

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.606/PUN/2023
Assessment Year : 2017-18

Siddharth Properties, Office No.501, Eden Hall, Opp. Om Super Market, Model Colony, Pune 411 016 PAN : AAZFS3607C	Vs.	ACIT, Circle-3, Pune
Appellant		Respondent

Assessee by Shri Suhas Bora
Revenue by Shri Ajay Kumar Kesari

Date of hearing 01-08-2023
Date of pronouncement 01-08-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dt. 25-04-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC) u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2017-18.

2. The first two grounds were not pressed by the ld. AR. The same, therefore, stand dismissed.

3. The third ground is against the confirmation of addition of Rs.11,027/- made by the Assessing Officer (AO) u/s.43CA of the

Act on account of difference between the sale consideration received by the assessee and stamp valuation.

4. The facts apropos this ground are that the assessee, a builder, sold a flat below the circle/stamp value. Considering the provisions of section 43CA, the AO made an addition of Rs.11,027/- towards difference between the stamp value and the price at which the flat was sold by the assessee. The Id. CIT(A) affirmed the addition, against which the assessee has come up in appeal before the Tribunal.

5. Having heard the rival submissions and gone through the relevant material on record, it is observed that the addition of Rs.11,027/- has been made on account of sale of flat to one Mr. Abhay Bahirat with stamp value of Rs.39,39,447/- as against the actual sale price realized at Rs.39,28,420/-, giving difference of less than 0.3%.

6. The first proviso to section 43CA was inserted by the Finance Act, 2018 w.e.f. 01-04-2019 providing 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 *five 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'. The Finance Act, 2020 w.e.f. 1.4.2021 has substituted *ten per cent* with the hitherto *five per cent*. It is palpable that the rigor of section 43CA has been slackened by the first proviso providing that where the stamp value does not exceed by 10% of the agreed sale consideration, only the transacted value should be considered as full value of consideration.

7. The Pune Bench in the case of *M/s. City Corporation Ltd. Vs. DCIT (ITA No.619/PUN/2020)* has held, vide its order dated 17-08-2021, that the first proviso to section 43CA is retrospective. Considering the fact that the difference in the stamp value and the actual transacted value in the instant case is just 0.3%, following the above noted decision in *M/s. City Corporation (supra)*, we order to delete the addition sustained in the first appeal on this score.

8. The only other ground which survives in the instant appeal is against the confirmation of disallowance amounting to Rs.3,81,354/- made by the AO u/s.40(a)(ia) of the Act.

9. The factual matrix of this ground is that the AO, on perusal of details of legal expenses, observed that the assessee deposited lower TDS with reference to payments made to four parties, which have been tabulated at page 17 of his order. The differential amount of short deduction of tax at source was found out at Rs.1,27,118/-. By

extrapolating the amount of short deduction of tax at source to the corresponding amount of expenditure at Rs.12,71,180/-, the AO computed the disallowance at 30% of this sum amounting to Rs.3,81,854/-. The ld. CIT(A) sustained the addition.

10. Having heard both the sides and gone through the relevant material on record, it is seen that the entire disallowance has been made on the basis of tabulation done by the AO, on the strength of information furnished by the assessee in Form No.16A and the other relevant details. The ld. AR submitted that the information submitted to the AO was not correct and there was some mistake on the part of the assessee. He invited our attention towards Form Nos.16A in respect of these four parties for demonstrating that there was no difference in the amount of TDS. At the same time, it was fairly admitted that the fresh Form Nos.16A were not considered either by the AO or by the ld. CIT(A). Considering the entire spectrum of the case, we are of the considered opinion that it would be just and fair if the impugned order on this score is set aside and the matter is remitted to the file of the AO. We order accordingly and direct him to decide the issue afresh as per law after allowing reasonable opportunity to the assessee. Needless to say, the assessee will be at liberty to file any evidence in support of its contention in such fresh proceedings.

11. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 01st August, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 01st August, 2023
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलिय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-08-2023	Sr.PS
2.	Draft placed before author	01-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*