to have the addition deleted in this appeal.

5. We would first like to record certain relevant facts which are culled out from the orders of lower authorities and the papers placed in the Paper-Book filed by Ld. AR. These facts are such that the assessee is engaged in the business of plots; that the assessee had prepared a P&L A/c of such business and duly submitted before Ld. AO during original assessment; that impugned plot was purchased for Rs. 51,47,235/- and sold for Rs. 54,00,000/-, the purchase/sales have been debited/credited to P&L A/c; that the impugned plot sold by assessee constituted a part of business-stock and not a capital asset; and that the transaction was taxable and had been taxed by the revenue-authorities themselves u/s 28 under the head "Income from Business or Profession" and not as "Income from Capital Gain". There is no doubt or dispute about these facts which are discernible from the orders of lower authorities as well as the copy of P&L A/c and Computation of Total Income filed in the Paper-Book. In fact, the Ld. CIT(A) has also mentioned in Para No. 8.1 of his order **"From the details of submissions including the Profit & Loss Account and Balance-Sheet, there is no doubt that the sold land was stock-in-trade"**. Thus, there is a clarity and consensus of both sides *qua* the nature of land which was stock-in-trade and taxable/having been taxed as "Income from Business or Profession".

6. With such undisputed facts on record, Ld. AR straightaway carried us to the provisions of Income-tax Act, 1961 and made two-fold submissions, viz. (i) Section 50C applies only if the transferred asset is a capital asset and the profit is chargeable under "Income from Capital Gain", which is not so in present case; (ii) Section 43CA is applicable if the transferred asset is a part of stock-in-trade and the profit is chargeable under "Income from Business or Profession", but the said section 43CA has come into statue from 01.04.2014 through Finance Act, 2013 and thereby applicable to AY 2014-15 onwards but the present case relates to AY 2013-14, rendering the

section 43CA not applicable. With these submissions, Ld. AR strongly argued that neither section 50C nor section 43CA is applicable to the impugned transaction and the lower authorities have wrongly made/confirmed the addition of Rs. 22,20,000/- without any legal authority or basis.

7. We have carefully read the provisions of section 50C and 43CA as analysed by Ld. AR before us. We are in complete agreement with the submissions of Ld. AR that neither section 50C nor section 43CA was applicable to the transaction done by assessee. Even the Ld. DR representing the revenue could not oppose this conclusion made during hearing. That brings us to conclude that the addition made by Ld. AO is without any legal authority and cannot be sustained. Consequently, we delete the addition of Rs. 22,20,000/- and allow Ground No. 3 of assessee.

8. As the grievance for which the assessee is aggrieved is the addition of Rs. 22,20,000/- which stands fully settled in favour of assessee, we do not feel necessity of adjudicating other grounds raised in the Appeal Memo. Hence other grounds are treated as infructuous.

9. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 07/12/2022.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 07.12.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	30.11.22
2.	Date of typing & draft order placed before the Dictating Member	30.11.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	