

आयकरअपीलीयअधिकरण“ए”न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH,
PUNE

BEFORE SHRI SATBEER SINGH GODARA, JM
AND DR. DIPAK P. RIPOTE, AM

आयकरअपीलसं. / ITA No.3010/PUN/2017

निर्धारणवर्ष / Assessment Year : 2014-15

Vijay Arvind Raykar, S.No.33, Wadgaon(BK), Singhagad Road, Haveli, Pune – 411041. PAN: ADQPR 1950 F	Vs	The Income Tax Officer, Ward- 6(2), Pune.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Abhay A.Avchat– AR
Revenue by	Shri S P Walimbe - DR
Date of hearing	19/04/2022
Date of pronouncement	22/04/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeals)-4, Pune dated 29.09.2017 for the Assessment Year 2014-15. The Assessee raised the following grounds of appeal:

- “1. *The Income Tax Officer, Ward 6(2), Pune, has erred in disallowing an amount to the extent of Rs. 94,526/- under the provisions of section 14A of the Act read with Rule 8D and the Commissioner of Income Tax (Appeals)-4, Pune has erred in confirming the same.*
2. *There is error in making aggregate addition of Rs.27,30,900/- under section 43CA of the Act and appropriate relief should be granted to the assessee in respect thereof.*
3. *The Assessee requests for grant of appropriate relief from additions made under section 14A and 43CA of the Income tax act, 1961.*
4. *The order of the Income Tax Officer, Ward 6(2), Pune, under section 143(3) dated September 29, 2017 is bad in law and learned Commissioner of Income Tax officer (Appeals)-V, Pune has erred in confirming the same.*
5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Brief facts of the case are that the assessee is an individual and engaged in the business of construction of residential and commercial projects. The assessee filed his return of income for the A.Y. 2014-15 on 30.09.2014 declaring total income of Rs.70,00,320/-. The case was selected for scrutiny and notice under section 143(2) dated 28.08.2015 was issued and served upon the assessee. Subsequently, assessment order under section 143(3) of the Income Tax Act, 1961 was completed on 23.12.2016 assessing the total income of the assessee at a higher amount of Rs.98,25,750/-, by making aggregate additions of Rs.28,25,426/-. Additions were made on the following sections:

- i) Disallowance under section 14A of Rs.94,526/-
- ii) Addition under section 43CA of Rs.27,30,900/-

2.1 The Assessing Officer(AO) has made disallowance under section 14A r.w.rule 8D in para 4 of the assessment order. The same is reproduced here as under:

“4. Disallowance u/s 14A: During the course of assessment proceedings, AR of the assessee was asked to submit note on applicability of sec 14A and working of disallowance u/s 14A read with rule 8D. AR submitted the details on 30.11.2016. AR contended that disallowance u/s14A would not be applicable in the instant case. The submission on the same is discussed with the AR. As per the working of disallowance u/s 14A read with rule 8D, the same is worked out of Rs.94,526/-. Hence, the amount of Rs 94,526/- is disallowed and added to the total income to which AR agreed.”

2.2 The ld.CIT(A) has upheld the said addition. Aggrieved by the same, the assessee has filed appeal before this Tribunal.

3. We have heard both the parties and perused the material available on record and gone through the orders of lower authorities. It is

observed that the Assessing Officer has not recorded any finding regarding the expenditure incurred by assessee for the exempt income. The assessee also claimed that assessee was having more than sufficient own funds and investments have been made out of own funds. The AO has not discussed anything about the claims made by the assessee regarding availability of own funds. Even the Id.CIT(A) has not discussed about the expenditure incurred by assessee for earning so-called exempt income. The Id.CIT(A) has also not discussed about the assessee's claim of availability of own funds.

3.1 The Hon'ble Bombay High Court in the case of CIT vs. Sociedade De Fomento Industrial (P.) Ltd., has held as under:

“19. Here, on facts, the Tribunal noted that the AO only discussed the provisions of section 14A(l) but has not justified how the expenditure the Assessee incurred during the relevant year related to the income not forming part of its total income. The AO, according to the Tribunal, straightaway applied Rule 8D. Indeed, there must be a proximate relationship between the expenditure and the tax-exempt income. Only then would a disallowance have to be effected. This Court, we may note, on more than one occasion, has held that the onus is on the Revenue to establish that there is a proximate relationship between the expenditure and the exempt income. That is, the application of section 14A and rule 8D is not automatic in each and every case, where there is income not forming part of the total income. No doubt, the expenditure under section 14A includes both direct and indirect expenditure, but that expenditure must have a proximate relationship with the exempted income. Surmise or conjecture is no answer.

20. We may further reiterate that before rejecting the disallowance computed by the Assessee, the Assessing Officer must give a clear finding with reference to the Assessee's accounts as to how the other expenditure claimed by the Assessee out of the non-exempt income is related to the exempt income.”

3.2 In this case the AO has not discussed anything regarding the expenditure claimed to earn the exempt income. The AO has not recorded any findings that the expenditure have a proximate relationship with the exempted income, and how the other expenditure claimed by the Assessee out of the non-exempt income is related to the exempt

income. Therefore, respectfully following the Hon'ble Bombay High Court's decision in Sociedade De Fomento Industrial (P.) Ltd(supra), the disallowance made under section 14A is hereby directed to be deleted, accordingly, the Ground No.1 raised by the assessee are allowed.

4. Ground No.2 relates to addition under section 43CA of the Act. The assessee is a builder. He is in the business of construction and sale of residential/commercial properties. The AO observed that certain residential units have been sold by the assessee at a price less than the value adopted for Stamp Duty purpose by the State Government. The Chart mentioned by the assessee in the assessment order is reproduced here as under:

Date of agreement	Flat Nos.	Name of the Purchaser	Transaction price	Value adopted for stamp duty purposes	Difference
12.09.13	J-1/1	Sachin Ganpati Patil	18,53,600	22,26,500	3,72,900
28.05.13	3	Rohit Kulkarni	21,29,100	22,59,100	1,30,000
14.08.13	4	Nagnath Desai	18,53,600	22,26,500	3,72,900
15.07.13	7	Santosh Naik	18,00,000	22,50,240	4,50,240
14.09.13	9	Ananta V Mandhre	19,62,600	22,26,500	2,63,900
07.10.13	12	Rajendra Bharne	22,09,800	22,26,500	16,700
18.02.14	13	Chaitanya Bhave	21,53,300	22,26,092	90,792
19.08.13	15	Govind R Takle	20,00,000	22,51,000	2,51,000
03.07.13	J-2/1	Sanjay Shinde	21,78,100	22,34,500	56,400
12.07.13	4	Akshada Achyut Pawar	15,00,000	22,26,068	7,26,068
Total difference					27,30,900

4.1 During the assessment proceedings, the assessee pleaded before the AO that due to market conditions and competition, the assessee had sold at a price less than the stamp duty valuation. The assessee also

pleaded that the project is situated in Gram Panchayat Area. The AO rejected the claim of the assessee. The AO specifically pointed out that in the same project i.e. Shushrut Residency, Flat No.14 of J1 was sold on 11.06.2013 to Mr.Ghadge for a consideration of Rs.23,50,000/- and stamp duty valuation is Rs.22,50,240/-. Therefore, the AO concluded that the reasons given by assessee that the project is in Gram Panchayat Area and market conditions are baseless. The AO stated that the assessee has sold some other units at a price more than the stamp duty valuation. Therefore, after discussing, the AO made an addition of Rs.27,30,900/- under section 43CA of the Act.

4.2 Aggrieved by the addition, the appellant filed an appeal before the ld.CIT(A). The ld.CIT(A) accepted the assessee's plea that the AO should have referred the properties for valuation to the departmental valuer. Therefore, the ld.CIT(A) directed to AO to refer these residential units to the Departmental Valuation Officer(DVO), for valuation.

5. The ld.DR for the Revenue relied on the order of the Assessing Officer.

6. We have considered the submission of the assessee and the orders of the lower authorities. The section 43CA is reproduced here as under:

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.]

Relevant portion of Section 50C is 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.

6.1 Section 43CA read with section 50C(2) explains that whenever the assessee claims that value adopted for the purpose of Stamp Duty is in excess of Fair Market Value, the AO may refer it for valuation to DVO. Therefore, we agree with the view of the Id.CIT(A). Since there

is a dispute regarding valuation of Residential Units, the Id.CIT(A) was right in directing the AO to refer the issue of valuation to DVO. Accordingly, the AO is directed to refer the issue of valuation of impugned Residential Units to DVO. After receiving the valuation report from the DVO, the AO shall pass the order giving effect after giving opportunity to the assessee. Thus, this ground no.2 raised by the assessee is allowed for statistical purpose.

6.1 In the result, the Ground No.2 of assessee is allowed for statistical purpose.

7. The Ground No.3 to 5 are general in nature and no separate adjudication is required.

8. In the result, appeal of the Assessee is partly allowed

Order pronounced on 22nd April, 2022.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 22nd April, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

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

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT,Pune.