



Jainam Constructions  
Assessment Year-2012-13

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.5292/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Income tax Officer-17(2)(1)</b> Room No. 134, Aaykar Bhavan M.K. Road, Mumbai-400 020.	<b>बनाम/</b> Vs.	<b>M/s. Jainam Constructions</b> B-10, Shankeshwar Darshan Seth Motisha Lane, Mazgaon Mumbai-400 010.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AACFJ-8965-D</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

**C.O. No.57/Mum/2018**

(arising out of I.T.A. No.5292/Mum/2016)

(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>M/s. Jainam Constructions</b> B-10, Shankeshwar Darshan Seth Motisha Lane, Mazgaon Mumbai-400 010.	<b>बनाम/</b> Vs.	<b>Income tax Officer-17(2)(1)</b> Room No. 134, Aaykar Bhavan M.K. Road Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AACFJ-8965-D</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Shri Sushil Kumar Poddar-CIT-DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	10/10/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	13/11/2019



## आदेश / O R D E R

### Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid matter is a recalled matter since the appeal as well as cross-objections were disposed-off vide order dated 18/05/2018. However, the order has been recalled vide order dated 15/02/2019 and accordingly, the appeal as well as cross-objection has come up afresh for hearing before this bench.

2. When the appeal was called for hearing, none appeared for assessee. The perusal of order sheet entries revealed that the assessee has remained negligent to attend the hearing on several occasions. Left with no option, we proceed to dispose-off the same on the basis of material on record and after hearing Ld. CIT-DR. We have heard the arguments advanced by Ld. CIT-DR and perused the orders of lower authorities.

3. The aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-28, Mumbai [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-28/IT-253/ITO-17(2)(1)/2015-16 dated 03/06/2016* on certain grounds of appeal. The revenue has filed revised grounds of appeal on 09/05/2018 along with Form No. 36, which read as under: -

1. On the facts and circumstances of the case and in law Ld.CIT(A) has erred in directing to delete the addition of Rs.14,78,00,145/- on the grounds that the addition emanating from the provisions of Sec.50C of the I.T.Act cannot be made in the case of a builder as the flats sold are their stock in trade and not Capital assets without appreciating the fact that the assessee firm has not substantiated with any documents, evidence and proof the reason for selling the residential/commercial units at less than stamp duty Authority Valuation including the reasons as to why the buyers of the residential/commercial units



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- bought the said properties at less than the Value determined by the Sub Registrar and not disputed with the Stamp Duty Authority Valuation but paid the Stamp Duty at Stamp Duty Authority's valuation."
2. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in directing to delete the addition of Rs.14,78,00,145/- without considering the fact that the assessee has not furnished proof for selling the flat at less than Fair Market Value, which in this case is the Stamp Duty Valuation. The onus to furnish the proof lies with the assessee as decided by the Hon'ble Supreme Court in the case of Durga Prasad More (82 ITR 540 SC) and also in the case of Sumati Dayal (1995 AIR 2109.)"
  3. The appellant prays that the order of the A.O should be restored and order of the CIT(A) should be set aside."

The grounds raised in assessee's cross-objections read as under: -

1. The Learned Commissioner of Income-Tax (Appeals)-28, Mumbai [hereafter referred to as the CIT(A)] erred in disallowing the provisions made towards payments to MHADA of Rs.5,64,00,000/-, to Collector's Office of Rs.2,32,75,980/- and Professional Fees for litigation of Rs. 50,00,000/- aggregating to Rs. 8,46,75,980/- which were allowed by the ITO as deduction. Your respondent submits that on the facts and circumstances of the case and in law the amount is allowable as deduction and therefore the ITO may be directed to allow the said deduction.
2. The Learned CIT(A) erred in confirming the disallowance of residual expenditure incurred on the project in F.Y.2012-13 of Rs. 8,77,580/-, F.Y.2013-14 of Rs. 18,84,840/- and in F.Y.2014-15 of Rs. 3,28,723/- aggregating to total addition of Rs.30,91,143/-.

The registry has noted a delay of 35 days in assessee's cross-objections, the condonation of which has been sought by the assessee vide condonation petition dated 01/03/2018 which is supported by an affidavit of the partner of assessee firm. The delay is stated to have taken place since the partner of assessee firm, who was looking after taxation matters, was facing adverse medical conditions and busy in family matters. Keeping in view the quantum of delay, we condone the delay and proceed to adjudicate the same.

