

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya (AM)

I.T.A. No. 198/Mum/2019 (Assessment Year 2015-16)

M/s. Faber Construction 2/B, Ground Floor Kapur Mansion, 10 Morland Road, Agripada Mumbai-400 011.  PAN : AACFF0436F (Appellant)	Vs.	ACIT-21(1) Piramal Chambers Lalbaug Mumbai-400 012.  (Respondent)
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Assessee by	Ms. Shweta R. Singh- Employee
Department by	Shri Dharm Veer Singh
Date of Hearing	15.01.2020
Date of Pronouncement	12.03.2020

ORDER

This appeal by the assessee is directed against orders of learned CIT(A) dated 26.11.2018 and pertains to assessment year 2015-16.

2. The grounds of appeal read as under :-

1. On the facts and circumstances of the case and in law, the Learned Commissioner (Appeals) 48, Mumbai, erred in:

1.1 Upholding the additions made by the Learned AO under the provisions of section 43CA without considering

1.1 the fact that the Ready Reckoner rates are for ready to move in flats and not for flats under construction and the marginal difference of less than 1% between the Ready Reckoner rates and the Sale consideration ought to have been ignored in certain flats .

1.2 the fact that in the case of Flat No. 1902, the said flat was agreed to be sold on 06.11.2012, which was prior to introduction of the provisions of section 43CA of the Act, and therefore, the date of registration should not have been considered as the date of sale for the purpose of invoking the provisions of Section 43 CA of the Income Tax Act, 1961.

2. Hence, the addition of Rs. 16,99,269/- wrongly upheld by learned CIT(A) be deleted.

3. Brief facts of the case are that assessee is a builder and developer. During the course of assessment officer invoked the provisions of section 43CA. He made the following disallowances being difference between agreement value for sales and the stamp value for the registration.

Market value as per registration date	Allotment letter date	Date of payment on allotment	Amount received on booking	Total amount received	RR value on allotment	Difference between market value on allotment date of allotment
4890086	12/10/2014	12/10/2014	300000	4800000	4890086	90086
4399500	06/11/2012	06/11/2012	3000000	3100000	3461040	361040
6416200	03/06/2013	03/06/2013	2000000	4500000	5554903	1054903
4888800	10/07/2014	10/07/2014	700000	4800000	4888800	88800
5631870	11/02/2015	11/02/2015	5600000	5600000	5631870	31870
5624190	13/03/2014	13/03/2014	100000	5600000	5624190	24190
5624190	04/01/2014	04/01/2014	3500000	5600000	5624190	24190
5906340	07/04/2014	07/04/2014	500000	5600000	5624190	24190
Total Difference						1699269

4. Against the above order assessee appeal before the learned CIT(A). Learned CIT(appeals) upheld the action of the assessing officer. As regards the claim of sale of flat No. 1902 learned CIT(A) held that assessee cannot claim credit that the agreement for the same took place in 2012 as the assessee has declared the sale in the present assessment year

5. Against the order assessee is in appeal before the ITAT.

6. I have heard both the Counsel and perused the records. I find that assessee's submission is twofold. The 1<sup>st</sup> submission is that there is only marginal difference between the stamp value and the agreement value and hence the difference should not be added. The 2<sup>nd</sup> submission is regarding sale of flat No. 1902 on the ground that the agreement for the same was already entered into in the year 2012.

7. Upon careful consideration as regards the addition on account of flat No. 1902 is concerned, the assessee's plea that agreement was entered into in

2012 cannot be accepted as learned CIT(A) has rightly observed that assessee has chosen to declare the same in the present assessment year.

8. As regards the submission of the assessee for granting relief wherein there is only marginal difference, I find that it may be gainful to refer to the following proviso which has been inserted in section 43CA(1) with effect from 1.4.2019.

Section 43CA(1).

Where the consideration received or acquiring 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 purpose 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.

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five percent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of consideration."

9. The above proviso has been inserted by the Finance Act, 2018 with effect from 1/4/2019. A cardinal principle of interpretation is to look at the mischief, the act, the amendment, the proviso is aimed to remove or take care of. In the present case I find that proviso was inserted to grant relief where there is only a 5% variation in the agreement value and stamp value. In such circumstances the proviso granted relief in as much as the difference of 5% is to be ignored and the deeming provision of section 43-CA shall not be invoked. I find that this proviso is aimed at mitigating the hardship or the mischief which was caused to the taxpayer on the invocation of deeming provisions of section 43-CA where there is marginal variation upto 5%. In this view of the matter in my considered opinion this proviso shall take retrospective effect. Hence I hold that in cases where the variation is up to 5% no addition shall be made by the assessing officer by invoking the provisions of section 43-CA. Accordingly, the matter stands remitted to the file of assessing officer. The assessing officer

shall restrict the disallowances only to those cases where the variation exceeds 105%. Needless, the assessee shall be granted adequate proportionate being heard.

10. In the result this appeal by the assessee stands partly allowed.  
Order has been pronounced in the Court on 12.03.2020.

SD/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 12/03/2020

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.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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