

Sec. 43CA amendment increasing safe harbour limit from 5% to 10% on sale of immovable property has retro-effect

Facts of the case - Sai Bhargavanath Infra v. ACIT - [2022] (Pune - Trib.)

Assessee-company was a builder and developer. During the assessment, the Assessing Officer (AO) made additions under section 43CA on account of the difference between the sale value of flats sold and the stamp duty value of the same.

The assessee opposed the additions by contending that the difference between the sale value of the flats sold and the stamp duty value was less than 10%. Therefore, no such addition wasn't warranted. However, the AO rejected the assessee's contention and passed the assessment order.

On appeal, the CIT(A) upheld the order AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

Decision of the case :

- The Tribunal held that section 43CA provides that if consideration from the transfer of asset (land or building) is lesser than its stamp duty value then the difference will be taxed as deemed income. However, if the difference between such value is within 10% margin, then there cannot be any addition.
- This 10% margin had been provided by the Finance Act, 2020 w.e.f., 01-4-2021, and before that the margin was 5%. The instant case was related to A.Y. 2015-16 which is prior to the date when the amendment took place and such 10% margin was inserted.
- Now, the question arises whether this amendment effective from 1-4-2021 can even apply to prior assessment years as well.
- Relying upon the spirit of the Supreme Court decision in the case of Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249, the Tribunal held that if a fresh benefit is provided by the Parliament in an existing provision, then such an amendment should be given retrospective effect. The statute must spell out clearly if any tax liability has to be fastened with the assessee tax-payer with retrospective effect. However, if the provision is beneficial for the assessee such a beneficial provision can be applied in a retrospective manner.
- In the given case, the legislature intended to provide relief to the assessee if the difference is less than 10% which has been brought into effect from 1-04-2021. This beneficial provision will apply with retrospective effect.