THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 3353/Mum/2019 (Assessment Year 2014-15)

M/s. Gurukrupa Developers DN Nagar Project A-205, Western Edge-II Behind Metromall Dattapada Borivali-East Mumbai-400 066. PAN : AAFFG7859Q	Vs.	PCIT-32 2nd Floor, C-11 Pratyakshakar Bhavan Bandra Kurla Complex, Mumbai 400 051.
(Appellant)		(Respondent)

Assessee by	Shri Sashi Tulsiyan
Department by	Shri Ajay Kumar
Date of Hearing	18.12.2019
Date of Pronouncement	14.01.2020

O R D E R

Per Shamim Yahya (AM) :-

This is an appeal by the assessee directed against the order of learned CIT passed u/s. 263 of the Income Tax Act dated 27.3.2019.

2. Brief facts of the case are that the assessee is engaged in the business of builder and developer. The assessee filed return of income declaring total income of Rs. 6,82,55,390/- for A.Y. 2014-15 on 30.9.2014, the same was selected for scrutiny and the order was passed u/s. 143(3) of the Act and assessed income of Rs. 6,83,55,390/-. Learned CIT issued show cause notice u/s. 263 of the Act. In the show-cause notice it was mentioned that stamp duty valuation exceeds total consideration, hence higher stamp duty valuation should have been considered for taxation as per provisions of section 43CA of the Act. That this fact was overlooked and assessment was erroneously completed u/s. 143(3) of the Act. That the Assessing Officer did not examine this crucial fact and as such assessment order was passed by the Assessing

Officer is erroneously in so far as it prejudicial to the interest of the Revenue. In response, the assessee submitted that though registration happened in the impugned assessment year, agreement/allotment/booking was done much earlier and this aspect was duly examined by the Assessing Officer. The assessee submitting as noted by learned CIT reads as under :-

> "The show-cause notice dated 15.11.2018 was issued to the assessee fixing hearing on 03,12.2018 which was served on the assessee by hand delivery. Before the appointed day, Shri B.H, Kishnadwala & Associates, Chartered Accountants duly authorized by the assessee made submission vide letter 30.11,2018 which is placed on record, The relevant portion of the assessee's submission is reproduced as under :-
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> > "The assessee has declared sales during the AY. 2014-15 relevant to the financial year ended 31.03.2014 accordingly and paid the taxes on the profits for the year. The agreement value of the fiats/ shops allotted were at a rafe higher than the value worked out as per the Stamp Duty Authority rates (Ready Recknor Rates) applicable for the respective year. For example if a flat is booked on 1.4.11 then the Ready Recknor (Stamp Duty) rate of the year 2011 (from 1.1.2011 to 31.3.2011) is compared with the agreement rate of the fiat. In all such cases the agreement value is always higher than the Ready Recknor values.
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> > Most of the flats/shops which were allotted in earlier years were registered with the Stamp Duty Authorities on completion of construction only i.e. in the financial year 2013-14 (i.e. on 31.3.2014). Therefore, the comparison on of Agreement value and that as shown in the registered document by Stamp Duty Authority is different and that the value of Stamp duty will always be higher as the same is done at a subsequent period/date.
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> > Since the registration of agreement was done in F.Y, 2013-14, the value of Stamp duty authorities is higher than the value of agreement entered Into by the assesses in respect of those flats/shops which were allotted in earlier years. But if the value of the Stamp duty Authorities of the year of allotment is compared with the allotment letter value / agreement value, then none of the flats/shops have been sold at a rate lower than the value arrived at as per the Stamp Duty authority rates.
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> > As can be seen from the above referred submissions all the details were submitted to the Assessing officer and had been scrutinized in toto. As mentioned earlier since the registration of agreement was done in F.Y. 2013-14, the value of Stamp duty authorizes is higher than the value of agreement entered into by the assessee in respect of those flats / shops which were allotted/sold in earlier years. But if the value of the Stamp duty Authorities of the year

> of allotment is compared with the allotment letter value / agreement value, then none of the flats/shops have been sold at a rate lower than the value arrived at as per the Stamp duty Authority rates. Also as per section 43CA, the assesses had received advance payments by account payee cheque from all such buyers on or before the date of allotment/sate.
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> From the above referred submissions it is clear that all the necessary documents and records as required for the verification and satisfaction of the assessing officer has been submitted during the time of assessment proceedings. Further the assessing officer had verified all the documents in all respects including applicability and satisfaction of satisfying all provisions of section 43CA that the officer has passed the order u/s 143(3)."