4.1 Facts in brief are that the assessee being resident firm stated to be engaged as real estate developer was assessed for year under consideration u/s. 143(3) on 30/03/2015 wherein the income of the



assessee was determined at Rs.481.66 Lacs as against *Nil* return filed by assessee on 18/09/2012.

4.2 During assessment proceedings it transpired that the assessee was engaged in redevelopment of a property bearing C.S. No. 121 of Mazgaon division wherein the leasehold rights were obtained by the assessee in public auction of MCGM. The property consisted of slum dwellers and unauthorized occupants. The assessee was granted permission for redevelopment of the said property during the period 07/12/2001 to 31/12/2002. The said project was carried in the name and style of *Jupiter* at Nesbit Road, Mazgaon. Upon perusal of details / information, it transpired that the building was ready for occupation and all the flats were already sold. However, the assessee claimed that certain issues regarding the money paid to MHADA & state government were under dispute and therefore, the assessee did not offer any income for taxation purpose. The assessee admitted that although the building was ready for occupation but occupation certificate was not granted due to some pending finishing and civil works and legal hurdles raised by MHADA & State government. Both the authorities were stated to have raised certain demands which were under challenge before judicial authorities and therefore, the volume of sale and profit could not be determined.

4.3 However, it was noted that the assessee carried out only one project and it paid advance tax of Rs.50 Lacs for AY 2008-09, the refund of which was later on sought by the assessee u/s 154 which was ultimately refunded as per the order of Tribunal. In the above background, Ld. AO formed an



opinion that the assessee was postponing his liability to pay tax even after the project was completed on the wrong pretext that a contingent liability was likely to be incurred at a later stage due to various demand from the statutory authorities. An inspection of the project was also carried out on 05/03/2015 wherein it transpired that the project was complete in all respect and occupied as well as inhabited by the residents since the year 2006. The residents of the society confirmed that they had purchased and made full payment of the flats and had been occupying their respective residential units since 2006.

4.4 The perusal of details of flats sold by the assessee, it further transpired that the agreement value at which various flats were sold was less than stamp duty valuation to the extent of Rs.14.78 Crores, the details of which have already been tabulated in para-9 of the quantum assessment order. Although the assessee submitted that the provisions of Section 43CA were not applicable for year under consideration, however, Ld. AO noted that the assessee was not able to substantiate the agreement value with any documentary evidences and could not explain the reasons for selling the units at less than stamp duty valuation.

4.5 In the above factual matrix, Ld. AO proceeded to compute the estimate income earned by the assessee from the stated project. The total expenses incurred up-to 15/02/2015 (after deducting indirect incomes) were worked out to be Rs.13.89 Crores. The provision for estimated expenses was worked out to be Rs.11.47 Crores. After deducting the aggregate expenditure of Rs.25.36 Crores from the sale consideration as per stamp



duty valuation for Rs.29.95 Crores, the net profit was worked out to be Rs.4.59 Crores. This profit was further enhanced by expenses incurred in FY 2012-13, 2013-14 and during the period 01/04/2014 to 15/02/2015 aggregating to Rs.22.13 Lacs (on net basis). Accordingly, the income was determined at Rs.4.81 Crores.

5. Aggrieved, the assessee contested the same before the Ld. CIT(A) vide impugned order dated 03/06/2016 wherein the issues were decided partly in assessee's favor by observing as under: -

**5.DECISION:** I have carefully considered the facts of the case, grounds of appeal and written submissions made before me. The controversy here is twofold. The 1<sup>st</sup> ground of appeal is against the action of the AO in holding that the project is complete and therefore the appellant should have recognized revenue and thereby profits from the same. The 2<sup>nd</sup> ground is against the action of the AO in adopting the stamp duty valuation for all the sale agreements of the appellant which admittedly have been registered below the stamp duty value for all flats.

**5.1 Ground 1:** The AO has held the project to be complete therefore has recast the accounts of the appellant and recognized revenue and taxed the resultant profits. The case of the appellant is that the project cannot be held as complete as he does not have occupation certificate which is pending due to ongoing litigation with the State Govt authorities. The matter needs detailed examination on facts. The case of the appellant is that the project is not complete as there are pending litigation with the State Govt authorities regarding the project and final OC has not been granted. I find that the so-called litigation is basically additional monetary demands on the appellant from the Collector Mumbai & MHADA. The demand raised from the Collector is two fold:- one is regarding the enhanced lease rent to be paid by the appellant and the other is towards additional monetary demand for Occupancy Charges. The demand from MHADA is regarding the surplus area to be surrendered to MHADA as the project is a SRA project. The appellant has appealed in the High Court in respect of these demands of the State authorities and the matter is pending. On the strength of this, the appellant claims that the project is not complete. I specifically called for the details of all the flats sold, their agreed sale consideration, date of registration of sale deed, date of handing over of possession etc. The appellant has submitted these details for all the flats constructed by him in the project. From the same, I observe that in the overwhelming majority of flats, the date of registration of the sale agreement is FY 2006-07 & 2007-08. I also find that for almost all the flats, the date of possession is also in FYs 2006-07 & 2007-08. The appellant conceded that the purchasers have all occupied the flats and are residing there since FYs 2006-07 & 2007-08. I, therefore fail to understand the proposition of the appellant that the project is not complete. As discussed earlier, the litigation with the



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state govt is only regarding the additional levies payable for alleged transgressions by the appellant. The matter is pending in Court and the appellant has not admitted his liability towards the same and he is vehemently contesting the same. The Hon'ble High Court of Bombay has ordered status quo in the matter till it decides the petitions of the appellant. If the proposition of the appellant is to be accepted, then it would mean that the project is not complete till the final outcome of the litigation which cannot be predicted. The facts as brought out by me indicate that the physical project is complete in all respects and the possession of the flats has also been handed over by the appellant to the purchasers and they are staying in the flats. The inescapable conclusion is that the project is complete and therefore profits from the same have to be recognized. I therefore do not agree with the appellant that the project is not complete and I agree with the AO that the project is complete and profits from the same have to be recognized. I accordingly dismiss ground 1. However, while on this issue, I find that the appellant has submitted a without prejudice computation of income before the AO. In the same, the sales are recognized at Rs.17,10,86,600 and the WIP is Rs 13,67,04,817 (upto 31.03.2012). The appellant has then reduced certain other expenses net of income incurred on the project in the subsequent years being FY 2012-13 & 2013-14 as also FY 2014-15. These are expenses actually incurred in the books on the project. Over and above this, the appellant has made a provision for expenses of Rs.2,32,75,980 being Collectors demand, Rs.3,00,34,541 being Occupancy Charges, Rs 5,64,00,000 being value of surplus area demanded by MHADA and a provision towards cost of litigation Rs 50,00,000. The provisions made towards the 1<sup>st</sup> three demands are contested by the appellant in the High Court which has ordered status quo in the matter. The AO has allowed the provisions so made but disallowed the actual expenditure of FYs 2012-13 onwards. This action of the AO is not correct. I have examined the details of provisions made and the actual expenses debited. The provision claimed by the appellant towards the Collectors demand of Rs 2,32,75,980 and MHADA of Rs 5,64,00,000 being value of surplus area demanded by MHADA is clearly not an allowable provision as it has no relation to the actual completion of the project. On the other hand, the demand towards the Occupancy Charges of Rs 3,00,34,541 is an allowable provision as it is directly related to the OC to be obtained by the appellant. This is therefore not in the nature of a contingent liability. It has been held in a number of cases by the Supreme Court (Rotork Controls etc) that the provision towards committed liability for any service or product is to be allowed as a deduction. In the instant case, obtaining the OC is a mandatory condition for completion of the project and is directly related to the project. It logically follows that the addition expenditure to be incurred for obtaining the OC is to be allowed as a deduction even if the same is a provision. Merely because the quantum of the expenditure is disputed, it cannot be said that the provision is towards a contingent liability. It may be noted that the appellant has disputed the quantum of the expenditure towards the occupancy charges and not the factum itself. I am therefore of the view that the occupancy charges of Rs 3,00,34,451 is to be allowed as a provision to the appellant. On the other hand, the appellant is disputing the charge of the other demands on him by the Collector and MHADA. He is denying that he is liable to pay anything towards lease renewal charges and also denying that he has to surrender surplus area. In these circumstances, it is evident that



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as the appellant has denied the charge of these expenses, the provisioning for the same cannot be allowed to him. The appellant has claimed one more provision of Rs. 50,00,000 towards cost of litigation. When asked to back up the same with some sort of evidence, the appellant could not submit any details of the same. It therefore appears to me that the provision of Rs 50,00,000 is a mere ad hoc provision made towards legal expense. I therefore hold that the AO was wrong in allowing the provision of Rs 5,64,00,000 to MHADA, Rs 2,32,75,980 to Collector and Rs 50,00,000 towards professional fees for litigation. The AO is directed to withdraw the deduction so allowed on these three amounts in the assessment order. Ground 1 is therefore dismissed.

