

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.702/Mum./2024
(Assessment Year : 2017-18)

Arihant Associates
Anand Tower, C-Bldg 42,
Tilak Nagar, Chembur
Mumbai 400 089
PAN – AAPFA1588C

..... Appellant

v/s

The ACIT
Circle – 30(1)
Room No. 502, 5th Floor,
Kautilya Bhavan, C-41 to C-43,
G Block, BKC, Bandra (E)
Mumbai – 400051.

..... Respondent

Assessee by : Shri Raturaj Gurjar
Revenue by : Shri Ram Krishna Kedia

Date of Hearing –17/09/2024

Date of Order – 05/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 19/12/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds: -

"1. National Faceless Assessment Unit (NFAC) has erred in upholding the disallowance of Rs. 50,15,000/- u/s 43CA regarding flat No. C-1103. Without appreciating following facts:

i. Provisions of Sec. 43CA cannot be made applicable to the present assessment year as no exchange had taken place during year.

2. Without prejudice to above, failed to appreciate the fact that the Ld. AO had made enquire about 4 residential units (C-1103, C-301, C-404 & C-702), the appellant had made submissions on same identical facts for all 4 units but the Ld. AO has made addition for only one property without providing proper explanation.

3. the appellant craves leave to add, alter or amend the above grounds of appeal."

3. The solitary grievance of the assessee, in the present appeal, is against the addition made under section 43CA of the Act.

4. The brief facts of the case are that the assessee is a firm engaged in the real estate business. For the year under consideration, the assessee filed the return of income on 21/12/2019 declaring a total income of INR 3,72,97,278. The return filed by the assessee was selected for scrutiny under CASS and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, from the record by the assessee, it was observed that the assessee had sold the following flats at values less than the stamp duty values: -

Sr	Property details	Agreement value	Stamp duty value	Difference
1	C-1103, Anand Bldg, Tilak Nagar Anand C-op, Housing Society, Bldg, No.2, Tilak Nagar, Chembur, Mumbai - 400089.	49,30,000	99,45,000	50,15,000
2	C-301, Anand Bldg, Tilak Nagar Anand C-op, Housing	12,50,000	15,19,000	2,69,000

	<i>Society, Bldg, No.2, Tilak Nagar, Chembur, Mumbai - 400089.</i>			
3	<i>C-404, Anand Bldg, Tilak Nagar Anand C-op, Housing Society, Bldg, No.2, Tilak Nagar, Chembur, Mumbai - 400089.</i>	38,60,000	60,73,272	2213,272
4	<i>C-702, Anand Bldg, Tilak Nagar Anand C-op, Housing Society, Bldg, No.2, Tilak Nagar, Chembur, Mumbai - 400089.</i>	20,00,000	22,45,000	2,45,000
			<i>Total</i>	77,42,272

5. Accordingly, the assessee was asked to show cause as to why the sum of INR 77,42,272 should not be considered as its income from the business or profession under section 43CA of the Act. In response, the assessee uploaded its reply on the portal. After considering the submissions filed by the assessee, the Assessing Officer ("AO") vide order dated 25/12/2019 passed under section 143(3) of the Act disagreed with the submissions of the assessee in respect of Flat No. C-1103. The AO held that on the one hand, the assessee submitted that the flat was allotted to the party in the years 2009 and 2010, while on the contrary, the assessee submitted a copy of the allotment letter, in respect of the same flat, i.e. C-1103, which dates to 05/05/2011, thus contradictions raise doubts on the genuineness of the assessee's claim. The AO further held that the assessee had not provided a copy of the bank account statement reflecting the transaction and a copy of the ready reckoner for the year in which the aforesaid flat was allotted to the party. Accordingly, the AO considered the difference between the stamp duty value and the agreement value in respect of Flat no.C-1103 to the tune

of INR 50,15,000 as the income of the assessee under the head income from business or profession, in accordance with the provisions of section 43CA of the Act and added the same to the total income of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that in this case, there was only one registered sale agreement that was executed during the year under consideration, therefore the value adopted by the stamp duty authority, i.e. INR 99,45,000, as on the date of the agreement is to be adopted as deemed sale consideration. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee was in the business of real estate. From the record, it is evident that initially show cause notice was issued in respect of four sale transactions, wherein the agreement value was less than the stamp duty value and the assessee was asked to show cause as to why the sum of INR 77,42,272 be not considered as its income from business or profession and be added to its total income. However, after consideration of the reply filed by the assessee, the AO did not agree with the submissions of the assessee in respect of Flat no.C-1103. As is evident from the record that the AO emphasised on the statement of the assessee that the flat was allotted to the party in the year 2009 and 2010, instead of considering the allotment letter dated 05/05/2011 submitted by the assessee in respect of the aforesaid Flat no.C-1103. The AO further held that the assessee has not provided a copy of the bank account statement reflecting the transaction and a copy of the ready

reckoner for the year in which the aforesaid flat was allotted to the party. Accordingly, only in respect of Flat no.C-1103, the AO made an addition under section 43CA of the Act to the tune of INR 50,15,000, by considering the stamp duty value on the date of registration of the agreement, i.e. during the year under consideration. At the outset, it is the plea of the assessee that the afore-noted details were never sought by the AO during the assessment proceedings. Be that as it may, the primary contention of the assessee is that since the allotment letter in respect of Flat no.C-1103 was issued on 05/05/2011 and the agreement for sale was executed between the parties on 30/04/2011, therefore the stamp duty rate as on that date should be considered to be the full value of consideration for the purpose of section 43CA of the Act.

8. In order to decide the issue at hand, it is relevant to analyse the provisions of section 43CA of the Act, which reads as follows: -

"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."

9. Therefore, as per the provisions of section 43CA(1) of the Act, where the consideration received or accrued as a result of the transfer by an assessee of a land or building is less than the value adopted by the stamp duty authority, then the value so adopted shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for the purpose of computing profits and gains from transfer of such asset. The provisions of section 43CA(3) further provide that where the date of agreement fixing the value of consideration and the date of registration of such transfer of asset are not the same, then stamp duty value as on the date of agreement shall be taken as the full value of the consideration for the purpose of computing profits and gains from transfer of such asset.

10. As per the assessee, it is carrying on the business of land development-redevelopment under the scheme framed by MHADA. Accordingly, it collected advances from various buyers since the financial year 2007-2008 for the said development. In respect of Flat no.C-1103, which is in question, as per the assessee advances were received from Mr. Arun C. Rathod and Mrs. Sapna Arun Rathod against the agreement for sale dated 30/04/2011 and a letter of allotment dated 05/05/2011. It is further the plea of the assessee that the agreement for sale was unregistered with the Registrar of Assurance and during the financial year 2016-17, the assessee entered into a supplementary agreement wherein the purchaser agreed to pay the cost of an additional FSI of INR 2,00,000 and accordingly,

the assessee regularised the default by registering the agreement with the competent authority in the year under consideration.

11. From the perusal of the agreement for sale executed on 30/04/2011, forming part of the paper book from pages 81-161, we find that the assessee agreed to sell Flat no.C-1103 to Mr. Arun C. Rathod and Mrs. Sapna Arun Rathod for a total sum consideration of INR 47,30,000. In this regard, earnest money of INR 2 lakh was paid by the purchaser vide cheque No. 272834 dated 26/04/2011, and the balance consideration amounting to INR 45,30,000 was agreed to be paid as per the schedule of payment provided in the agreement for sale, on pages 97-113 of the paper book. We further find that the agreement for sale was executed on the stamp paper dated 29/04/2011. Subsequently, on 31/03/2016 supplementary agreement was signed between the parties for payment of the additional consideration of INR 2 lakh in respect of the additional carpet area of 107 ft², thus resulting in a total area of 758 ft². From the said supplementary agreement, we find that it refers to the agreement for sale dated 30/04/2021 and further mentions that the building is in the initial stage of construction and due to changes in the policy of the Municipal Corporation, the developer is required to pay a premium in respect of FSI which was then available at free of cost and therefore the developer is required to incur additional expenditure for the construction of the said area. Accordingly, vide supplementary agreement the purchaser agreed to pay sum of INR 2 lakh as an additional cost, which was paid to the developer vide cheque No. 037608 drawn on ICICI Bank. The parties further agreed that the principal

agreement dated 30/04/2011 shall be read along with the supplementary agreement and the same shall form part of the principal agreement.

12. We further find that on 05/05/2011 the assessee issued a letter of allotment to Mr. Arun C. Rathod and Mrs. Sapna Arun Rathod in respect of Flat no.C-1103, which forms part of the paper book from pages 52-53. From the perusal of the letter of allotment, we find that the same refers to a consideration of INR 49,30,000 for a carpet area of 758 ft². Thus, it is evident that the aforesaid consideration, i.e. INR 49,30,000, is nothing but the consideration ultimately paid by the purchaser, i.e. INR 47,30,000 + INR 2,00,000, pursuant to the execution of the supplementary agreement for a total carpet area of 758 ft², i.e. 651 ft² as per the agreement for sale + 107 ft² additional carpet area. Therefore, we are of the considered view that the recital in the letter of allotment, on which emphasis has been placed by the learned CIT(A), that a regular agreement for sale shall be executed, refers only to the supplementary agreement entered between the parties on 31/03/2016. However, the said fact cannot obliterate the agreement for sale dated 30/04/2011 entered between the parties in respect of Flat no.C-1103. Therefore, such being the facts, it is clearly evident that the agreement for sale executed on 30/04/2011 was the principal agreement honoured by the parties for the sale of Flat no.C-1103. Thus, even though the said agreement was ultimately registered in the year under consideration, in light of the provisions of section 43CA(3) we are of the considered view that the stamp duty value as on the date of the agreement for sale, i.e. 30/04/2011 be considered as the full value of consideration for computation of profits

and gains of the assessee from the transfer of Flat no.C-1103. Further, the provisions of section 43CA(4) of the Act are also satisfied in the present case, as the earnest money of INR 2 lakhs was paid by the purchaser vide cheque No. 272834 dated 26/04/2011. Consequently, we set aside the impugned order and delete the addition made by considering the stamp duty value on the date of registration of the agreement. We direct the AO to compute the profits and gains from the transfer of the impugned flat in light of the provisions of section 43CA(3) of the Act by considering the stamp duty value as on the date of agreement for sale, i.e. 30/04/2011. We further direct that no order shall be passed without affording reasonable opportunity of being heard to the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

13. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05/11/2024

Sd/-
AMAJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/11/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai