

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 470/JP/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Indexone Tradecone Pvt. Ltd. Jaipur	बनाम Vs.	DCIT, Central Circle-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No.: AABCI2248E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri G. M. Mehta (CA)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 03/07/2018
घोषणा की तारीख / Date of Pronouncement: 16/07/2018.

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-01, Jaipur dated 01.02.2018 pertaining to assessment year 2014-15 wherein the assessee has challenged the order of Id. CIT(A) in sustaining the addition of Rs. 20,38,324/- while invoking the provisions of section 43CA of the Act.

2. Briefly stated, the facts of the case are that the assessee company is engaged in business of developing and constructing residential/commercial property in Jaipur. During the course of assessment proceedings, the Assessing Officer observed that the assessee has sold various properties during the year under consideration and got them registered. It was noticed by the Assessing Officer that the assessee company has shown sale value less than the value ascertained by Sub-Registrar and as such the sale was shown

less than 50C value. In its submission before the AO, the assessee submitted that the agreement to sale has been made by it in earlier years and as such the sale price has been shown accordingly. It was further stated that all the bookings have been made in earlier years through sale agreements, wherein booking amount cheques were received at the time of booking and as such the provision of section 43CA are not applicable on it. The Assessing Officer, on perusal of the registered documents filed in respect to the sale affected during the year, observed that cash payments were also received apart from payments received through cheques. Accordingly, a show cause notice dated 18.10.2016 was issued to the assessee company as to why appropriate addition should not be made in terms of provisions of section 43CA of the Act given that advances were received in cash at the time of booking in terms of copies of the agreement dated 09.07.2007. After considering the submissions of the assessee, the AO finally held that the assessee has entered into agreement to sell in earlier years and at the time of agreement, the assessee company had received payment through cheques as well as in cash as booking amount. As far as cheque payments are concerned, the same was found acceptable. However, in respect to sale transaction in respect of Flat No. 3 and T-2 situated at Sapphire Heritage, the AO observed that the assessee company received the booking amount in cash and as such it is a case of contravention of the spirit of legislature as discussed/defined in sub-section (4) of such 43CA of IT Act, 1961. Accordingly, the differential amount of the sale consideration as per the sale consideration declared by the assessee in the respective sale deeds and the value adopted by the stamp duty authority for the purpose of charging the stamp duty was brought to tax in the hands of the assessee company u/s 43CA of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). It was submitted before the Id. CIT(A) that provisions of section 43CA have been wrongly applied by the Assessing Officer as the sale

consideration in respect of two flats (Flat No. 3 and T-2 situated at Sapphire Heritage) were already taken into consideration in earlier years in its books of accounts and offered to tax when the entire consideration was received and the possession of the flats were handed over to the buyers on 28.06.2008 and 30.06.2010 respectively. It was submitted that in terms of provisions of section 2(47)(v) of the Act, the transfer was complete on these dates and therefore, the AO was not justified in invoking the provisions of section 43CA of the Act.

4. The Id. CIT(A) referred to the provisions of section 43CA inserted by Finance Act, 2013 w.e.f 01.04.2014 and the CBDT Circular No. 3/2014[F. No. 142/24/2013-TPL] dated 24.01.2014 and held that the said provisions are applicable from A.Y 2014-15 in cases where valuation of the property adopted by the stamp duty authorities is more than the sale consideration declared in the sale deed. It was held by the Id. CIT(A) that it is undisputed fact that the sale deeds in respect of Flat No. T-3 and T-2 were registered during year under consideration and therefore, the provisions of section 43CA are clearly applicable. It was further held by the Id. CIT(A) that it is nowhere stated in section 43CA that this provisions would not be applicable to the sale transactions as covered under the provisions of section 2(47)(v) of the Act.

5. Regarding another contention of the assessee that the petty amount were received in cash at the time of executing the agreement to sell for these two flats and the remaining consideration was received through banking channels and therefore, its case is covered under the exceptions as stated in section 43CA(4) of the Act, it was held by the Id CIT(A) that there is no equity in tax laws and as per the provisions of section 43CA(4) of the Act, the exceptions to section 43CA(3) could be allowed only in those cases, wherein a part of the sale consideration was received by modes other than cash on or before the date of the 'Agreement to Sell' and in the instant case, the cash

amount was paid by the buyers on the date of agreement to sell and therefore, the case of the assessee could not be excluded from the applicability of provisions of section 43CA(1) of the Act. Accordingly, the Id. CIT(A) upheld the addition of Rs. 20,38,324/- made by the Assessing Officer u/s 43CA of the Act. Now, the assessee is in appeal before us against the said findings of the Id CIT(A).

6. The Id AR submitted that the assessee Company is a developer & builder of residential and commercial properties. After sale of constructed property, in majority of cases, the Buyers get the properties registered in the office of Sub-Registrar in their names; however in few cases after completion of sales, the same are registered afterwards, in office of Sub-registrar as per the convenience of buyers. Since the sales in such cases are complete, these are disclosed in regular books of accounts as sales. In assessee's case, two residential flats (Flat No. T-2 and Flat No T-3) were sold and disclosed in books of accounts as "Sale of Units" in period relevant to A.Y. 2009-10. However, both the sold properties were got registered in the office of sub-registrar on 09.12.2013 and 03.10.2013 respectively by the Buyers. Invoking provisions of section 43CA of IT Act, both the lower authorities made/sustained addition of Rs.20,38,324/- in A.Y. 2014-15, which was the difference in actual sale price disclosed and accepted by the Deptt. in A.Y. 2009-10 and DLC rates in F.Y. 2013-14.

It was further submitted that the purchase consideration of the two residential flats (stock in trade) was received as per following details:

S.No.	Details of sold properties	Sale agreement & possession date	Sale consideration	Payment details- i.e. amount, modes and dates
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1.	Flat no. T-2 Sapphire Heritage	9th April 2007 (possession handed over on 30.06.2010)	Rs.26,36,000/	09.04.2007 04.05.2007 30.06.2010	11,000 (Cash) 24,00,000(Cheq) 2,25,000(Cheq)
1.	Flat no. T-3 Sapphire Heritage	9th April 2007 (possession handed over on 28.06.2008)	Rs.27,00,000/	09.04.2007 04.05.2007 28.06.2008	1,50,000 (Cash) 24,50,000(Cheq) 1,00,000(Cheq)

It was further submitted that the assessee company had accounted for the sales of both the constructed residential units in financial year 2008-09 (A.Y. 2009-10) for which copy of return of income and relevant statements of accounts and details of sale of stock in trade is enclosed as per following details and proofs:

S.No.	Details of sold properties	Sales declared and accepted by Deptt.
1.	Flat no. T-2 Sapphire Heritage	A.Y. 2009-10
2.	Flat no. T-3 Sapphire Heritage	A.Y.2009-10

It was further submitted that both the buyers, after purchasing residential flats No. T-2 and T3, in F.Y. 2008-09, obtained electricity connection in their respective names in that year and started residing therein or and another flat was let out.

It was further submitted that Section 43CA of IT Act was inserted by Finance Act 2013 w.e.f. 1st April 2014, applicable from A.Y. 2014-15 which levies tax on difference in sale value of land or building or both (stock in trade) and the value assessed or assessable by the authority of the State Government for purpose of payment of stamp duty. However, if the sales are complete on receipt of consideration or major part thereof and after handing over the possession, the deeming fiction prescribed under said section cannot be made applicable. In this case, even after

accepting the sales of both the residential flats in the A.Y. 2009-10, the addition of Rs. 20,38,324/- was sustained by Id. CIT(A) for inability of the assessee to foresee the future insertion of provisions of section 43CA of IT Act in which cash receipt at the time of booking or agreement was made basis of the additions though it was not the intention of the legislature.

It was further submitted that sale of both the flats (stock in trade) for which addition was made/sustained were complete as per provisions of section 2(47)(v) of IT Act on handing over the possession to buyers, accounted for and disclosed as sales in returns of income and accepted by the Department in earlier years therefore, on the registration of the same properties with the Sub-Registrar, the same cannot be subject to tax again when it was not sales in the books of accounts.

It was submitted that the sales of both the flats (Flat No. T-2 & Flat No. T-3) was complete in F.Y. 2008-09 (A.Y. 2009-10) when these were sold to the Buyers. These properties were registered in the office of Sub-registrar as under:

S.No.	Details of sold properties	Registered on
1.	Flat no. T-2 Sapphire Heritage	09.12.2013
2.	Flat no. T-3 Sapphire Heritage	03.10.2013

It was submitted that the date of handing over of possession to both the buyers is appearing in the registered deed of sales and therefore sale is complete on that day. On the facts, both the lower Authorities were not justified in making/sustaining the additions in A.Y. 2014-15 by invoking provisions of section 43CA of IT Act more so when the sale of these flats were already accepted by Id. AO as per return of income for the A.Y. 2009-10 and both the Buyers recognized and accepted as owners by semi-

Government Department (Electricity Board) to whom electricity connections in their respective names was provided in the FY 2008-09.

7. The Id. DR vehemently argued the matter and took us through the findings of the lower authorities which we have already considered above.

8. We have heard the rival contentions and perused the material available on record. In the present case, the undisputed facts are that the assessee has entered into the agreement to sell dated 9th April, 2007 in respect of Flat No. T-2 Sapphire Heritage for a total sale consideration of Rs. 26,36,000/- which has been received in form of cash amounting to Rs. 11,000/- on 09.04.2007 and the remaining amount in cheque of Rs. 24,00,000/- on 04.05.2007 and 2.25 lacs on 30.06.2010 respectively. Thereafter, the possession of the property was handed over to the buyer on 30.06.2010 and the final sale deed was registered on 09.12.2013 disclosing the cash and the cheque payments received earlier and the fact of possession being handed over to the buyer on 30.06.2010. Further, it is also being contended by the Id. AR that the sale consideration of Rs. 26,36,000/- have been duly declared in the assessee's return of income and accepted by the Department for AY 2009-10.

9. Similar fact pattern exists in respect of the other property namely Flat No. T-3 wherein the agreement to sell was entered into on 9th April, 2007 for an amount of Rs. 27,00,000/- out of which Rs. 1.5 lac was received in cash on 09.04.2007 and thereafter, two cheque payments of Rs. 24.5 lac and 1 lac were received by the assessee on 04.05.2007 and 28.06.2008. The possession over the said property was handed over to the buyer on 28.06.2008 and finally the sale deed was executed on 03.10.2013 confirming the payments and the possession being handed over to the buyer on 28.06.2008. Further, it is also being contended by the Id. AR that the sale consideration of Rs.

27,00,000/- have been duly declared in the assessee's return of income and accepted by the Department for AY 2009-10.

10. In light of above factual matrix wherein the whole of the sale consideration has been received as per agreement to sell in the previous years and even the possession over the property being handed over to the buyer and the buyer has either started residing therein or given his flat on hire and the sale transaction duly accounted for in the books of accounts of the assessee and reported to tax in the return of income, the question that arises for consideration is whether the provision of section 43CA can be invoked in respect of such transactions and the differential amount can be brought to tax for the reason that the sale deed has been executed during the year under consideration wherein the value adopted by the Sub-Registrar for purposes of payment of stamp duty is higher than what has been agreed to between the assessee and the buyer and the exceptions provided under sub-section (4) are not available to the assessee.

11. In order to appreciate the rival contentions, it would be appropriate to refer to the provisions of section 43CA of the Act which reads 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."

12. The provisions of section 43CA have been inserted by the Finance Act, 2013 w.e.f 01.04.2014 relevant to assessment year 2014-15 and if we look at the provisions of sub-section (3) and sub-section (4), it emphasizes a scenario where the date of agreement fixing value of consideration for transfer of the assets and date of registration are not the same and provides that the value as on the date of agreement would be considered provided the amount of consideration or part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the assets.

13. In the present case, where the date of agreement to sell in respect of the two flats is 9.4.2007, which is much prior to the financial year relevant to assessment year 2014-15 when the provisions of section 43CA have become effective, there is no way the assessee would have foreseen these provisions at the time of entering into the agreement to sell that it has to receive the consideration only by any mode other than cash. At the relevant point in time when it had entered into agreement to sell, there was no such requirement of receiving the whole of the consideration in mode other than cash. Therefore,

in order to make the provisions of sub-section (4) workable, in our view, the provisions of sub-section (4) would be applicable in respect of agreement to sell for transfer of an asset which has been executed on or after 1st April, 2013 and thus, not applicable in the instant case. The matter is accordingly remanded back to the file of the Id CIT(A) to determine the valuation of the two properties in terms of sub-section (3) as on the date of agreement to sell which is 9.4.2007 and where it is so determined that such valuation is higher than what has been declared by the assessee, the same can be brought to tax in the year under consideration.

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

Order pronounced in the open Court on 16/07/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 16/07/2018

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Indexone Tradecone Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-2, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 470/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.