

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA Nos.46/Ahd/2024 & 47/Ahd/2024
Assessment Years : 2017-18 & 2018-19 respectively

Sarjan Realities Pvt.Ltd. 5, Shrimali Society Nr. Shree Krishna Center Navrangpura Ahmedabad - 380 009 Gujarat	Vs	The Dy.CIT Circle-4(1)(1) Ahmedabad
PAN : AAACE 3472 H		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, ARs
Revenue by :	Shri Ritesh Parmar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 09/05/2024
घोषणा की तारीख /Date of Pronouncement: 28/05/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

These two appeals are filed by the Assessee as against the appellate orders dated 06.12.2023 and 07.12.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [hereinafter referred to as "the CIT(A)"] relating to the Assessment Years (AYs) 2017-18 and 2018-19 respectively. Since common facts and issues are involved for both the years under consideration before us, the aforesaid appeals are being disposed of by way of a common order.

2. First, we take up the assessee's appeal in ITA No.46/Ahd/2024 for A.Y. 2017-18.

2.1. The assessee has taken following grounds of appeal:

1. *The Ld. CIT(A) has erred in law and on facts of the case in confirming addition of Rs. 14,21,40,945/- made by Ld. AO u/s. 43CA of the Act.*
2. *Both the lower authorities have erred in law and on facts in considering Rs.21,66,66,000/- as value adopted by stamp authorities without considering the valuation report obtained from govt. approved valuation report.*
3. *Both the lower authorities have erred in considering sales consideration amount at Rs.7,45,25,055/- while making disallowance u/s. 43CA without considering the amount of Rs.3,09,19,083/- which is also a part of sales consideration of land collected against invoice raised.*
4. *Both the lower authorities have erred in law and on facts in considering Rs.21,66,66,000/- as value adopted by stamp authorities. Both the lower authorities have not correctly appreciated the method of computation of value adopted by stamp authorities.*
5. *Both the lower authorities have erred in considering value adopted by stamp duty authorities without removing the effect of formula and adhoc addition of Rs 15 Lacs per acre for development charges as per the stamp duty regulations.*
6. *Both the lower authorities have erred in law and on facts in not referring the matter to the Valuation Officer as per Section 43CA(2) r.w.s. 50C(2) when the appellant has contested the valuation made by stamp duty authority.*
7. *The Ld. CIT(A) has erred in law and on facts of the case in confirming addition of Rs.5,09,000/- made by Ld. AO u/s. 50C of the Act.*
8. *Both the lower authorities have erred in law and on facts in not referring the matter to the Valuation Officer as per Section 50C(2) when the appellant has contested the valuation made by stamp duty authority.*
9. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower*

authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

10. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.*

11. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

Facts of the case:

3. The assessee filed its return of income declaring income of Rs.10,20,37,310/- and book profit of Rs.27,18,04,861/- The assessee-company is engaged in the business of purchase of land/rights at windy sites, developing and sale/lease of land rights to wind farm developers and other ancillary services and generation and sale of electricity by installing windmills.

3.1. During the year under consideration, assessee sold land in the State of Maharashtra to its customers for the purpose of installation of solar farm. Some part of land was held as stock in trade and some part as capital asset. The land under question was situated in the State of Maharashtra.

3.2. During the course of assessment, the AO found that land held as stock in trade was sold at a value less than value determined by the stamp duty authorities. Therefore, assessee was called upon to show cause as to why addition should not be made u/s.43CA of the Act in respect of 'difference' between value adopted by stamp duty authorities' and 'sale consideration'. The assessee furnished a detailed response as to why addition proposed u/s. 43CA of the Act is not justified in the present case. In the said reply, the assessee put forward following points before the AO:

- a. The Government of Maharashtra has prescribed a formula for determination of stamp duty (jantri value) in case where property is to be used for installation of windmill/solar farm. (The copy of said valuation guideline in Marathi language was also submitted).
- b. As per the said formula, an ad-hoc amount of Rs. 15,00,000/- per hector is to be added while calculating stamp duty of such land. Hence, while working out value adopted for the purpose of stamp duty, effect of Rs.15,00,000/- per hector needs to be removed. To that extent, value on which stamp duty (jantri value) has been worked out is not comparable with the marker value.
- c. Since assessee has sold "agricultural land", jantri value as applicable to "agricultural rural land" will be applicable. Copy of certificate of advocate certifying that the land was agricultural land was furnished.
- d. In "sale deed", it has been mentioned that jantri value was worked out by considering the land as "agricultural rural land".
- e. In order to determine correct fair market value of land, "valuation reports" from recognized Government approved valuer were obtained and furnished by the assessee.
- f. Comparative details of "sale consideration", "jantri value" and valuation as adopted by the registered valuer were furnished indicating that "actual sale consideration" is more than "market value", as mentioned by the Stamp Duty Authority and independent valuer.
- g. Assessee sold land for the purpose of installation of Windmill and received "sale consideration" which comprised income from "sale of land" and "other land related services for developing such land for installation of Windmill" Copy of invoice was furnished on sample basis to demonstrate the said aspect. Accordingly, difference between sale consideration and stamp duty valuation has to be worked out after considering total sale value of land (including other land related services). Such difference works out to Rs.11,12,21862/- (i.e. Rs.21,66,66,000 - Rs. 10,54,44,138). Hence,

at the most, such difference of Rs.11,12,21862/- could have been considered for making addition under section 43CA of the Act.

3.3. Rejecting the contentions of the assessee, the AO passed an order making an addition of Rs.14,21,40,945/- u/s.43CA of the Act. The AO also made an addition u/s.50C of the Act on account of difference in the value adopted by stamp duty authorities and sale consideration in case of some land which was held as capital asset and capital gain was declared by the assessee.

4. Aggrieved by such addition, the assessee filed an appeal before Ld. CIT(A), who in turn confirmed the additions. While confirming the addition of Rs.14,21,40,945/- u/s.43CA of the Act, the Ld. CIT(A) recorded following observations:

“Moreover both the purchaser and seller are well acquainted with the rules & regulation & formula formed by the Maharashtra Govt, in case of selling a land for solar firm/windmill. Therefore, at the very moment of registering the deed of conveyance both the parties are having knowledge of the value of property as per stamp duty valuation authority. After accepting the stamp duty valuation by registering the deed ,the appellant would not retract the said valuation by grasping any new logic of land being agricultural land etc.,

Apart from above the appellant is unable to furnish any supporting evidence against their above claim. Therefore the interpretation and submission of the appellant being total consideration inclusive of land related service also, are unacceptable since illogical and unjustified. Accordingly, I fully agree with the observation and decision narrated in the assessment order of the AO in as much as the same is justified and logical and as per law.”

4.1. At the time of confirming the addition of Rs.5,09,000/-, the Ld.CIT(A) concluded that:

“Moreover, at the very moment of registering the deed of conveyance both the parties are having knowledge of the value of property as per stamp duty valuation

authority. After accepting the stamp duty valuation by registering the deed the appellant would not retract the said valuation by grasping any new logic of land being agricultural land and situated far away from human population in remote forest areas without basic infrastructure or irrigation facility etc.,

Therefore these interpretation are unacceptable being illogical and unjustified. Accordingly, I fully agree with the observation and decision narrated in the assessment order of the AO in as much as the same is justified and logical and as per law."

On merits:

5. Before us, the counsel for the assessee, stated that both the AO and the Ld.CIT(A) have not considered the specific contention about the ad-hoc adjustment of Rs.15,00,000/- in the stamp duty value as adopted for the purpose of calculation of stamp duty only and the effect of Rs.15,00,000/- is to be removed.

5.1. The counsel for the assessee also brought to our notice that both the AO and the Ld.CIT(A) have not taken into consideration the value of other services of Rs.3,09,19,083/- included in the sale consideration and to that extent the addition u/s.43CA of the Act should have been reduced.

