

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH 'DB', JABALPUR**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 12/JAB/2019 : Asstt. Year: 2014-15

Satyapal Daryani, 46 APR Colony, Katanga, Jabalpur, M.P 482002	Vs	The Pr.CIT-2, Jabalpur, MP 482002
(APPELLANT)		(RESPONDENT)
PAN No. AWJPS 1734 L		

Assessee by : Sh. Anil Kumar Gupta, FCA

Revenue by : Sh. Shravan Kumar Gotru, CIT-DR

Date of Hearing: 29.11.2023	Date of Pronouncement: 30.11.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id.PCIT-2, Jabalpur dated 22.02.2019.

2. The assessee has raised the following grounds of appeal are as under:-

1. *The Hon'ble Pr. CIT erred in assuming jurisdiction for revision on the issues which are already subject matter of appeal before the Hon'ble CIT(A). Thus, the revision order is beyond jurisdiction and in defiance of law.*

2. *The Hon'ble Pr. CIT grossly erred in framing the revision order u/s. 263 on the issues which are not the part of show cause notice issued to the assessee under section 263 of the IT Act.*

3. *The contention of the Hon'ble Pr. CIT that his revision order falls under clause (a) &(b) of explanation 2 of section 263 as claimed on Pg. 5 of his revision order, is baseless and misleading.*

4. *The issue of revision regarding valuation of land under section 43CA has already been enquired by a separate show cause notice by the Ld. AO and replied by the assessee and the Ld. AO has taken a plausible decision under the law.*

5. *Therefore the order of Ld. AO is neither erroneous nor prejudicial to the interest of the revenue.*

6. *On the facts and circumstances of the case, the Hon'ble Pr. CIT grossly erred in not considering the provisions as contained in sub-section (3) of section 43CA.*

7. *On the facts and circumstances of the case, the order of the Hon'ble Pr. CIT is not justified in presuming that section 44AD is not applicable in the case of the assessee.*

8. *The Hon'ble Pr. CIT failed to appreciate that the deeming fiction of section 43CA are restricted to substitute the value of actual sale consideration with the stamp duty value, only for the purpose of calculation of profit. Therefore, it cannot be extended to determine turnover for the purpose of applying section 44AD.*

3. The case was selected for scrutiny u/s 143(3) of the Income Tax Act 1961. The AO assessed the income of the assessee u/s 143(3) by making the additions of Rs. 3,78,022/- on account of profit @8% and Rs. 15,00,000/- on account of agricultural income.

4. Later on, the Id. Pr. CIT issued a notice under section 263 to consider revision of the assessment order passed under section 143(3) of the IT Act on the ground that AO has not considered the stamp duty value of land sold as prevailing in the assessment year 2014-15 of Rs 1,92,38,000/-. He pointed out that AO is not correct in considering the stamp duty value of land sold as prevailing in the assessment year 2013-14, the year in which the agreement to sale was executed along with advance payment of Rs 25,00,000/- through cheque. Thereafter, the order u/s. 263 of the Act was passed on 22.02.2019, wherein the Id. Pr. CIT has set aside the assessment order u/s. 143(3) and remanded it back to the Ld. AO, to consider the circle rate of land as prevailing at the time of the registry i.e. Rs 1,92,38,000/-.

5. Aggrieved the assessee filed appeal before us.

6. Heard the arguments of both the parties and perused the material available on record.

7. The pertinent facts are as under:-

- On 23-03-2013, assessee entered into an agreement for sale of nine plots each measuring 1500 sq. ft. total measurement 13,500 sq. ft. at the total consideration of Rs. 81,00,000/-.
- Under this agreement assessee received an amount of Rs.25,00,000/- vide cheque no.081567 dt. 25-03-2013, union bank of India, Ranjhi, Jabalpur.
- It was also agreed that balance amount will be paid within four months at the time of registry. Copy of the agreement is perused.
- On 08-07-2013, assessee received the balance amount of Rs. 56,00,000/-vide cheque No. 081968, and also got the sale deed registered.
- The circle rate at various dates are as under:
 - i. At the time of registry of sale deed:
Rs.1,92,38,000/-
 - ii. Market value of plot on date of agreement:
Rs.1,28,25,750/-
 - iii. Sale Agreement:
Rs.81,00,000/-
- The agreement of sale so executed is in writing and duly supported by transactions through Banking Channels.

S. No	Particulars	Date	Sale consideration	Circle rate	Remark
1.	Date of execution of agreement with advance payment of Rs 25,00,000 through cheque no 08156 dated 25.03.2013	22.03.2013	81,00,000	1,28,25,750	Section 43CA was not in existence
2	Date of execution of sale deed	08.07.2013	81,00,000	1,92,38,000	Section 43CA was in existence
3	As per sub-section 3&4 of section 43CA of IT Act, the date of agreement will be	22.03.2013	81,00,000		However, at the time of sale agreement, section 43CA was

	considered for consideration of sale value.				not in existence. Therefore, on this incidence of sale of assets where the agreement has been executed prior to 01.04.2013, section 43CA will not be applicable.
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8. The Section 43CA, has come into effect from 01-04-2014(A.Y. 2014-15), this means that all transactions which has occurred upto 31-03-2013 will remain unaffected with the provisions of this section. Assessee entered into an agreement for sale of land at the total consideration of Rs. 81,00,000/-, on 23-03-2013, looking to the non-existence of Section 43CA. the assessee is not supposed to comply with the provisions which are coming in future after the execution of a specific transactions. "Lex non cogit ad impossibilia" i.e. The law does not compel the doing of impossibilities." Hence, the order of Id. Pr.CIT cannot be upheld.