3. Considering the above and the details learned CIT noted that the assessee has submitted details with respect to the issue of 43CA of the Act only in regard to stamp value and agreement value of the units/gala. He noted that the assessee has submitted allotment letters to whom flats/shops allotted but he noted that neither the payment of initial booking amount nor cheque numbers alongwith date printed on it. Although he observed that the payment of initial booking amount has been credited in the assessee's account as per bank statement submitted. However, he noted that bank statements of persons who have booked flat are missing in record. Therefore he held that the claim of the assessee that flats were booked long time before registration is not justified. He also noted that if a person books flats by advancing its hard earned money, he will ensure that the same amount should be brought in writing which is not present in the allotment letters submitted by the assessee. Hence, he held that in the absence of vague details it is justified to come to the conclusion the order of the Assessing Officer was erroneous and prejudicial to the interest of the Revenue as mentioned above. Thereafter learned CIT referred to the provisions of section 43CA and held that the provisions of are self explanatory. Learned CIT concluded as under :-

> "7. Based on the observations made above, on the perusal of the records and the documents submitted, I in exercise of the powers conferred upon me u/s 263 of the Act hereby set-aside the order of the Assessing Officer to the extent as under :-

> "Issue of section 43CA of the Act, in respect of units sold at the rates below the stamp value."
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> 8. The Assessing Officer is required to go through the details as submitted by the assessee during the revision proceedings u/s. 263 of the Act as well as the details available on the record. In the light of the provisions of the section 43CA and 68 of the IT. Act, along-with relevant judicial case laws, the Assessing Officer is directed to verify and peruse the documents submitted by the assessee to reach a conclusion and action as per law. The Assessing Officer is directed to give opportunity to the assessee and the assessee is also free to submit the relevant documents in support of the claim made by it to ensure that the principle of justice is religiously followed."

4. We have heard both the counsel and perused the records. Learned Counsel of the assessee submitted that the issue has been duly examined by the Assessing Officer in course of assessment. He submitted that as per provisions of section 43CA the exception is carved out where 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 asset. Hence, he submitted that the provision of subsection (1) & (2) are not applicable in this case. Learned Counsel submitted that the assessee has duly submitted allotment letter and payment of booking amount was also evidenced by bank statement submitted. Hence, he submitted that existence of agreement and payment thereof prior to the registration has been duly proved by the assessee. In this regard he also submitted that the bank statement and ledger account wherein details of bank account, credit from the customer are duly mentioned. We note that learned CIT has also not disputed that the receipt of payment prior to the registration in support of booking is evidenced by the assessee's bank account. However, learned CIT has drawn adverse inference on account of bank account of the concerned buyers is not on record. In our considered opinion this limb of argument for disallowing assessee's claim by learned CIT is not at all sustainable. The assessee has given evidence of allotment and booking by allotment letter and payment through bank prior to registration. Thus the assessee has discharged the onus cast upon it. Learned CIT cannot disbelieve the same on the ground that the bank statement of the buyers are not on record. In our considered opinion there is nothing on record to suggest that

bank statement contained bogus entries. It is also not a case that the Revenue has received any information that the buyers have not issued cheque and bank statement of the assessee show entries which are related to some other transaction. Moreover, when these documents are on record and hence, this aspect has been duly examined by the Assessing Officer in our considered opinion there is no occasion for learned CIT to exercise u/s. 263 of the Act. In this regard learned counsel has placed reliance upon the decision of Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd. (332 ITR 167) and Hon'ble Bombay High Court decision in the case of Gabriel India Ltd. (203 ITR 108). In our considered opinion these case laws also further fructify the case of the assessee. Accordingly, in our considered opinion when allotment letter/booking of the unit alongwith payment of receipt through bank is already on record, we fail to understand as to what enquiry is further remaining to find out whether provisions of section 43CA(4) are applicable. We may in this regard gainfully refer to provisions of section 43CA as under:-

> Section 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.
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> (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).
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> (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.]

5. From the above, we note that in compliance with sub-section 4 of section 43CA, the assessee has duly received sums through bank and allotment letter are also on record. Hence, when allotment letter/booking of the unit alongwith receipt of booking receipt through bank at an earlier period is already on record, the value at the time of registration is not to be applied. Learned CIT was fully conscious of the fact as he has all the details of the stamp value, date of agreement/allotment and date of receipt of payment in assessee's bank statement. Hence when despite being aware that addition in this regard is not permissible, he has asked the Assessing Officer to further reexamine the issue by reference to the details available on record. In our considered opinion by way of above order dehorse any cogent material or reasoning learned CIT is directed the Assessing Officer to make roving inquiry to somehow or other dislodge evidences duly on record that provisions of section 43CA are not applicable in the facts of the case. Accordingly, in the background of the aforesaid precedent and discussion we set aside the order of learned CIT and decide the issue in favour of the assessee.

6. In the result, appeal of the assessee stands allowed.

Order has been pronounced in the Court on 14.1.2020.

SD/-	SD/-
(RAMLAL NEGI)	(SHAMIM YAHYA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 14/1/2020

Copy of the Order forwarded to :

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

6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

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