

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.26/Ahd/2022
Assessment Year : 2015-16

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| M/s.Sharnam Realities P.Ltd. 411A, Neelkanth Palace B 100 Ft. Road Satellite 380 015. PAN : AAICS 9152 J | Vs | Pr.CIT-4 Ahmedabad. |
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|--------------------|--|--------------------|
| (Applicant) | | (Responent) |
|--------------------|--|--------------------|

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| Assessee by : | Shri Tushar Hemani, AR and Parimalsinh B. Parmar, AR |
| Revenue by : | Shri Akhilendra Prap Yadav, CIT-DR |

सुनवाई की तारीख / **Date of Hearing** : 13/12/2023
घोषणा की तारीख / **Date of Pronouncement**: 08/03/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the assessee against order passed by the Ld.Pr.Commissioner of Income Tax-4, Ahmedabad (hereinafter referred to as "ld.Pr.CIT" dated 23.3.2020 in exercise of his revisionary powers under section 263 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2015-16.

2. The grounds raised by the assessee are as under:

1. The ld. PCIT has grossly erred in law and on facts in assuming jurisdiction u/s.263 of the Act on the erroneous ground that the impugned assessment order is erroneous in so far as it is prejudicial to the interest of the revenue.
2. The Id. PCIT grossly erred in not appreciating that in order to invoke s.263, two conditions must be fulfilled viz. the impugned assessment order must be erroneous and that error must be prejudicial to the interest of the revenue. In the present case, Id. AO has passed the reasoned assessment

order after analyzing all details and therefore there was no error in the impugned assessment order so as to justify action u/s.263 of the Act. Under the circumstances, the very assumption of power u/s.263 of the Act is unjustified and bad in law and therefore, order u/s.263 of the Act deserves to be quashed.

3. *The subject order u/s. 263 passed by Id. PCIT is illegal and bad in law in the absence of any finding of the Id. PCIT as to how the alleged error of the AO has resulted in loss of revenue particularly when share in common areas is not to be considered for the purposes of S.43CA r.w.s.50C of the Act.*
4. *The Id. PCIT has further erred in law in not coming to any concrete conclusion and without conducting any inquiry or investigating the issue, merely directed the AO to frame the assessment order afresh. Without there being any positive finding about order being erroneous and prejudicial to the interest of the revenue, the action of Id. PCIT is without jurisdiction and illegal and hence deserves to be deleted.*
5. *Ld. PCIT has erred in not considering various facts and in not appreciating the facts and law in their proper perspective.”*

3. A bare perusal of the order of the Id.Pr.CIT reveals that the order under section 263 of the Act was passed, finding the assessment passed by the AO in the present case under section 143(3) of the Act, to be erroneous causing prejudice to the Revenue on account of the fact that the AO was found to have not made proper inquiries vis-à-vis the transaction of sale of properties undertaken by the assessee in the course of its business of construction of commercial and residential properties in the context of the provisions of section 43CA of the Act. The provisions of section 43CA of the Act required the actual consideration received for the sale of properties to be substituted with the stamp duty valuation of the same where the stamp duty valuation was found to be on the higher side. As per the Id.Pr.CIT, the AO had not examined the transaction of sale of godowns/offices/shops undertaken by the assessee during the year from this perspective, and therefore, he restored the matter back to the AO with specific directions for examination on this aspect.

4. The argument of the ld.counsel for the assessee before us was that :

- It had been adequately demonstrated to the Ld.PCIT with evidence in case of all properties sold that there was no instance calling for invocation of provisions of section 43CA of the Act in the present case.
- That the Ld.PCIT had picked up one instance of sale of property , wrongly appreciated the facts emanating from the documents before him and arrived at his finding of error.
- That even his finding of error was incorrect since it related to the AO not noticing the fallacies in the stamp duty valuation of the property sold which aspect , Ld.Counsel for the assessee contended ,was beyond the powers of AO even as per the provisions of section 43CA of the Act.

5. With regard to the above he drew our attention to the submissions of the assessee before the Ld.PCIT reproduced at para 2.2 (xiv) page 6 of his order pointing out therefrom the fact that the assessee had submitted the *jantri* value of all 27 sale transactions of properties during the year. He drew our attention to the said detail placed at paper book page No.215 and pointed out that the detail contained all information in relation to the properties sold with respect to:

- Date of conveyance deed
- Dastavej number
- Name of purchasers
- Sale consideration as per conveyance deed
- Jantri value as per stamp duty authority
- Stamp duty payable as per stamp duty authority
- Stamp duty actually paid by the assessee

- Whether sale consideration is lower than jantri value
- Difference between sale consideration and jantri value

He pointed out that the above detail was duly evidenced with Jantri value report of all 27 properties placed before us at P.B 216-275.

6. Ld. Counsel for the assessee contended that with all facts placed before the Ld.PCIT duly evidenced with necessary documents, and the facts – clearly showing the sale consideration to be in excess of *jantri* value of the properties sold, there was clearly no error in the order of the AO having accepted the actual sale consideration and not substituting it with the *jantri* value in terms of section 43CA of the Act.

7. Next he pointed out that the Ld.PCIT found the provisions of section 43CA invocable by appreciating the facts relating to sale of one property only, that too incorrectly.

8. He drew our attention to para 3.1 of the ld.Pr.CIT's order which records his finding of error in the assessment order, and pointed out therefrom that the ld.Pr.CIT took the instance of the property sold by the assessee during the year being a godown sold by the assessee to one Rajkumar Varadmal Budhani of Surat, and from the same he found out that the stamp valuation authority had not considered the full area sold by the assessee and if the full area was considered, the stamp valuation would be more than the price at which the property was ultimately sold by the assessee. He drew our attention to para 3.1 and 3.2 of his order in this regard as under:

“3.1 To ascertain the contentions as made in the revisionary proceedings u/s 263 of the Act and as mentioned above, I have carefully perused the contents of the sale deed made in respect of the godown purchased by one Shri

Rajkumar Varadmal Budhani of Surat. He has purchased unit no.22 in Block "A" of Sharnam-4 scheme situated at the ground floor. This unit had a total construction area as under:-

| <i>Unit No.</i> | <i>Location of the unit</i> | <i>Area In Sq. Ft.</i> | <i>As per Conversion Table</i> | <i>Common area in sq. mtr. As Mentioned Schedule 3 of the sale deed</i> | <i>Conversion unit from sq. ft. to sq. mtr.</i> |
|-----------------|-----------------------------|------------------------|--------------------------------|---|---|
| 22 | Cellar | 200 | 18.581 | 10.08 | 0.092903 |
| 22 | Ground Floor | 660.5 | 61.359 | 33.28 | 0.092903 |
| 22 | First Floor | 914.6 | 84.972 | 46.08 | 0.092903 |
| 4 | Second Floor | 914.6 | 84.972 | 46.08 | 0.092903 |
| 6 | Third Floor | 914.6 | 84.972 | 46.08 | 0.092903 |
| 6 | Fourth Floor | 483.8 | 44.95 | 24.40 | 0.092903 |
| | <i>Total area sold</i> | 4088 | 379.81 | 176.00 | 0.092903 |

The above area of 379.81 sq. mtrs. together with 176.00 sq. mtr. of undivided area occupied by the common space such as lift, staircase etc has been sold for Rs.75,00,000/- and the stamp duty required to be paid on this sale consideration has been worked out to Rs.3,67,500/-. Against this stamp duty so calculated by. applying the rate of 4.90% to the sale consideration as per the sale deed, the assessee has used the stamp papers of Rs.4,17,000/- in the different denomination values ranging from Rs.1,000/- to Rs.25,000/-. In respect of this sale deed registered at Sr.no.2892 of 2014, the assessee has filed copy of valuation certificate showing stamp duty valuation of Rs.58,53,300/- - and worked out the payable stamp duty of Rs,2,86,812/-. The rate of Rs.20,000/- per sq. mtr. has been applied for the total area of 299.86 sq. mtrs. with the notes that spot inspection had not been made and descriptive valuation has been estimated as per sale deed details. Thus, there is a difference in the area mentioned in the sale deed (total area 379.81 sq.meters (carpet area) + 176.00 sq. mtr. of common & undivided share) totaling to 555.81 sq. mtrs. Thus, the stamp duty valuation authority has not considered the full area sold by the assessee. If the full area of 555.81 sq. mtr. is considered and the rate of Rs.20,000/- is applied, then the correct stamp duty valuation would be Rs.1,11,16,200/- on which the assessee would be liable to pay the stamp duty of Rs.5,44,694/-.

3.2 Further, the undersigned has visited the Jantrl Table for the area falling in T.P. Scheme No. 9 (Rajpur-Hirpur) which showed consolidated valuation in respect of entire T.P. scheme for residential as well as commercial area. The screen shot of this webpage has been downloaded and is pasted as under:-

View Jantri Rate

| TP No | S.P. No | F.P. No | Extension | Rate | Rate | Rate | Rate | Rate | Rate |
|-------|---------|---------|-----------|------|------|-------|-------|------|------|
| 0 | 9/1 | 5 | | 5500 | 7350 | 20000 | 31250 | 6150 | 3750 |

As per this Jantri Table, the rate for offices has been fixed at Rs.20,000/- per sq. mtr. whereas for the shops, the same has been fixed at Rs.31,250/- per sq. mtr. Therefore, the valuation as per the calculation sheet (annexure-2 of the "submission dated 26.02.2020 appears, to be wrong so far as the area of 299.860 sq. mtr considered for which no other details have been furnished to substantiate the claim for this much 'measured area. The sale deed clearly mentioned total area of 555.81 sq. mtrs for which the assessee has received the sale consideration. Thus, there is an ambiguity in this respect and the A.O. did not call for any explanation and also did not verify the issue in its proper perspective. Therefore, in the interest of justice and to re-examine the entire issue afresh, the assessment order passed u/s 143(3) of the Act dated 31.10.2017 is held to be an erroneous and also prejudicial to the interest of revenue. In the result, the assessment order passed u/s 143(3) of the Act dated 31.10.2017 is set-aside u/s 263 of the Act with a direction to make the assessment de-novo after considering the above-mentioned submissions of the assessee and findings. The A.O. is also directed to carry out further inquiries/verification, more particularly by calling for the specific details as mentioned below:-

- Referring to the above, he explained that the Id.Pr.CIT found that while the assessee, as per the sale deed, had sold property/godown of total area of 379.81 sq.meters with 176 sq.meters of undivided area occupied by common space such as lift, staircase

etc. totaling in all to **555.81 sq.meters**, whereas the valuation certificate showing stamp duty value applied by the stamp duty authority to a total area of only **299.86 sq.meters**. He, thereafter, pointed out that the Id.Pr.CIT went on to apply the rate of Rs.20,000/- to full area of the property sold as noted by him of 555.81 sq.meters, and found that the correct stamp duty valuation ought to have been at Rs.1,11,16,200/- on which the assessee would be liable to pay stamp duty of Rs.5,44,694/-. From para 3.2, he pointed out that the Id.CIT(A) checked the *jantri* rate from the *jantri* table for the area followed in the relevant TP scheme where the godown was located and found that the valuation, therefore, by the stamp duty authority was incorrect with respect to the impugned property for having adopted wrong area of the property sold i.e. 299.86 sq.meters while the assessee had actually sold 555.81 sq.meters, which found mention in the sale deed also.

10. Ld.Counsel for the assessee pointed out that this finding of fallacy in the stamp duty valuation by the Id.Pr.CIT of the area sold by the assessee was not correct. He pointed out that it had been explained to the Id.Pr.CIT that the stamp duty valuation had been done on the entire property sold and 299.86 sq.meters related only to second floor and floor above the second floor for which stamp duty valuation was done separately, while for the ground floor and the cellar separate stamp duty valuation has been done. Copies of both valuation certificate had also been filed to the Id.Pr.CIT. In this regard, he drew our attention to the reply filed to the Id.Pr.CIT placed before us at PB Page No.110-201, more particularly, point no.7 of the reply, where the assessee had submitted complete details and evidence of the sale transaction in respect of Rajkumar Varadmal Budhani as under:

"7. The Appellant Company has also provided all the facilities for easy movement of goods and many of its customers have preferred to purchase Offices and Godowns on all the floors. Whereas in some cases, there are individual buyers for individual godowns/offices in each floor, we are giving working for one of the sale transaction in the case of Mr. Rajkumar Bhutani where total sq.ft. 4088.19 of area is sold to him are located at different floors. We are enclosing herewith the Working of the same in the attached vide Annexure-1 for your ready reference. The copies of dastavej and corresponding jantri value proof is submitted vide Annexure-2.

11. Our attention was also drawn to page no.114 containing in tabular form the sale transaction with Rajkumar Varadmal Budhani reflecting the total area of 379.81sq.meters considered by the ld.stamp duty valuation authority as under:

| Sharanam Realties P Limited A.Y. 2015-16 | | | | | | | |
|---|-----------|---------------------|---------------------------------------|---------------|--|---------------------------------------|-------------------------------|
| Sale transaction with Rajkumar Bhutani | | | | | | | |
| Particulars | Sq. meter | Equivalent Sq. foot | Stamp Duty Authority Rate per Sq. Mtr | Amount in Rs. | Depre @1.2% for 2 years from year 2012 (i.e. from year of rajachitthi) | Net Value as per Stamp Duty Authority | Assessable Stamp duty @ 4.90% |
| | 1 | 2 | 3 | 4 (1*3) | 5 | 6 (4-5) | 7 |
| Ground Floor | 61.36 | 200 | 31250 | 1917500 | 46020 | 1871480 | 91703 |
| Cellar | 18.58 | 660.46 | 25000 | 464500 | 11148 | 453352 | 22214 |
| Second Floor & floors Above second floor | 299.86 | 3227.73 | 20000 | 5997200 | 143933 | 5853267 | 286810 |
| Approx. Net Value as per stamp duty authority | 379.80 | 4088.19 | | 8379200 | 201101 | 8178099 | 400734 |

12. Our attention as also drawn to PB Page No.115 to 118 being the certificate issued by the stamp duty authority corroborating the calculation as per the assessee placed at PB Page No.114, reproduced by us above.

13. Ld.counsel for the assessee contended that the ld.Pr.CIT only picked up one certificate of stamp duty authority pertaining to 299 sq.meters and failed to take note of other certificate which related to remaining portion i.e. ground floor and cellar portion of the properties sold, and on this incorrect appreciation of the facts before him, he arrived at, therefore, wrong conclusion that the stamp duty valuation of the property sold by the assessee was incorrectly done

14. Lastly, the ld.counsel for the assessee submitted that what the ld.Pr.CIT noted was actually error or mistake in the calculation of the stamp duty valuation of the property sold. He pointed out that even his directions to the AO were with regard to verifying whether the stamp duty valuation had been done correctly. The ld.counsel for the assessee drew our attention to the directions given by the ld.Pr.CIT at page no.11 & 12 of his order as under:

(1) The A.O. shall call for the unit-wise details in terms of carpet area and commonly shared area as described above in respect of one purchaser viz. Rajkumar Varadmal Budhani (Sale deed no. 2892 of 2014) and work out the total area so sold during the year under consideration along with the deemed sales (the sale deeds executed in the subsequent assessment years) and apply the universal rate of Rs.20000/- per sq. meter and adopt the deemed sale consideration as per the provisions of section 43CA of the Act.

(2) The A.O. shall also make a separate reference to the Stamp Duty Authority so as to seek clarification for the calculation sheets filed by the assessee during the revisionary proceedings and obtain a fair opinion as to whether there was mistake crept in arriving at the valuation of Rs.58,53,300/- for the area of 299.860 sq.mtrs. for the property sold through registered sale deed no.2892 and other sale deeds executed after ascertaining from the concerned authorities of the Stamp Duty Office having jurisdiction over the properties located in T.P. Scheme No.9 Rahoyr Hirpur).

(3) After receiving such clarification from the Stamp Duty Office, the AO. shall decide the fair market value as per the provisions of section 43CA of the Act and for that purpose, all due opportunities shall be provided to the assessee before deciding the issue against it.

(4) If the A.O. feels it necessary, he may make the reference to Valuation Cell for determining the fair market value of the entire project as it must have been completed by this time and all the units of Sharnam-4 must have been sold

and adopt the higher value as per the provisions of section 43CA r.w.s. 50C of the Act.

(5) The A.O. shall pass the assessment order de-novo after taking into all the above-referred material together with the details and documents already made available during the course of assessment proceedings and make due addition by applying the provisions of section 43CA r.w.s. 50C of the Act.

(6) The A.O. shall allow set off of carried forward business loss of Rs. 1,48,22,066/- as claimed in the return of income to the extent of assessed total income and give telescopic effect of such adjustments in the subsequent assessment years.

15. The ld.counsel for the assessee pointed out that it is clearly evident from the above direction of the ld.Pr.CIT to the AO that the error noted by him was with respect to the mistake in calculation of the stamp duty valuation of the property which he stated was beyond the power of either of the AO or the ld.Pr.CIT, and who in any case, as per the law, were required to accept the stamp duty valuation as its, without questioning it in terms of section 43CA of the Act. He contended that, the Revenue authorities under the Income Tax Act cannot step into the shoes of the stamp duty valuation authorities by any chance .That even for the purposes of section 43CA of the Act the AO is only allowed to compare the actual sale consideration received by the assessee with the stamp duty valuation thereof, and where the stamp duty valuation exceeds the actual consideration received, the stamp valuation is to be adopted and substituted for the sale consideration of the property sold; that the Revenue authorities cannot call in question the stamp duty valuation of the property. He relied on the following case laws in this regard:

- *Gestetner Duplications P. Ltd. Vs. CIT, 117 IGTR 1 (SC);*
- *Nitin P. Shah alias Modi Vs. DCIT, 276 ITR 411 (Guj)*
- *APMC Vs. ITO, 355 ITR 384 (Guj)*
- *ITO Vs. E-Infochips Ltd., 124 TTJ 176 (Ahd);*
- *Gujarat Information Technology Funds, 45 SOT 529 (Ahd);*

- *PCIT Vs. BA Research, (2016) 240 Taxman 443 (Guj)*
- *CIT Vs. Quintiles Research (India) P.Ltd., 429 ITR 4 (Kar)*

He, therefore, contended that the ld.Pr.CIT's finding of error based on his finding and questioning the valuation of the stamp duty authority was incorrect

16. In view of the above, the ld.counsel for the assessee contended that there was no error as such error in the order of the AO, vis a vis applicability of the provisions of section 43CA of the Act and therefore, the order passed under section 263 of the Act was liable to be set aside.

17. The ld.DR, on the other hand supported the order of the ld.Pr.CIT.

18. We have heard contentions of both the parties, carefully gone through the order of the Ld.PCIT and also the various documents referred to before us.

On a careful consideration of all the above we are in complete agreement with the Ld.Counsel for the assessee that the Ld.PCIT has failed to make out a case of any error in the order of the AO warranting exercise of revisionary powers u/s 263 of the Act.

19. The error noted by the ld.Pr.CIT in the assessment order is that the sale of properties by the assessee during the year was not examined by the AO vis-à-vis its stamp duty value for the purpose of invoking section 43CA of the Act, which requires the sale consideration to be substituted with the stamp duty value when the same exceeds the actual sale consideration.

20. We have noted that the ld.Pr.CIT has not pointed out any instance where actual sale consideration of the property sold needed to be substituted with the stamp duty value in terms of section 43CA of the Act, despite the fact that details of all 27 properties were filed by the assessee to him clearly pointing out that in no case the stamp duty value exceeded actual sale consideration and all documents to evidence the same were also filed to the Ld.PCIT. Ld.PCIT clearly has been unable to demonstrate even a single instance of sale of property inviting invocation of section 43CA of the Act.

Therefore, clearly the Ld.PCIT has failed to make out a case of any error having crept in the order of the AO for having accepted the actual sale consideration of properties sold as opposed to their stamp duty value in terms of section 43CA of the Act.

21. His finding of the error, we find, is restricted to the fact that the stamp duty valuation of the property has not been done correctly. As pointed out by the ld.counsel for the assessee and as noted by us from the impugned order, the ld.Pr.CIT has picked up one instance of the sale of the property and noted that stamp duty valuation of the same was done by adopting incorrect figure of area of the property sold. The ld.counsel for the assessee has demonstrated before us that this finding of the ld.Pr.CIT was incorrect, because he had not appreciated all the documents placed before him, which clearly revealed that the stamp duty authority had valued entire area of the property sold. The ld.counsel for the assessee has demonstrated by way of certificate of stamp duty authority that there were separate certificates, one pertaining to the second floor and the floor above it, and other pertaining to the ground floor and the cellar, and the ld.Pr.CIT had considered only first certificate and missed out on taking note of other certificate pertaining to the ground floor and cellar, and therefore, the

cement this view of ours wherein courts have held that once competent authority has determined *jantri* value. AO/CIT cannot find any fault in the same. That AO's cannot go beyond competent authority concerned for making addition.

24. In the present case, this is exactly the error which has been noted by the ld.Pr.CIT that the AO has not looked into the mistake in the valuation of the properties sold by the assessee by the stamp duty authorities. When this aspect is clearly beyond the scope of the powers of Revenue authorities, there is no question of the AO being in error for not having examined the same.

24. In view of the above, we hold that the ld.Pr.CIT has failed to point out any error in the order of the AO, and his finding of the error if any is beyond the scope of powers of Revenue authorities and on complete mis-appreciation of the facts on the issue of invocation of section 43CA of the Act.

In view of the same we hold that the order passed by the Ld.PCIT is not sustainable and set aside the same.

25. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 8th March, 2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 08/03/2024

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