

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1066/Bang/2024
Assessment Years : 2017-18

Sparkle Estates Pvt. Ltd., 41/1, 3 <sup>rd</sup> Cross, Kumara Park, Seshadripuram, Bengaluru-560 020.  <b>PAN – AAMCS 1456 M</b>	Vs.	The Pr. Commissioner of Income-tax, Bengaluru-1,  The Dy./Asst. Commissioner of Income Tax, Circle- 6(1)(1), Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri C Ramesh, CA
Revenue by	:	Shri D.K Mishra, CIT (DR)

Date of hearing	:	18.07.2024
Date of Pronouncement	:	26.07.2024

**ORDER**

**PER SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER :**

Present appeal filed by the Revenue against the order passed by the Pr. CIT, Bengaluru-1 dated 28/03/2024 having DIN No. ITBA/REV/F/REV5/2023-24/1063546008(1) for the assessment year 2017-18.

2. Facts leading to the filing of present appeal are. The assessee company engaged in the business of real estate. For the impugned assessment year, the assessee could not file its return of Income (ROI). Accordingly, the case of the assessee was reopened and notice u/s148

of the Act, was issued to assessee. In response thereto the assessee filed its ROI declaring an income of Rs.2,05,49,360/-.

3. During re-assessment proceedings, the AO observed that assessee has sold out certain properties for an amount of Rs.3,11,43,211/-. Dissatisfied with the reply of the assessee, the AO framed the assessment determining income of assessee amounting to Rs.10,17,22,274/-. Against this order, the assessee preferred an appeal before the CIT(A) on 08/08/2022. The Id. CIT(A) allowed the appeal of the assessee vide its order dated 13/03/2024.

4. Meanwhile, the **Pr.CIT, Delhi** issued notice to the assessee on 28/12/023, asking us to why the stock of land sold by the assessee could not be assessed at Circle rate of Rs.1980/- instead of Rs.1650/- as declared by the assessee and recorded in sale deeds, the Pr.CIT has referred to provisions of sec. 43CA.

5. The assessee objected to the jurisdiction of the PCIT, Delhi and pointed out that PCIT, Bangalore is having jurisdiction over assessee not Delhi. Accordingly, the PCIT, Bengaluru, issued notice u/s 263 on 12/03/2024. Hence, it is relevant to mention that Pr.CIT, Bangalore also cited verbatim reason as formulated by the Pr.CIT, Delhi while assuming jurisdiction over the case of the assessee u/s 263 of the Act.

6. In response to the notice of PCIT, Bangalore, the assessee filed his reply and contended that order of the AO was neither erroneous nor prejudicial to the interest of revenue. However, the PCIT revised the order of AO to the for examining the case of the assessee in the light of the provisions sec. 43CA of the Act.

7. Aggrieved, with the order of Pr.CIT, assessee preferred the present appeal and raised the following grounds:-

*“The Appellant objects to the Revision Order passed u/s. 263 on the following grounds in so far as it is prejudicial to the as it is opposed to law and circumstances of the case: -*

*1. The Pr. CIT-1 Bengaluru has not independently form an opinion to revise the assessment order u/s.263 and he has borrowed the satisfaction from Pr. CIT -7 Delhi, without recording independent satisfaction.*

*2. The Pr. CIT erred in invoking the provisions of section 263 of the Act ignoring the fact that the Appellant Company's activities falls under formation and development of residential layout and purchase and sale of properties and the same was examined by the A.O. during the course of assessment.*

*3. The Pr. CIT was not correct in not appreciating the facts that the A.O. has verified the sale deed copies which was submitted during the course of assessment proceedings u/s.143(3) by calling detailed information in this regard, which is a binding agreement.*

*4. The Pr. CIT was not correct in directing AO to revise the assessment by invoking he provisions of section 263 relying on the decision of Hon'ble Supreme Court in the case of CIT Vs Paville Projects Pvt Ltd without appreciating the facts that the Appellant company has entered into deed of declaration before sale of property with the KEHBC Society, where the sale price of Rs.1,650/- per sqft.*

*5. The Pr. CIT was not correct in not appreciating the fact that the Appellant Company already fixed the sale price to Society before formation of sites and said price of Rs.1650/- is inclusive of land cost, development cost and margin for layout formation.*

*6. The Pr. CIT was not correct in not appreciating the facts that the Appellant has entered into sharing agreement and received an advance of Rs.1.47 cores on the date of sharing agreement, based on the price fixed during deed of declaration, through banking channels.*

*7. The Appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal.*

*8. Wherefore on the above grounds and on such other grounds the prays the Appellate Authority to set aside the Revision order passed*

*u/s.263 as above and may pass such other as the Appellate Authority deems fit."*

8. At the outset, the Id. Counsel for the assessee argued that on 31/05/2014, the assessee has executed a deed of declaration (annexed in paper book at **page no.15 to 86**) declaring that assessee has sold its lands to M/s Karnataka Engineering House Building Co-operative Society Limited (herein after referred to as KEHBC for the sake of convenience). It has also been pointed out by the Id. Counsel for the assessee that the assessee, has also entered into an agreement to sale-cum sharing agreement with M/s KEHBC **on 06/08/2015**, copy of this agreement is **placed at page No.87 to 120**. By virtue of these agreements, the assessee has received substantial amount against that transfer of rights in the impugned lands from M/s KEHBC. The Id. counsel for the assessee in a nutshell argued that if at all circle rate of lands are to be applied, they have to be applied from the date of execution deed of declaration & the agreement to sell. The counsel for the assessee further pointed out that the Karnataka government has revised the circle rate only after the from **1/4/2016** i.e. transfer of right in the land by the assessee in M/s KEHBC. At last, the counsel for the assessee argued that the impugned sale deeds which are considered by the PCIT, Bangalore for assuming jurisdiction of 263 are in fact executed by M/s KEHBC in the capacity of seller and not by the assessee. The assessee was only confirming party in the sale deed, as evident from the sale deed annexed in paper book at page no.184 onwards.

9. The Id. DR for the revenue argued that the AO while framing the asst. u/s 43(3) has not considered the sale deed at all, hence, the Pr. CIT has correctly invoked provision of sec. 263 of the Act.

10. After considering the rival submissions, we observe that the Id. DR could not be able to refute the contentions of the assessee vis-a-vis the role of the assessee as the confirming party, in the so called sale deeds which are considered by the PCIT. We are of the view that provisions of sec. 43CA cannot be invoked in the hands of a confirming party the provisions of sec. 43CA are reproduced hereunder for the sake of convenience:-

**Section 43CA**

**Special provision for full value of consideration for transfer of assets other than capital assets in certain cases**

*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).*

*(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*

*(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.]*

11. Perusal of the above provisions of sub sec. of 43CA, proves beyond doubt that rigors of this provision are applicable to assessee, who is the owner of an asset. In this case, when we have seen the sale deeds are executed by M/s KEHBC in the capacity of owner. The sale deeds are registered document and available in public domain, therefore, it cannot be considered as additional evidences in fact the PCIT has taken cognizance of these sale deeds while issuing notice of 263 to the assessee. Therefore, the Id. Pr.CIT has erred in invoking the provisions of sec. 263 in the case of the present cases instead of the real owner of the asset on the date of transfer. The PCIT was very much in possession of sale deed at the time of assumption of jurisdiction u/s 263 of the Act, therefore, we are of the view that he has wrongly assumed jurisdiction in the case of the present assessee, who was not owner of the asset. If at all the applicability of the provisions of 43CA are to be seen in the hands of present assessee, notwithstanding, the ownership of the asset, then the rates available on 6/8/2015 are to be taken into consideration for the purpose of 43CA of the Act. Hence, we are of the firm view that the order of the AO cannot be termed as erroneous and prejudicial to the interest of the revenue, thus, we set aside the order u/s 263 of the Act of Pr.CIT, Bangalore.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in court on 26<sup>th</sup> day of July, 2024

Sd/-

**(CHANDRA POOJARI)**

Accountant Member

Sd/-

**(PRAKASH CHAND YADAV)**

Judicial Member

Bangalore,  
Dated, 26<sup>th</sup> July, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore