

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 92/RPR/2021
निर्धारण वर्ष / Assessment Year : 2017-18

The Assistant Commissioner of Income Tax
(Central Circle)-1, Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Mahavir Infracon Pvt. Ltd.
C/o. Sumeet Fabrics, Jaistambh Chowk,
Rajnandgaon (C.G.)-491 441
PAN : AAHCM7501J

.....प्रत्यर्थी / Respondent

Assessee by : Shri Parasmal Jain, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 15.03.2023
घोषणा की तारीख / Date of Pronouncement : 10.04.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by CIT(Appeals)-3, Bhopal dated 27.08.2021, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 26.12.2019 for the assessment year 2017-18. The revenue has assailed the impugned order on the following solitary ground of appeal before us:

"1. On the facts and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs.2,24,25,380/- made by the Assessing Officer by invoking provisions u/s.43CA of the Income Tax Act, 1961."

2. Succinctly stated, the assessee company which is engaged in real estate business had e-filed its return of income for A.Y.2017-18 on 24.03.2018, declaring an income of Rs.55,41,240/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had debited in its profit & loss account an amount of Rs.2,24,25,380/- under the head "sale registration charges". On being queried about the nature of the aforesaid expenses, it was stated by the assessee that the same were the expenses which were incurred towards stamp duty and registration fees in some instances of sale in order to promote its sales. However, the A.O did not find favour with the explanation of the assessee as regards the allowability of

its aforesaid claim for deduction of registration charges. The A.O was of the view that as it was an obligation of the purchaser to pay stamp duty and registration fees in order to strengthen his title as regards the property purchased, therefore, the claim for deduction of the same as an expenditure by the assessee was totally unjustifiable as there was no obligation cast upon it to have incurred the same. Alternatively, it was observed by the A.O that even if the assessee as a seller pursuant to a mutual agreement with the purchaser had in order to promote its sales incurred the stamp duty and registration charges, then the same would bring the sale value of the property below the value adopted by the Stamp Valuation Authority. Considering the aforesaid facts, the A.O was of the view that as the assessee had carried out the sales exactly at the same value as was adopted by the Stamp Valuation Authority for the purpose of payment of stamp duty, therefore, offering of discounts by him, i.e., incurring of stamp duty and registration fees would bring the sale consideration below the value determined by the Stamp Valuation authority and would trigger the provisions of Section 43CA of the Act. Accordingly, the A.O on the basis of his aforesaid deliberations, made an addition of Rs.2,24,25,380/- towards sale consideration of the property sold by the assessee as a trader by invoking the provisions of Section 43CA of the Act.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) after making necessary verifications observed that the assessee appellant had incurred stamp duty charges, which fact was not only

discernible from the e-stamps purchased but was also found mentioned in the registered sale deeds. Referring to the triggering of the provisions of Section 43CA of the Act by the A.O, the CIT(Appeals) was of the view that as the assessee had sold all the properties and units at the market value determined by the stamp valuation authority, and, in lieu thereof, had received full sale consideration as mentioned in the registered sale deeds, therefore, the provisions of Section 43CA of the Act were not applicable in its case. Rebutting the observations of the A.O that the stamp duty and registration fees were compulsorily to be paid by the purchaser, it was observed by the CIT(Appeals) that as per Section 29 of the Indian Stamp Act, 1899, it was only in the absence of any agreement to the contrary that the expenses in relation to stamp duty payable on transfer of asset was to be borne by the buyer. It was, thus, observed by the CIT(Appeals) that now when the registered sale deeds clearly made a mention that the liability for payment of stamp duty and registration fees was to be borne by the seller i.e. the assessee, therefore, no liability for making payments towards the said expenses could be fastened on the purchaser. Alternatively, it was observed by the CIT(Appeals) that even otherwise as per the amendment made available on the statute vide the Finance Act, 2019 which was applicable w.e.f. A.Y.2014-15, a variation upto 10% between actual consideration and the value adopted for stamp duty purpose was to be ignored within the meaning of Section 43CA of the Act. Therefore, considering the fact that the were difference in the present case varied

between 5% to 7%, the CIT(Appeals) was of the view that no addition on the said count could have been made in the hands of the assessee. On the basis of his aforesaid observations the CIT(Appeals) vacated the addition of Rs.2,24,25,380/- made by the A.O.

5. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Id. Authorized Representatives of both the parties and perused the orders of the lower authorities as well as the material available on record.

7. Admittedly, it is a matter of fact borne from record that the assessee company which is engaged in the business as that of a developer, had in order to promote its sales incurred expenses towards stamp duty and registration fees with respect to the properties sold by him in the course of its business. We find on a perusal of the order of the CIT(Appeals) that the assessee's claim of having incurred stamp duty and registration charges was duly verified by him and found to be correct. Apart from that, the Ld. AR in the course of the hearing of the appeal had taken us through the complete details of stamp duty and registration expenses aggregating to an amount of Rs.2,24,25,380/- that were incurred by the assessee in the course of its business, Page 13 to 25 of APB. In sum and substance, it is a matter of an admitted fact that the stamp duty and registration

expenses on the sale of properties were borne by the assessee company. As observed by us herein above, the CIT(Appeals) not finding favour with the disallowance of the assessee's claim for deduction of the aforementioned amount of stamp duty and registration fees had vacated the same by observing as under:

"4.1.1 I have considered the facts of the case, plea raised by the appellant and findings of the AO. As a matter of fact the appellant is involved in real estate business and develops piece of land into various sizes of plots and sales the developed plots to customers. The appellant also done construction activities on plots by entering into construction agreement with plot owners. The appellant before me as well as before AO has taken a plea that in order to promote various projects of the appellant company it has launched various offers from time to time. In support appellant has also filed copies of these advertisement pamphlets. The appellant during the year under consideration came up with offers such as 'free registry', free modular kitchen, GST free, free gold coin, cash discount etc. Further to promote such offers pamphlets were distributed across the town through leaflets and through newspapers. In the instant subject issue, the appellant has borne expenses stamp duty and registration fees. In support appellant has filed copies of registered sale deeds, copies of agreement to sale, copy of stamp purchased. On perusal of the copy of registered sale deed it has been clearly mentioned that entire expenses towards registration has been borne by seller. Now the moot question which arises here whether any such expenses has actually been borne out by the seller or not. On perusal of evidences on record it is evidently clear that appellant has paid stamp duty charges which is clearly mentioned on e-stamp purchased under heading Stamp Duty Paid By: MAHAVIR INFRACON PVT LTD' and the same has been mentioned in registered sale deed. Therefore, it is evidently clear that appellant has paid stamp duty charges.

4.1.2 It is interesting to mention here that the AO has also invoked provisions of section 43CA of the Act. For ready reference the relevant provision al. the Act is reproduced as under:-

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 of 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:

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred

and [ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account²[*or through such other electronic mode as may be prescribed*] on or before the date of agreement for transfer of the asset.

Clearly, the provisions of section 43CA of the Act are applicable in the case where the consideration received or accruing on transfer of a building or land or both asset, is less than the stamp value assessed by the State Government, then the value so adopted for computing profit and loss from such transfer shall be full value of consideration as determined by the stamp value authorities. In the instant case, all the properties/units were sold at market value determined by the stamp valuation authorities and the appellant has received full sale consideration as mentioned in the registered sale deeds. Thus, the provisions of section 43CA of the Act are not applicable in the case of appellant.

4.1.3 The AO has further alleged that the stamp duty and registration fees are compulsory obligations and are payable by the purchaser. It is pertinent to mention here that the section 29 of the Indian Stamp Act, 1899 which specifically deals with the provisions for payment of stamp duty and by whom. The section reads that in absence of any agreement to the contrary the expenses in relation to stamp duty payable on transfer of asset shall be borne by the buyer. In the instant case, the liability for payment of stamp and registration fees expenses has been clearly mentioned in registered sale deeds. Therefore, it cannot be alleged that the liability of making payments towards stamp duty is of the purchaser.

4.1.4 Most importantly, an amendment has been made by Finance Act 2019 to provide that a variation of upto 10% between actual consideration and the value adopted for stamp duty is to be ignored and is applicable from the date when provisions of section 43CA of the Act were brought into the

statue book i.e from AY 2014-15. In the case of appellant the difference varies between 5% to 7%. The appellant in support has placed reliance on following case laws:-

(a) Maria Fernandes Cheryl vs. Income Tax Officer (International Taxation) 2(3)(1) (2021) 209 TTJ 850

(b) Sandeep Patil Vs. Income Tax Officer in ITA No.924/Bang/2019

(c) Kishore Hira Bhandari Vs. Income Tax Officer in 177 ITD 565

(d) CIT Vs. Calcutta Export Company reported in 404 ITR 654

(e) C.B Gautam Vs. Union of India and Others in 199 ITR 530

(f) Rahul Constructions Vs. Dy. CIT (2010) 38 DTR (Pune) (Trib) 19

(g) Smt. Sita Bai Khetan Vs. Income Tax Officer 181 TTJ (JP) 549

4.1.5. In view of the above discussion and judicial pronouncements relied upon by the appellant, the A.O is not justified in making addition by invoking provisions u/s.43CA of the Act. Therefore, addition made by the A.O amounting to Rs.2,24,25,380/- is deleted. Therefore, appeal on this ground is allowed.”

8. We have given a thoughtful consideration and are persuaded to subscribe to the view taken by the CIT(Appeals) that the claim for deduction of the stamp duty and registration charges by the assessee company were duly allowable as a deduction in its hand. In our considered view, the aforesaid expenses incurred by the assessee company being in the nature of an expenditure that was incurred wholly and exclusively for the purpose of its business would clearly fall within the realm of Section 37 of the Act. Also, we concur with the view taken by the CIT(Appeals) that the claim of the aforesaid amount as an expenditure by the assessee company which in turn was guided by its business prudence could not

have been stretched for concluding that the same would scale down the sale consideration below the value determined by the Stamp Valuation Authority and thus, would be in contravention of the provisions of Section 43CA of the Act. We, say so, for the reason that as observed by the CIT(Appeals), and, rightly so, as the assessee company had sold all the properties/units at the market value determined by the Stamp Valuation Authority, and had received the entire amount of sale consideration as mentioned in the said sale deeds, therefore, there could be no occasion for triggering provisions of Section 43CA of the Act. In so far the observations of the A.O that the obligation to meet out the stamp duty and registration charges was cast upon the purchaser of the property, we are unable to accept the same. We, say so, for the reason that as per Section 29 of the Indian Stamp Act, 1899 it is only in absence of any agreement to the contrary that the expenses in relation to stamp duty payable on transfer of asset is to be borne by the buyer. Now in the case before us, as it is clearly mentioned in the registered sale deed that the stamp duty and registration fees had been borne by the buyer, therefore, no liability for making the said payments could by any means be fastened on the purchaser.

9. On the basis of our aforesaid observations, we are of a strong conviction that the A.O had grossly erred in law and facts of the case in declining the assessee's claim for deduction of stamp duty and registration expenses, which being in the nature of an expenditure having been incurred wholly and exclusively

for the purpose of its business were clearly allowable as a deduction within the meaning of Section 37(1) of the Act. Apart from that, we concur with the view taken by the CIT(Appeals) that the A.O misconceiving the scope and gamut of the provisions of Section 43CA of the Act had wrongly applied the same to the case of the present assessee before us. We, say so, for the reason that as the assessee had sold the properties/units at the market value determined by the Stamp Valuation Authority and had received the sale consideration as mentioned in the registered sale deed, therefore, the provisions of Section 43CA of the Act by no means could have been invoked in its case. Also, as the A.O had failed to point out a single instance wherein the sale consideration received on the sale of the properties/units by the assessee was lower than the value adopted or assessed or assessable by any authority of the state government for the purpose of payment of stamp duty in respect of transfer of the same, therefore, there was no justification for him to have triggered the provisions of Section 43CA of the Act.

10. Alternatively, we are also in agreement with the CIT(Appeals) that even otherwise, now when the valuation towards actual sale consideration and the value adopted for stamp duty in the present case varies between 5% to 7%, i.e., within the tolerance limit of upto 10%, therefore, pursuant to the amendment made available on the statute vide Finance Act, 2019 that is applicable w.e.f. A.Y.2014-15, no adverse inferences could have been drawn u/s.43CA of the Act. We, thus, in

terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) uphold his order.

11. In the result, appeal filed by the revenue being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
DR. DIPAK P. RIPOTE
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 10th April, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Bhopal
4. The Pr. CIT, Central, Bhopal
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.