

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.558/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2015-16

Rishikesh Builders & Developers,  
B 11/14, Damani Complex,  
Data Chowk, Solapur – 413007

PAN : AAGFR7962L

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,  
Circle – 2, Solapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 29-08-2023  
घोषणा की तारीख / Date of Pronouncement : 05-09-2023

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 10-03-2023 passed by the National Faceless Appeal Centre, Delhi ("NFAC") for assessment year 2015-16.

2. The ld. AR, Shri Pramod S. Shingte requested to take up ground No. 2 as in which the relief is sought, the difference in valuation between

stamp duty and actual consideration being less than 10% in the facts and circumstances of the case.

3. We note that the assessee is firm engaged in the business of construction and sale of residential flats, shops etc. It is noted that the assessee sold the flats and shops mentioned in tabular form in para 6 of the assessment order and the AO asked the assessee to submit the market value (the ready reckoner value). The details as reflecting in tabular form in para 6 shows the nature of property, name of purchaser, date of sale, sale price and market value. According to the AO provisions u/s. 43CA of the Act is applicable and added the difference between sale price (sale consideration) and market value (stamp duty value as adopted by the Government) of Rs.83,02,000/- (Rs.3,60,57,000/-) – Rs.2,77,55,000/-) to the total income of the assessee u/s. 43CA of the Act. It was contended before the CIT(A) that the difference between sale value and market value is less than 10% in some cases and requested to delete the addition made on account of difference to such units. The CIT(A) held that the said request cannot be accepted in view of insertion of first proviso to section 43CA of the Act w.e.f. 01-04-2021. The ld. AR drew our attention to chart placed at page 1 of the paper book and submits that the properties stand at Sr. No. 1, 2, 3, 4, 5, 6 & 8 being difference more than 10% are liable to be confirmed, rest are to be given benefit in terms of orders passed by the Tribunal. The ld. AR drew our attention to the order of Mumbai Tribunal and argued that the insertion of first proviso to section 43CA of the Act is retrospective effect since 2003, which was followed by other Benches of ITAT and referred to pages 20, 37 and 44 of the paper book. Further, he placed on record the order dated 17-08-2022 in the case of Sai Bhargavanath Infra in ITA No. 1332/PUN/2019 for A.Y. 2015-16 and

argued that the Pune Tribunal by placing reliance on the decision of Hon'ble Supreme Court in the case of Vatika Township Pvt. Ltd. reported in 367 ITR 466 (SC) held the proviso to section 43CA of the Act which came into effect from 01-04-2021 as retrospective effect. In view of the same, the comparability chart as provided by the assessee at page 1 of the paper book is reproduced hereunder for ready reference :

Sr. No.	Shop/ Office/ Flat No.	Name of Purchaser	Date of Sale	Sale Price	Market Value	Diff. between actual consideration and stamp duty value	%	Valuation by DVO	Diff. Between actual consideration and DVO valuation	%
1	2	3	4	5	6	7	8	9	10=(9-5)	11
1	S-5	Krishna Construction	01-01-2015	2400000	3357000	957000	39.88	2400000	0	0.00
2	S-7	Kavita Sunil Bidada	12-03-2015	500000	761000	261000	52.20	580000	80000	16.00
3	S-8	Urmila Mohanlal Karwa	11-12-2014	3500000	5545000	2045000	58.43	3588000	88000	2.51
4	S-9+10	Babulal Radhakishan Bidada	11-12-2014	3500000	5597000	2097000	59.91	3619000	119000	3.40
5	S-12	Lalita Yashwant Pethkar Sheetal Gurunath Jaliminche	10-12-2014	1500000	2369000	869000	57.93	1698000	198000	13.20
6	S-13	Pratibha Ranjeet Jagtap Anuradha Shrinivas Patil	10-12-2014	1800000	2741000	941000	52.28	1959000	159000	8.83
7	S-14	Bhange P. S.	11-12-2014	1700000	1852000	152000	8.94	1700000	0	0.00
8	F-203	Anil Vyanketesh Maslekar	15-11-2014	2000000	2610000	610000	30.50	2925000	925000	46.25
9	F-504	Amar A. Kale	19-01-2015	2900000	3105000	205000	7.07	2900000	0	0.00
10	F-603	More Priuanshu V.	23-03-2015	2950000	3103000	153000	5.19	2955000	5000	0.17
11	F-402	Manisha Shailesh Daga	21-01-2015	2400000	2407000	7000	0.29	2400000	0	0.00
12	F-403	Shailesh Omprakash Daga	21-01-2015	2600000	2610000	10000	0.38	2600000	0	0.00
				27750000	36057000	8307000		29324000	1574000	

4. On an examination of the above which clearly shows the difference between sale price and value adopted by the Government are less than 10% for properties stand at Sr. No. 7, 9, 10, 11 and 12. The ld. DR did not dispute the same. Therefore, in view of the order of this Tribunal the addition made against the properties for which the difference is less than 10%, no addition could be made on such properties u/s. 43CA of the Act. Thus, addition by way of difference being 10% less between sale

consideration and stamp duty added by the AO and as confirmed by the CIT(A) are deleted, rest are confirmed. Thus, ground No. 2 raised by the assessee is allowed.

5. In view of our decision in ground No. 2, the ground Nos. 1 and 3 becomes infructuous, requiring no adjudication. Thus, ground Nos. 1 and 3 raised by the assessee is dismissed as infructuous.

6. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 05<sup>th</sup> September, 2023.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05<sup>th</sup> September, 2023.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune