

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Aby T. Varkey (JM)

I.T.A. No. 3319/Mum/2023 (A.Y. 2017-18)

M/s. Shreem Properties 1107, ATL Corporate Park, Saki Vihar Road Opp. L&T Gate No. 7 Powai, Mumbai-400072.  PAN : ABQFS5467K (Appellant)	Vs.	DCIT, Circle-26(3) Kautilya Bhavan G-Block, Bandra Krula Complex Bandra East Mumbai-400 051.  (Respondent)
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Assessee by	Dr. K. Shivram
Department by	Dr. Kishor Dhule
Date of Hearing	05.02.2024
Date of Pronouncement	06.02.2024

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 27.7.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2017-18. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 13.03 crores made under section 43CA of the I.T. Act in an ex-parte order passed by him.

2. Learned AR submitted that the assessee is a partnership firm engaged in the business of builders and developers. During the year under consideration the Assessing Officer noticed that there is difference between sale value shown in the sale deed and stamp duty value determined by the registration authority in respect of seventeen sales made by the assessee. Accordingly, by invoking provisions of section 43CA of the Act, Assessing Officer assessed the difference amount between the two amounts aggregating to Rs. 13.03 crores as income of the assessee. The Learned AR submitted

that the assessee had requested the Assessing Officer during the course of assessment proceedings to refer the matter of determination of market value of the property to the district valuation officer (DVO). The Assessing Officer also referred the matter to the DVO but did not receive the report of DVO till the date of completion of the assessment. Hence the Assessing Officer proceeded to assess the amount of Rs. 13.03 crores to the total income of the assessee.

3. Before the learned CIT(A), the assessee did not respond to his notices and hence the learned CIT(A) dismissed the appeal of the assessee confirming the addition made by the Assessing Officer. The Ld A.R submitted that the assessee could not respond to the notices issued by Ld CIT(A) for the reasons beyond its control.

4. The Learned AR submitted that the addition made by the Assessing Officer under section 43CA of the Act requires reconsideration on account of the following reasons :

- a) The Assessing Officer has not considered the valuation determined by the DVO, since his report did not reach him before completion of the assessment.
- b) The Assessing Officer has ignored the provisions of section 43CA of the Act which mandates comparison of the sale value shown in the sale deed with the stamp duty value as on the date of entering of "agreement for sale". He submitted that in the instant case the allotment letter to the prospective buyers of the flat is the agreement to sell and hence the stamp duty value as on that date should have been considered by AO u/s 43CA of the Act. This has resulted in grave mistake in the quantum determined by the Assessing Officer.
- c) The Assessing Officer has also ignored section 43CA which mandates that no addition is required to be made if the difference between sale consideration shown in the sale deed and stamp duty value is less than 10%.

Accordingly learned AR prayed that the matter may be restored to the file of the Assessing Officer for examining the issue of applicability of sec. 43CA afresh.

5. We heard learned DR and perused the record. Having regard to the submissions made by learned AR and also having regard to the fact that the learned CIT(A) has passed ex-parte order, we are of the view that this issue requires fresh examination. Since the AO has not properly considered the provisions of sec.43CA and also the report of DVO, we are of the view that this issue needs to be examined afresh at the end of the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of Assessing Officer for examining it afresh in accordance with law. We also direct the assessee to fully cooperate with the Assessing Officer for expeditious completion of the assessment.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on 6.2.2024.

Sd/-  
(Aby T. Varkey)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 06/02/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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