

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 497/PAT/2022
Assessment Year: 2016-2017**

***M/s. Classicon Builders India Pvt. Limited,..Appellant
J.J. Complex, Boring Canal Road,
Patna-800001, Bihar
[PAN:AABCC4564F]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-2, Patna***

Appearances by:

*Shri A.K. Rastogi, Advocate, appeared on behalf of the
assessee*

*Shri Rupesh Agrawal, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : October 05, 2023

Date of pronouncing the order : October 09, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 23.06.2022 passed for Assessment Year 2016-17.

2. The Registry has pointed out that the appeal of the assessee is time barred by 80 days. The assessee has filed an application for condonation of delay and submitted that the order was served upon the assessee electronically because the Department was gradually moving towards e-assessment and the notices were being served upon the assessee on-line/electronically and this being the first year of this shifting from physically to electronically mode coupled with the fact that COVID was struck on the Nation. The assessee could not lay its hands on the details and the copy of the order of the Id. CIT(Appeals) well in time, which led this appeal to a time-barred situation. It prayed that the delay in filing the appeal be condoned and it be decided on merit.

3. On the other hand, Id. Sr. D.R. submitted that the assessee could be more vigilant in prosecuting its litigation with the Income Tax Department.

4. We have duly considered the rival contentions and gone through the record carefully. The assessee has pleaded that there was a shift in the assessment procedure from physical to electronic mode and it could not lay its hand on the Id. CIT(Appeals)'s order and accordingly could not file the appeal well in time. It is pertinent to observe that by making the appeal delayed, the assessee will not get any benefit. Therefore, this step

was not taken as a strategy to litigate with the Department. It is a bonafide error and accordingly we condone the delay and proceed to decide the appeal on merit.

5. Brief facts of the case are that the assessee is Private Limited Company engaged in the business of Real Estate. It has filed its return of income electronically under section 139(1) for A.Y. 2016-17 declaring total income of Rs.11,70,000/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. According to the ld. Assessing Officer, the assessee has sold certain properties, whose sale considerations were not disclosed equivalent to the sale consideration on which stamp duty was charged. Therefore, according to the ld. Assessing Officer, as per section 43CA, the assessee was required to be assessed on the total sale consideration determined for the purpose of payment of stamp duty. After taking into consideration that value, the taxable income is to be worked out. He issued a show-cause notice as to why the sale consideration adopted for the purpose of stamp duty should not be taken as full sale consideration. The ld. Assessing Officer has observed that there was a difference between the sale value declared by the assessee in its accounts vis-a-vis stamp duty paid. This difference was of Rs.43,48,000/-.

6. In response to the notice of ld. Assessing Officer, the assessee has filed detailed submission and placed on record the information in tabulated form. It has contended that though sale deeds have been executed in the accounting year relevant to this A.Y., but sale agreements were executed prior to the sale deeds and the assessee has received payments through account payee cheques. As per sub-clause (3) of section 43CA, he submitted that if there was an agreement executed between the parties prior to the date of sale, then the valuation for the purpose of payment of stamp duty on the date of agreement ought to be taken as the date of the sale deed. That valuation figure has to be taken for the purpose of determining the full value. The ld. Assessing Officer did not accept the contention of the assessee and he made an addition of Rs.37,04,000/-.

7. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

8. Before us, ld. Counsel for the assessee submitted that in total, there are five sale instances. In the first four sale instances are concerned, the date of agreement was prior to the date of sale and assessee has received partial sale consideration through account payee cheques. Thus the agreements are to be treated as

authentic. With regard to the fifth sale instance, he submitted that as per the 1st proviso to section 43CA, sub-clause(1), if the variation is less than 5% between the actual sale consideration, vis-a-vis the stamp duty valuation, then no addition is to be made. He took us through the details compiled by the ld. Assessing Officer in paragraph no. 5 at page 4 of the assessment order as well as reproduced by the ld. CIT(Appeals). He prayed that the additions be deleted.

9. Ld. Sr. D.R., on the other hand, submitted that as far as the first four sale instances are concerned, if the date of agreement is to be recognized for the purpose of calculation of the sale amount, then this issue be restored to the file of ld. Assessing Officer to find out what was the stamp duty valuation on that date and if there is a difference, then that addition deserves to be made. As far as the sale item no. 5 in the case of Mr. Subhaga Sita Raman Prasad Singh is concerned, he was unable to controvert the submission of the ld. Counsel for the assessee.

10. We have duly considered the rival contentions and gone through the record carefully. A perusal of the order of ld. CIT(Appeals) would reveal that the ld. 1st Appellate Authority has noted all the details submitted by the assessee before the ld. Assessing Officer. He also took

into consideration Section 43CA but construed its meaning in a different manner. A perusal of sub-clause (3) & (4) of section 43CA would reveal that it applies for the situation where property is sold by an agreement, subsequently sale deed is executed. In case of any difference on the date of registration, vis-a-vis date of agreement, then, the value assessable by the stamp duty authority in respect of such transfer on the date of agreement shall be taken. Sub-section (3) & (4) would provide a benefit of prior agreement to an assessee if the consideration at the time of agreement has been received, otherwise than cash. A perusal of the details of transaction noticed by the ld. Assessing Officer in Paragraph no. 5 of the assessment order would reveal that the first sale deed was in the case of Sushma Singh and the sale deed was executed on 04.08.2015, whereas agreement to sale was executed on 06.07.2012. The assessee took 5 lakhs of rupees through account payee cheque. The case of the assessee is that as per sub-section (3) & (4) of section 43CA, the appointed date for the purpose of determining full sale consideration as per the valuation of the stamp duty authorities should be 06.07.2012 instead of 14.08.2015. Similarly in the case of Kailashpati Mishra, the actual sale deed was executed on 26.11.2015, whereas initial payment was received through account payee cheque on 15.07.2013. In the case of Kanti Singh, actual sale deed was executed on

23.11.2015 and agreement to sale was executed on 18.02.2009. In the case of fourth sale deed, namely Babita Sharma, actual sale deed was executed on 20.01.2016 and Rs.1,00,000/- was received through account payee cheque on 05.03.2012. A perusal of the order of Id. CIT(Appeals) would reveal that in principle, Id. CIT(Appeals) has construed the meaning of section 43AC in right perspective but he distinguished the claim of assessee only by observing that full payment through account payee cheque ought to have been received on the date of agreement. He also observed that Section 43CA is recognized only when a registered document is executed. To our mind, such construction of section 43CA is not in right perspective because with help of section 43CA full sale consideration are deemed equivalent to stamp duty valuation. The Act further provides a situation under sub-clause (3) and (4) as to on which date this deeming fiction could be shifted prior to the actual date of sale deed registration. For example, if assessee fails to execute the sale deed, then the purchaser would file a suit for specific performance and would execute the sale deed in his favour on the rate prescribed in the agreement. Similarly if property rates are down, then the purchaser refused to purchase the property, then, the assessee could file a suit for specific performance forcing the vendee to execute the sale deed. This right has been recognized in sub-section 3 & 4, therefore, the appointed

date for the purpose of determining the rate is the date when agreement was executed. It provides that payment while executing the agreement should not be through cash. It should be by any mode otherwise than cash. The ld. CIT(Appeals) has failed to appreciate the true perspective of section 43CA and has erred in construing it in such a manner that 43CA is attracted only when a registered document is executed and part payment is not to be recognized. This finding is not sustainable. At the time of hearing, it was pointed out by the ld. Sr. D.R. that in case, the date of agreement is accepted as the appointed date for determining the full consideration, then, stamp duty valuation prevalent on that date is to be adopted for the purpose of determining the full consideration. In case, stamp duty valuation is lesser than the sale consideration disclosed by the assessee, would be adopted as full sale consideration. This angle has not been examined by both the lower authorities. Therefore, we set aside the issue with regard to the four sale deeds at Serial Nos. 1 to 4 contained in paragraph no. 5 of the ld. Assessing Officer's order. These sale deeds are in the cases of Sushma Singh, Kailashpati Mishra, Kanti Singh and Babita Sharma. The ld. Assessing Officer is directed to collect the details of stamp duty valuation on 06.07.2012, 15.07.2012, 18.09.2009 and 05.03.2012. On the basis of stamp duty valuation on these appointed dates, if any changes are

required to be adopted, then, such changes are to be adopted. In other words, if stamp duty valuation on these dates is higher than the sale valuation, then, after providing an opportunity to the assessee and exploring other all valuation methods are to be adopted for full sale consideration for determining the taxable income of the assessee.

11. As far as the 5th sale deed in the name of Sanjeev Kr. Singh is concerned, the sale deed was executed on 29.03.2016. There was no amount taken by the assessee in advance but the variation is only Rs.46,000/-, which is less than 5% of the total sale consideration value of Rs.55,46,000/- and this variation is to be ignored as per the 1st proviso of section 43CA. No addition on account of this difference is to be made.

12. In view of the above discussions, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 09.10.2023.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President

Kolkata, the 9th day of October, 2023

*Copies to :(1) M/s. Classicon Builders India Pvt. Limited,
J.J. Complex, Boring Canal Road,
Patna-800001, Bihar*

- (2) *Deputy Commissioner of Income Tax,
Circle-2, Patna*
- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi,*
- (4) *Commissioner of Income Tax- ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.