**5.2 Ground 2:** This is against the action of the AO in holding that the sale consideration of the flats is to be adopted at the stamp duty valuation instead of the stated consideration as per agreement. The AO has discussed the matter in paras 15 to 18 of his order. It is an admitted fact that the flats have been sold by the appellant at stated consideration in the agreements which is lower than the stamp duty rates. There is also no dispute about the fact that the total of the agreed consideration is lesser than the stamp duty valuation by Rs 14,78,00,145. When asked to explain as to why he has sold flats at rates lower than the stamp duty valuation, the appellant contended before the AO that as no sales have been made after 01/04/2014, the provisions of sec 43CA would not apply to the appellant. The case of the appellant therefore is that there is no provision / to substitute the full value of consideration at the stamp duty valuation in cases where the stock in trade being flats are agreed to be sold at a lower value. I find that the AO has not mentioned licit reasons why he is substituting stamp duty valuation of flats instead of the stated sale consideration, but by his action, he has impliedly invoked sec 50C of the Act. Sec 50C applies to a case where a capital asset is transferred. In the present case, it is apparent that the appellant is a builder of flats and therefore the flats are his stock in trade and not capital assets. The provisions of sec 50C therefore do not apply to a case where the immovable property is stock in trade and income therefore is to be assessed under head business. Apart from the express provisions of sec 50C which apply only to transfer of capital assets, it has been held in the case of Neelkamal Realtors & Erectors India Pvt Ltd by the Hon'ble ITAT Mumbai (2013) 38 taxmann.com 195 (Mum) as under:-

I. Section 28(i), read with sections 43CA, 50C and 56, of the Income-tax Act, 1961 - Business income - Chargeable as [Real estate developer] - Assessment year 2009-10 - Assessee was engaged in business of selling of flats after construction - In assessment year 2009-10, it declared net income arising from sale of flats at Rs. 3.63 crores under head 'Business income' - Assessing Officer noticed that there were variations in price charged by assessee from various customers to whom flats were sold - He, therefore, made addition of Rs. 4.45 crores to income of assessee by applying rate of another flat sold by it vis-a-vis rate at which flat under view was sold - Assessee offered explanation for charging lower price in respect of some of flats sold by it - Commissioner (Appeals) relying on provisions of sections 50C and 56(2)(vii)(b)(ii) held that market value of flats ought to have been considered instead of actual sale consideration and accordingly sustained addition at Rs. 8.53 crores - Whether conclusion drawn by Commissioner (Appeals) in invoking provisions of section 50C for sustaining addition had no legal legs to stand on - Held, yes - Whether provisions of section 56(2)(vi)(b)(ii) had also no



application to instant case - Held, yes - Whether since assessee tendered explanation in support of charging lower price in respect of some of flats sold by it, which Assessing Officer failed to controvert, addition in entirety was liable to be deleted - Held, yes [Paras 7, 9 and 15] [In favour of assessee]

### **FACTS -1**

The assessee, a builder and developer, was engaged in the business of selling of flats after construction. In the return of income for the assessment year 2009-10 it declared the net income arising from the **sale** of flats at Rs. 3.63 crores under the head 'Profits and gains of business or profession'.

- The Assessing Officer noticed that there were variations in price charged by the assessee from various customers to whom the flats were sold. He, therefore, made an addition to the tune of Rs. 4.45 crores to the income of the assessee by applying the rate of another flat sold by it *visa-vis* the rate at which flat under view was sold.
- On appeal, the Commissioner (Appeals) relying on the provisions of sections 50C and 56(2)(vii)(b)(ii) held that the market value of flats ought to have been considered instead of the actual sale consideration. He, therefore, sustained the addition at Rs. 8.53 crores.
- On appeal to Tribunal:

### **HELD -I**

- A bare perusal of the provision of section 50C indicates that where the consideration received on transfer of a capital asset, being land or building or both, is less than the stamp value, then for the purposes of section 48, the stamp value shall be considered as full value of consideration received or accruing as a result of such transfer. Section 48 with the caption 'Mode of computation' deals with the computation of the income chargeable under the head 'Capital gains'. A cursory look at the above provision fairly indicates that section 50C is applicable only in respect of income computed under Chapter IV-E, *i.e.*, under the head 'Capital gains'. Since the assessee is a developer and income from the sale of flats has been computed under Chapter IV-D, *i.e.*, under the head 'Profits and gains of business or profession', obviously the provision of section 50C can have no application. [Para 6]
- The Finance Act, 2013 has inserted section 43CA with effect from 1-4-2014, which is again a special provision for full value of consideration for transfer of assets other than capital asset in certain cases. Sub-section (1) of this section provides that 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, 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 purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Sub-section (2) makes it clear that the provisions of sub-sections (2) and (3) of section 50C shall be applied in relation to the determination of the value adopted or assessed or assessable under sub-section (1). On a circumspection of sub-section (1) of section 43 CA, it becomes manifest that the provisions for substituting stamp value for the actual sale consideration on transfer of the land, building or both, which were earlier restricted to the 'capital asset' under head 'Capital gains' have now



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been extended to 'other than a capital assets' under the head 'Profits and gains of business or profession' as well. The reference to the words 'other than a capital asset' and the placement of section 43 CA in Chapter IV-D indicate that the stamp value in respect of building or land or both sold by a person engaged in such business shall be substituted with the actual consideration received as a result of transfer, if the latter is lower than the former. The insertion of this provision by the Finance Act, 2013 with effect from 1-4-2014 makes it abundantly clear that the mandate of 43CA shall apply only with effect from assessment year 2014-15 and not before that. Therefore, the conclusion drawn by the Commissioner (Appeals) in invoking the provision of section 50C for sustaining the addition has no legal legs to stand on. [Para 7].

Section 56 lies in the residual head of income, *i.e.*, 'Income from other sources'. Sub-section (1), which is a general provision, provides that income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under this head, if it is not chargeable to income tax under any of the heads specified in section 14, items A to E. Sub-section (2) of section 56 deals with certain types of specific incomes which are chargeable under this residual head. Clause (vii) provides that where an individual or Hindu undivided family receives any immovable property for no consideration or a consideration which is less than the stamp duty value of the property by an amount exceeding rupees fifty thousand, the stamp duty value of such property (in case of receipt of property without consideration) or the stamp duty value as exceeds such consideration (in case of receipt of property at lower consideration) shall be considered as income under this head. In peculiar facts of the instant case, section 56(2)(vii)(b)(ii) has no application. [Para 9]

Therefore, the sustenance of addition of Rs. 8.53 crores by the Commissioner (Appeals) was not appropriate. [Para 11].

The Assessing Officer made addition to the tune of Rs. 4.45 crores by applying the rate of another flat sold by the assessee *vis-a-vis* the rate at which flat under view was sold. For example, first item in the Table is flat No. 2501 with area of 2645 sq. fts. and sale consideration at Rs. 65.24 lakhs. First payment for this flat was received by the assessee on 21-10-2004 and the sale rate is Rs. 2467 per sq. ft. The Assessing Officer has compared this rate with the rate charged for flat No. 2702 sold by the assessee at a price higher by Rs. 649 per sq. ft. The assessee gave reason for charging low price in the terms that the buyer of flat No. 2501 assisted in promoting business and hence discount was offered to him. Similar is the position regarding other flats sold by the assessee in respect of which the Assessing Officer has made addition by comparing the rate charged with the higher rate charged in respect of other sale transactions. The assessee gave explanation for lower rate in respect of each flat. The Assessing Officer brushed aside the explanation by simply mentioning that such reduction was not justifiable or there was no explanation for lower rate or fabricated reasoning, etc. Such rejection of the assessee's explanation in one stroke is wholly impermissible. [Para 12]

Where the revenue requires the assessee to show as to why there is a difference in the price charged from two customers and the assessee offers some plausible explanation, no addition can be made simply by holding that this explanation is fanciful. There must be something concrete to show that the version given by the assessee is incorrect. [Para 14]



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The assessee gave reasons for charging lower price in respect of some of the flats sold, which the Assessing Officer failed to controvert. In such a situation, there can be no reason to make or sustain any such addition. Therefore, the addition in entirety was liable to be deleted

Respectfully following the decision of the Hon'ble ITAT Mumbai cited supra and in view of the express provisions of sec 50C, I hold that the sale consideration cannot be substituted by the stamp duty valuation. The addition made by the AO of Rs 14,78,00,145 is therefore deleted. Ground 2 is allowed.

