

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.203/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2015-16

Venketesh Associates, S. No.50 2 Office No.1, Platinum Classic Building, Pune Nagar Road, Chanddan Nagar, Pune- 410014. PAN : AAJFV9490J	Vs.	DCIT, Circle-7, Pune.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri A. K. Mahala

Date of hearing : 25.04.2024  
Date of pronouncement : 06.05.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 22.12.2023 passed by Ld CIT(A)/NFAC for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

"1. *On the facts and the circumstances of the case and in law, lower authorities erred in making an addition of Rs.37,53,597/- by invoking provision of section 43CA, on account of difference*

*between Stamp Duty Valuation and Agreement Value adopted without appreciating the contention of the appellant. Without referring the matter to the DVO as envisaged in the section. Appellant prays for the deletion of entire addition.*

*Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.”*

3. Brief facts of the case are that the appellant is a partnership firm engaged in the business of builder and developer. The Return of Income for the assessment year 2015-16 was filed on 25.03.2016 declaring total income of Rs.31,91,660/-. The return of income was selected for scrutiny under CASS & notices u/s 143(2) & 142(1) were issued to the assessee. The AO found that in respect of 9 flats the stamp duty value for the purpose of registration was higher than consideration mentioned in the agreement. The AO vide order sheet entry dated 29-09-2017 requested the assessee to show cause why difference of Rs.37,53,597/ between stamp duty value & agreement value should be not added u/s 43CA of the IT Act. It was contended by the assessee that the difference in the agreement value & government value is due to different method of valuation followed by the stamp duty authority. The AO did not accept the explanation of the assessee and made addition of Rs.37,53,597/- to the returned income u/s 43CA of the IT Act & passed the assessment order u/s 143(3) of the IT Act on 22-11-2017. The

assessee preferred an appeal but could not succeed & then in second appeal a Co-ordinate Bench of this Tribunal in ITA No.222/PUN/2019 vide an order dated 20-04-2022 remitted back the matter to Ld. CIT(A) to decide it afresh after providing a reasonable opportunity of being heard to the assessee.

4. In compliance to the above order of the Tribunal, LD CIT(A)/NFAC issued notice to the appellant who in reply furnished his submission before ld. CIT(A)/NFAC. By an order dated 22-12-2023 LD CIT(A)/NFAC again dismissed the appeal of the assessee, observing as under :-

*“3.1 Grounds of Appeal No.1: The only ground of the appellant pertains to addition of Rs.37,53,597/- made under section 43CA of the Act by the Assessing Officer vide order dated 22.11.2017 under section 143(3) of the Act. During the course of assessment proceedings, the Ld. Assessing Officer noticed that the appellant has sold certain flats on the value less than the assessable value. Before the Assessing Officer, the appellant mentioned that this difference is due to the method of calculating the saleable area which is different as adopted by appellant from the stamp authorities. The Ld. Assessing Officer did not accept the explanation of the appellant and made additions accordingly.*

*3.2 During the course of appellate proceedings, the appellant submitted his written submission on 24.11.2023. The appellant made arguments such as: -*

- 1. The sale agreement was entered before the appreciation of rate.*
- 2. The advances were taken at the time of agreement though no written agreement was there.*
- 3. The value adopted was for land and building, though the calculation of building value cannot be same for each unit.*

*3.3 I have examined submissions of the appellant and order of the Assessing Officer. I have noticed that the Stamp Authorities have adjusted these sale deeds in which the difference is very clear, as*

*mentioned by the Assessing Officer in his table. The appellant fails to submit any written agreement to suggest that the stamp value at the time of written agreement was lesser than present value. As appellant fails to contradict the findings of the Assessing Officer, the additions made by the Assessing Officer are confirmed. Thus, the ground of appeal No.1 is dismissed.”*

5. Against the above order dated 22-12-2023 passed by LD CIT(A)/NFAC, the assessee is in appeal before us in second round.
6. The LD counsel of the assessee submitted before us that the determination of fair market value on the basis of stamp duty value is not correct & the same was challenged before the AO as well as before LD CIT(A)/NFAC but both of them committed error in not accepting the same & further erred in not referring the matter to the DVO in the light of section 43CA r.w. section 50C of the IT Act.
7. On the other hand, LD DR relied on the order passed by Ld.CIT(A)/NFAC.
8. We have heard learned counsels from both the sides & perused the material available on record. The only ground raised before us in this appeal is regarding making the addition on the basis of difference in stamp duty value & Agreement value, without appreciating the contention of the appellant, without referring the matter to the DVO as envisaged in the section 43CA r.w. section 50C of the IT Act. For the sake of convenience relevant portion of

section 43CA as it was applicable during the period under consideration is reproduced herewith :-

*“43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer:*

*(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).”*

9. From the plain reading of above section it emerges clearly that for the purposes of determination of the value of the property the provisions of sub-section (2) & sub-section (3) of section 50C shall also apply, which reads as under :-

*“50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:*

*(2) Without prejudice to the provisions of sub-section (1), where—*

*(a) the assessee claims before any Assessing Officer that the value adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*

*(b) the value so adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) has not been*

*disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,*

*the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*

10. We find that the appellant assessee disputed the determination of fair market value of the flats sold on the basis of stamp duty value before the AO but he has not bothered to refer the matter to the valuation officer in the light of above provisions of law. We also find that the advances were received at the time of booking of the flats & the prices were locked at that point of time only, but the registration is done on later dates which resulted in difference in agreement value & stamp duty value. We find force in the contention of the appellant assessee that to overcome such situation section 43CA was introduced & an option was given to the assessee to object determination of fair market value on the basis of stamp duty value. Therefore, now we deem it proper to set-a-side the order passed by LD CIT(A)/NFAC as well as passed by the AO & remand the matter back to the file of the AO to refer the matter to the valuation officer for the purposes of section 43CA. The AO will

refer the matter to the DVO for determining the fair market value of the 9 flats under consideration & pass the order as per law in the light of report of the DVO after providing reasonable opportunity of being heard to the assessee. We order accordingly. The appeal filed by the assessee is allowed for statistical purpose.

11. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open Court on 06<sup>th</sup> day of May, 2024.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(VINAY BHAMORE)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06<sup>th</sup> May, 2024.

*Sujeet*

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.