9. Further the verbatim of notice of the Id. PCIT is as under:-

"You have claimed that you had entered into an agreement with the purchaser for the sale of property on 22.03.2013 and received an advance payment of Rs 25,00,000/- by cheque, therefore, as per the provisions of section 43CA(3) & (4), the market value as on date of agreement i.e. 22.03.2013 should be taken as the consideration. Your claim was considered and the value of property as informed by the District Registrar, Jabalpur on date of agreement i.e. on 22.03.2013 at Rs

1,28,25,270/- was taken as consideration as per the provisions of section 43CA(3) and the business income from the transfer was computed @8% at Rs 10,26,022. The difference of Rs 3,78,022/- (10,26,022-6,48,000) was added to the business income. During the year under consideration you had also shown agricultural income of Rs 34,59,992/- which was examined and Rs 15,00,000/- was disallowed treating as receipt from undisclosed sources. The assessment u/s 143(3) was completed accepting the aforesaid contention put-forth by you. However, examination of case records revealed that the market value of the property as on date of agreement i.e. 22.03.2013 was Rs 1,28,25,270/- whereas the sale consideration was at Rs 81,00,000/-. Therefore, this value of Rs 1,28,25,270/- was to be taken as full consideration as per the provisions of section 43CA(3) and the difference of Rs. 47,25,270/- should have been added to the business income of the assessee”.

10. On perusal of the above notice, it is apparently clear that Ld. PCIT has issued the notice on account of short assessment of income to the tune of Rs 47,25,270/- and show cause has been issued as why not the amount of Rs 47,25,270/- should not be added to the income of the assessee. The Ld. CIT computed the income of Rs 47,25,270/- as under:-

Particulars	Date	Amount
Circle Value of the property at the date of execution of sale deed	22.03.2013	1,28,25,270
Actual sale consideration already offered for taxation	08.07.2013	81,00,000
Difference as a revenue loss to the department		47,25,270

11. However, while framing the order u/s 263 of the Income Tax Act 1961 the Id. PCIT changed the allegations and framed

the order by taking the value of property at the time of registration of the sale deed as under:

Particulars	Date	Amount
Circle Value of the property at the date of registration	08.07.2013	1,92,38,000
Actual sale consideration already offered for taxation	08.07.2013	81,00,000
Difference as a revenue loss to the department		1,11,38,000

12. We find that the Id. PCIT has not appreciated the sub-section 3 & 4 of section 43CA of the Income Tax Act 1961 which clearly states that, where the date of agreement fixing the value of consideration for transfer of the assets and the date of registration of such transfer of assets are not same, then the value may be taken as the value of circle rate of property on the date of agreement.

The Sub-section 4 further states that such agreement should be supplemented by a payment through account payee cheque. In the case under consideration, the factual matrix is as under:-

Particulars	
Date of execution of agreement	22.03.2013
Date of cheque issued at the time of agreement (cheque no. 08156) of Rs 25,00,000	25.03.2013
Circle value (Stamp duty value) as on the date of execution of agreement of sale	1,28,25,270
Date of registration of sale deed	08.07.2013
Circle value (Stamp duty value) as on the date of registration of sale deed	1,92,38,000

13. In light of sub-section 3 & 4 of section 43CA of the Income Tax Act 1961, the adoption of sale consideration at the time of registration of sale deed i.e. Rs 1,92,38,000/- by the Id. PCIT is totally contrary to the law. Further, in notice of 263, the Id. PCIT has considered the market value of assets i.e Rs 1,28,25,270/- whereas in the final order, he recommended to consider the market value of assets as Rs 1,92,38,000/- as prevailing at the time of registration of sale deed. Hence, the order is contrary to the law and is annulled.

14. Further, we have gone through the factual statement where the agreement has been entered on 23.03.2020 and the cheque has been issued which has been duly encashed on 28.03.2013 Rs. 25,00,000/- and the amount of Rs. 56,00,000/- has been encashed on 09.07.2013. The Assessing Officer has duly considered this transaction and determined the sale value @ Rs. 128,25,270/- instead of Rs. 81,00,000/-. Hence the AO has rightly and duly considered the market value as on the date of entering into the agreement. Hence, the order of the Assessing Officer cannot be held to be erroneous.

15. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 30/11/2023.

Sd/-
(Yogesh Kumar U.S)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Jabalpur Dated: 30/11/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ITA No. 12/JAB/2019
Satyapal Daryani

**ASSISTANT REGISTRAR
ITAT JABALPUR**