5.3 Ground 3: This is against the action of the AO in disallowing the residual expenditure incurred on the project in FYs 2012-13, 2013-14 & 2014-15. The AO has held that the same not being incurred in the present AY cannot be allowed to the appellant. I am in agreement with the AO on this count. The residual expenditure net of income is Rs 8,77,580 in FY 2012-13, Rs 18,84,840 in FY 2013-14 & Rs 3,28,723 in FY 2014-15. The residual expenditure has to be claimed in the year in which the same is actually incurred as no provision is made towards the same in the present AY. I therefore uphold the action of the AO in disallowing this expenditure. Ground 3 is dismissed.

5.4 Summing up, the profit from the project is to be computed as under:-

Total Sales consideration as per agreements	= Rs 17,10,86,600
Less: WIP upto 31/03/2012 :	=Rs 13,67,04,817
Less: Provision for Occupancy Charges	= Rs 3,00,34,451
Net profit from project	= Rs 43,47,242

The AO is therefore directed to assess the income from the project at Rs 43,47,242.

6. In the result, the appeal is partly allowed.

As evident, the learned first appellate authority has upheld the action of Ld. AO in bringing to tax estimated project income. At the same time, Ld. CIT(A) directed Ld. AO to withdraw deduction of Rs.8.46 Crores out of total provisions of Rs.11.47 Crores as allowed by Ld. AO. However, Ld. AO was directed to adopt the sale consideration only as reflected by the assessee on the reasoning that the provisions of Section 43CA as well as Section 50C were not applicable in the instant case.

Aggrieved, the revenue is in further appeal whereas the assessee is contesting the denial of provisions as well as expenditure incurred in subsequent years.



5.1 After due consideration of material facts, it is undisputed fact the sole project being carried out by the assessee was substantially completed which is evidenced by the inspection carried out by the department at the project site. In fact, the assessee has not even contested the same before us. Therefore, there would be no quarrel on the point that the income from the project was rightly brought to tax by Ld. AO during the year under consideration and no interference, in this regard, would be required from our side.

5.2 So far as the difference in agreed sale consideration reflected by the assessee and stamp duty valuation is concerned, we find that nothing has been brought on record by Ld. AO that the assessee was in receipt of higher sale consideration than reflected by the assessee in its books of accounts. Clearly, the provisions of Section 43CA as well as Sec 50C were not applicable to the year under consideration. However, the perusal of quantum assessment order would establish that either of these sections have not been invoked by Ld. AO. In our considered opinion, the onus was on assessee to establish that the agreement value received by the assessee as sale consideration was the fair market value of the inventory being sold by the assessee. The assessee remained unsuccessful in demonstrating the same. In fact, the assessee did not offer any income / loss from the project only on the pretext that certain issues were pending with relevant authorities. The obligation to offer the income from the project would not be dependent on the settlement of the litigation and the same could not be allowed to be postponed till indefinite period of time. The



revenue could not be deprived-off its legitimate dues particularly when the project was substantially sold-off and the occupation was already granted as way back as FY 2006-07 & 2007-08. Therefore, the conduct of the assessee do not inspire us to confirm the stand of Ld. first appellate authority, in this regard. In our opinion, the assessee was duty bound to furnish proper explanation regarding sale of inventories at less than stamp duty valuation.

5.3 So far as the quantum of expenditure is concerned, since the correct income of the project was to be ascertained, the assessee would be entitled for actual expenditure incurred on the project and estimated expenditure which were likely to be incurred provided the expenditure had crystallized during the year and there was reasonable certainty of outflow of the same. Nothing concrete, in this regard, emanates from the quantum assessment order as well as appellate order.

5.4 In the background of above observations, we deem it fit to restore the matter back to the file of Ld. AO to ascertain the correct income of the assessee earned from the said project and reframe the assessment after affording reasonable opportunity of being heard to the assessee. The assessee is directed to substantiate his claim, in this regard, including explanation for sale of flat at less than stamp duty valuation.

6. Consequently, the appeal as well as cross-objections stand allowed for statistical purposes.



*Order pronounced in the open court on 13<sup>th</sup> November, 2019.*

**Sd/-**

**Sd/-**

**(Saktijit Dey)**

**(Manoj Kumar Aggarwal)**

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/11/2019  
Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**