

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.545/Mum/2021
(Assessment Year :2015-16)**

Mr. Akib Arif Patel 701, A Wing, Fine Touch CHSL 73, Souter Street Near Baby Garden Agripada, Mumbai-400 008	Vs.	Principal Commissioner of Income Tax-20, Mumbai Piramal Chamber, Lal Baug Parel, Mumbai-400 013
PAN/GIR No.ASNPP5176D		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajiv Khandelwal
Revenue by	Shri Rajeev Harit
Date of Hearing	17/08/2021
Date of Pronouncement	30/ 08/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.545/Mum/2021 for A.Y.2015-16 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-20, Mumbai u/s.263 of the Act dated 11/03/2021 for the A.Y.2015-16.

2. The first issue to be decided in this appeal is as to whether the Id. Pr. Commissioner of Income Tax had validly assumed revision Jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case. The

interconnected issue involved therein is on merits of the addition in the form of difference between stamp duty value on the date of registration of the property as against stamp duty valuation on the date of booking of the flats and the actual consideration and directed to be added by the Pr. CIT in the sum of Rs.1,13,43,600/- as against Rs.22,78,740/-.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and had filed his return of income for the A.Y.2015-16 on 31/03/2017 declaring total income of Rs.78,19,090/-. The assessee is engaged in the business of real estate development and re-development of old buildings in Mumbai. During the year under consideration, the assessee has shown income under the head 'income from business or profession'. During the course of assessment proceedings, the assessee furnished details of flats sold along with copies of agreement thereof before the Id. AO. On verification of the sale agreement, the Id. AO compared the stamp duty valuation of those flats sold with the actual consideration and resorted to make addition of Rs.22,78,740/- by applying provisions of 43CA of the Act, being the difference between the stamp duty value on the date of booking and actual sale consideration. The assessee has preferred appeal before the Id. Commissioner of Income Tax Appeals (Mumbai) and the same is pending. Meanwhile, the Id. Pr. Commissioner of Income Tax by exercising his revisionary powers u/s. 263 of the Act, sought to revise the order passed by the Id.AO as erroneous and prejudicial to the interest of the revenue on the ground that the Id. AO ought not to have been taken the stamp date value on the date of booking of the flats and instead he should have taken the stamp duty value on the date of actual registration of the flats. Accordingly, the Id. Pr. Commissioner of Income Tax directed the Id. AO to add the differential sale consideration in the sum of

1	201 office	Moh. ImialQuereshi	07.05.2014	40,00,000	76,25,500	36,25,500	2013-14
2	202 Office	FarhadSattar	07.05.2014	40,00,000	76,25,500	36,25,500	2013-14
3	11 04 Flat	Ahiq Hussain	06.06.2014	50,00,000	55,23,000	5,23,000	2014-15
4	503 Flat	JubedaChavda	30.06.2014	40,00,000	52,72,000	12,72,000	2014-15
5	1102 Flat	Yusuf Therali	26.11.2014	45,00,000	55,25,000	10,25,000	2013-14
6	702 Flat	Inayat Hussain	19.07.2014	40,00,000	52,72,600	12,72,600	2014-15
		-				1,13,43,600	

3.3. The short point that arises for our consideration is that when there is a time lag between the date of booking of the flat and the final registration of the flat in favour of the prospective buyers by the assessee, then whether the stamp duty value on the date of booking of the flat or on the date of actual registration of the flat should be considered in terms of Section 43CA of the Act. We find that the provisions of Section 43CA of the Act has been introduced in the statute w.e.f. 01/04/2014 relevant to the A.Y.2014-15 and hence, the same is applicable for the year under consideration. From the aforesaid table, it could be seen that the prospective buyers had booked the flats from the assessee on 14/12/2011, 08/03/2013, 08/05/2011 & 10/05/2013 whereas the registration of those flats had effectively happened on 07/05/2014, 07/07/2014, 19/07/2014 and 26/11/2014, thereby clearly proving the time gap between the date of booking of flats and the date of registration of the flats in favour of the prospective buyers by the assessee. Hence, there arises a doubt as to what would be the relevant date for the applicability of stamp duty valuation. We find that this has been squarely

addressed by the provisions of sub-section (3) of Section 43CA of the Act itself which reads as under:-

“(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.”

3.4. From the reading of the aforesaid provisions of 43CA(3) of the Act, it is very clear that stamp duty valuation on the date of booking is to be considered and the said stamp duty valuation shall have to be compared with actual sale consideration. This has been done by the Id. AO and hence, it could be safely concluded that the Id. AO had taken a plausible view in the matter by applying the provisions of the Act. We find that there is no incorrect application of law on the part of the Id. AO as alleged by the Id. PCIT. Having brought on record the time lag between the date of booking and the date of actual registration of the flats, the Id. PCIT ought not to have directed the Id. AO to take the stamp duty valuation on the date of registration of the flat which is completely in contradiction of provisions of Section 43CA(3) of the Act. Hence, it could be safely concluded that the Id. AO having taken a plausible view in the matter and the Id. PCIT is only trying to substitute his view in place of the view already taken by the Id. AO. This, in our considered opinion, cannot be done by the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Gabriel India Ltd., reported in 203 ITR 108. Moreover, we find that the Id. AO had not committed any error in the order as he had apparently applied the provisions of Section 43CA(3) of the Act. Hence, the twin conditions that are required for invoking revision jurisdiction i.e. (i) order of the Id. AO should be

erroneous and (ii) it should be prejudicial to the interest of the revenue are not cumulatively satisfied in the instant case. Hence on this count also, revision jurisdiction u/s.263 of the Act cannot be invoked by the Id. PCIT. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd., vs. CIT reported in 243 ITR 83. Accordingly, the ground raised by the assessee on invalid assumption of jurisdiction u/s.263 of the Act by the Id. PCIT is allowed. Since relief is granted on technical ground, we are not inclined to address the issue argued by the Id. AR on merits and the same are hereby left open. On merits of the addition, we are conscious of the fact that the issue is pending before the Id. CIT(A). Hence, we are not inclined to give any opinion on merits as it would jeopardize the decision making process of Id. CIT(A).

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

Order pronounced on 30/ 08 /2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/ 08 /2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai