

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.210/PUN/2024
निर्धारण वर्ष / Assessment Year: 2015-16

M/s.Goyal Developers, 1, Business Embassy, 1205/3/3, J.M.Road, Shivajinagar, Pune – 411005. PAN: AAJFG5666P	V s	The ACIT, Circle-2, Pune.
Appellant/ Revenue		Respondent /Assessee

Assessee by	Shri Kishor B Phadke – AR
Revenue by	Shri Ramnath P Murkude - DR
Date of hearing	29/04/2024
Date of pronouncement	01/05/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee against the order of Ld.Commissioner of Income Tax(Appeals)[NFAC], passed under section 250 of the Income Tax Act, 1961 for A.Y.2015-16 dated 08.12.2023. The Assessee has raised the following grounds of appeal :

“1. The Ld. CIT(A) erred in not appreciating that there was marginal difference between the sales consideration shown by the appellant and the value adopted for payment of Stamp duty &

therefore no addition was justified.

2. *The Ld. CIT(A) erred in not dealing with Ground no. 3 of the appellant requesting for reference to the valuation officer for valuation of such units as provided in sub section (2) of Sec.43 CA of the ITA.*

3. *The appellant craves leave to add amend, modify, or delete all any of the grounds of appeal.”*

Submission of Id.Authorised Representative(ld.AR) :

2. The ld.AR for the assessee submitted that as per section 43CA r.w.s 50C of the Act, the Assessing Officer(AO) should have referred the issue of valuation of Flats to DVO. The ld.AR submitted that it is mandatory for AO to refer to DVO when assessee disputes the valuation. The ld.AR also submitted that the assessee had raised this issue before the AO as well as ld.CIT(A). The ld.AR vehemently argued that the case may be set-aside to AO/CIT(A) with a direction to refer it to DVO with reference to valuation of Flat No.A-108, A-208, A-308 and A-703. Ld.AR took us through the order of ld.CIT(A) and AO.

Submission of Id.Departmental Representative(ld.DR) :

3. The ld.DR for the Revenue relied on the order of Assessing Officer(AO) and ld.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed that assessee is a builder. During the year A.Y.2015-16, it was observed by the AO that assessee had sold certain flats at the value less than the value decided by Stamp Duty Authorities of State Government. Therefore, AO made addition under section 43CA of the Act. Ld.CIT(A) gave a partial relief to the assessee. However, ld.CIT(A) noted in the order that difference in the Agreement Value and Value decided by Stamp Duty Authority of Flat No.A-108, A-208, A-308 and A-703 was more than 10%. Therefore, ld.CIT(A) confirmed the addition of Rs.12,01,728/-.

4.1 As per section 43CA sub-section 2, the provisions of Section 50C(2) and 50C(3) shall apply in relation to determination of value assessed under sub-section 1 of section 43CA. The section 50C(2) & section 50(3) are reproduced here as under :

50C.

(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.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

5. It is observed that assessee had raised the issue before Id.CIT(A) that for determination of the value of the impugned Flat, matter may be referred to the DVO. Ld.CIT(A) has not discussed this issue in the order at all. Since as per section 50C(2), when assessee disputes the valuation, the AO has to refer the issue to the DVO for determination of the value of the asset. In this case, admittedly assessee had disputed the valuation. The assessee had submitted comparative rates of the adjacent areas.

5.1 The Hon'ble Calcutta High Court has held in the case of Sunil Kumar Agarwal Vs. CIT [2015] 372 ITR 83 (Cal) as under :

“For the aforesaid reasons, we are of the opinion that the valuation by the Departmental Valuation Officer, contemplated under section 50C, is required to avoid miscarriage of justice. The Legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub-Registrar for the purpose of stamp duty. The Legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the Legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the Assessing Officer, discharging a quasi-judicial function, has the bounden duty to Act fairly and to give a fair treatment by giving him an option to follow the course provided by law.”

5.2 Respectfully following the decision of Hon'ble Calcutta High Court, in these facts and circumstances of the case, we deem it appropriate to remit the issue of valuation of Flat No.A-108, A-208, A-308 and A-703 to the Assessing Officer, the AO shall obtain report from DVO. The Assessing Office shall provide opportunity to the assessee. Accordingly, the Ground No.2 raised by the assessee is allowed for statistical purpose.

5.3 Since we have set-aside the Ground No.2 to the Assessing Officer, the Ground No.1 and 3 become academic in nature.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 1st May, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 1st May, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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