5.2. The counsel for the assessee also raised the point that the AO has failed to make a reference to Valuation Officer in accordance with sub-section (2) of section 50C of the Act which is also applicable to section 43CA of the Act. In this context, the counsel placed reliance on the following judicial pronouncements:

1. Sunil Kumar Agrawal vs. CIT - (2015) 372 ITR 83 (Calcutta)

2. Kallubhai Budhdhilal Shahu vs. ITO - ITA No. 500 /Srt/2023
3. Narendra Dahyabhai Patel vs. ITO - I.T.A. No. 2087 /Ahd/2013
4. Mahesh A. Vora vs. ITO - ITA No. 2217/Ahd/2016
5. Shri Ashwin C. Shah vs. ITO - WTA.No.25 to 30/Ahd/2017
6. Dharamshibhai Sonani vs. ACIT - (2017) 57 ITR(T) 669 (Ahmedabad - Trib.)
7. ACIT vs. Smt. Bimladevi Subhankaran Agarwal - I.T.A. No. 130/Ahd/2017
8. Vinodsingh Natvarsingh Rajput vs. ITO - ITA No.1853/Ahd/2019
9. Late Smt. Vimlaben Jashbhai Patel vs. DCIT - ITA No.873/Ahd/2019.

5.3. On the other hand, the Ld.CIT-DR relied on the orders of lower authorities and stressed that the assessee has not disputed the value with concerned authorities at the time of paying stamp duty.

6. We have heard the rival contentions and perused the material on record. We also note that both the AO and the Ld.CIT(A) have not given any consideration to the value of other services included in the sale consideration while arriving at the addition u/s 43CA of the Act.

6.1 We have also noted the contents of the decisions relied upon by the assessee. We specifically refer the decision of the Co-ordinate Bench in case of Narendra Dahyabhai Patel vs. ITO (I.T.A. No. 2087/Ahd/2013), dated 31/08/2016, where reference of one judgment of Hon'ble Calcutta High Court is made. For the sake of clarity, we reproduce the part of the decision of the Co-ordinate Bench:

"4. I find that, as held by Hon'ble Calcutta High Court in the case of Sunil Kumar Agarwal vs. CIT (2015) 372 ITR 83 (Cal), even in the absence of specific request from the assessee, the Assessing Officer has to give an option to the assessee to follow the course provided by law under section 50C(2). I, therefore, uphold the grievance of the assessee, and remit the matter to the file of the Assessing Officer for adjudication de novo after referring the matter to the DVO under section 50C(2)."

Respectfully following the judicial pronouncements, we set aside the order of Ld. CIT(A) and the matter is remanded back to the Assessing Officer with a direction that the reference be made to valuation officer and the assessment shall be made *de novo* in accordance with the law.

6.1. Ground Nos.1 to 8 are thus heard together and partly allowed for statistical purposes. Ground Nos. 9 to 11 are consequential and general in nature and, hence, are not adjudicated.

7. As a result, the appeal of the assessee in ITA No.46/Ahd/2024 for AY 2017-18 is partly allowed for statistical purposes.

8. In the second appeal of the assessee, i.e.. ITA No.47/Ahd/2024 relating to A.Y. 2018-19, the same grounds of appeal are raised relating to addition u/s.43CA of the Act to the extent of Rs.4,22,78,894/-.

8.1. Since the facts of the case are similar, except quantum in appeal, to the above adjudicated appeal in assessee's own case for A.Y. 2017-18(supra), we set aside the order of the Ld.CIT(A) and the matter is remanded back to the Assessing Officer with a direction that the reference be made to valuation officer and the assessment shall be made *de novo* in accordance with the law.

8.2. Ground Nos.1 to 8 are thus heard together and partly allowed for statistical purposes. Ground Nos. 9 to 11 are consequential and general in nature and, hence, are not adjudicated.

9. As a result, the appeal of the assessee in ITA No.47/ Ahd/2024 for AY 2018-19 partly is allowed for statistical purposes.

10. In the combined result, both the appeals of the assessee are treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 28 May, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER True Copy

Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 28/05/2024

टी.सी.नायर, व.नि.स।T.C. NAIR, SK. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad