

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

Before Shri P.M. Jagtap, Vice-President(Kolkata Zone)

**I.T.A. No. 85/PAT/2020
Assessment Year: 2017-2018**

***Sarvodaya Grih Nirman Pvt. Limtied,.....Appellant
L/001, Block-B, OM
Nirmalaya Apartmemnt,
Nageshwar Colony,
Bihar-800001
[PAN: AAGCS9922A]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-2(2), Patna, Bihar***

Appearances by:

Shri S. Sannigrahi, A.R., for the Appellant

Shri Ajay Kumar, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : September 09, 2021

Date of pronouncing the order : October 08, 2021

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Patna-1 dated 19.08.2020 and the solitary issue involved therein relates tao the addition of Rs.21,28,038/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by invoking the provisions of section 43CA of the Income Tax Act, 1961.

2. The assessee in the present case is a Company, which is engaged in the business of Real Estate Development. The return of income for the year under consideration was filed by it on 31.03.2018 declaring total income of Rs.13,72,450/-. The said return was selected for scrutiny under CASS to examine the issue relating to High Closing Stock and investment in immovable properties. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee-

company had sold/transferred certain flats to the different customers for certain sale consideration, which was lower than the stamp duty valuation. He, therefore, required the assessee-company to explain as to why the provision of section 43CA should not be invoked and the difference between the stamp duty value and sale consideration of the flats sold/transferred during the year under consideration should be added to its total income. In reply, it was submitted on behalf of the assessee-company that the said flats were agreed to be sold to the respective buyers by agreements entered into 8-9 years back and since the sale consideration for the same was agreed in pursuance of the said agreements in 8-9 years back, the provision of section 43CA could not be invoked to make any addition with reference to the stamp duty valuation prevailing in the year under consideration when final sale deeds were registered. The Assessing Officer, however, observed that there was a difference between the sale consideration and stamp duty valuation of atleast four flats even with difference to the dates of agreements to sale to the extent of Rs.21,28,038/-. He accordingly made an addition to that extent to the total income of the assessee by invoking the provisions of section 43CA in the assessment completed under section 143(3) vide an order dated 27.12.2019.

3. Against the order passed by the Assessing Officer under section 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and the addition made by the Assessing Officer of Rs.21,28,038/- by invoking the provision of section 43CA was challenged by the assessee by contending, inter alia, that the provision of section 43CA having come into operation from 01.04.2014 without any retrospective application, there was no scope to determine the stamp duty value of flats of the earlier period when the agreements to sale were executed. It was contended that the provisions of section 43CA were not in the statute when the agreements to sale the flats were entered into

and, therefore, the addition made by the Assessing Officer by invoking the provision of section 43CA was not sustainable. The Id. CIT(Appeals) did not find merit in this contention as well as the other contentions raised by the assessee and rejecting the same, he proceeded to confirm the addition made by the Assessing Officer by invoking the provisions of section 43CA of the Act. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that even though final sale deeds in respect of the relevant four flats were executed and registered during the year under consideration, the said flats were agreed to be sold about 8-9 years back in pursuance of the agreements entered into by the assessee-company with the respective buyers. It is also observed that this position clearly brought to the notice of the Assessing Officer by the assessee-company was not disputed by the Assessing Officer, but he proceeded to make the addition of Rs.21,28,038/- by invoking the provision of section 43CA as he found that there was a difference to that extent in the sale consideration of the flats as shown by the assessee-company and the stamp duty valuation of the same as on the date of the agreements to sale entered into earlier. In this regard, the Id. Counsel for the assessee has contended that the said agreements to sale whereby consideration for the flats was agreed, had been entered into with the respective buyers prior to 01.04.2014 and since the provision of section 43CA was inserted into the statute only w.e.f. 01.04.2014, the said provision was not applicable in the case of the assessee and the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by invoking the same is not sustainable. In support of this contention, he has relied on the decision of Jaipur Bench of ITAT in the case of Indexone Tradecone (P) Limited reported in 172 ITD 396, wherein the assessee-company was engaged in the business of developing and constructing residential/commercial properties and had entered into agreements to

sell two flats in the year 2007 and had received certain amount of sale consideration. Subsequently balance sale consideration was received during the previous year relevant to assessment year 2014-15 and sale deed of flats were executed and registered in the name of buyers. The Assessing Officer noted that sale consideration declared by the assessee in respective sale deeds was less than the value adopted by stamp duty authority for the purpose of charging stamp duty. He, therefore, invoked the provision of section 43CA and added the differential amount to the assessee's taxable income. On confirmation of the said addition by the Id. CIT(Appeals), the matter was carried before the Tribunal and the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by invoking the provision of section 43CA was deleted by the Tribunal by holding that the agreements to sale the two flats in question having been entered into much prior to the introduction of section 43CA in the statute with effect from 01.04.2014, the said provisions were not applicable in the case of the assessee. As the issue involved in the present case and all the material facts relevant thereto are similar to the case of Indexone Tradecone (P) Ltd. (supra) decided by the Jaipur Bench of ITAT, I respectfully follow the said decision of the Division Bench of ITAT, Jaipur and delete the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by invoking the provisions of section 43CA and allow this appeal of the assessee.

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

Order pronounced in the open Court on October 08, 2021.

**Sd/-
(P.M. Jagtap)
Vice-President (KZ)**

Kolkata, the 8th day of October, 2021

*Copies to : (1) Sarvodaya Grih Nirman Pvt. Limtied,
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- (2) ***Income Tax Officer,
Ward-2(2), Patna, Bihar***
- (3) *Commissioner of Income Tax (Appeals), Patna-1,*
- (4) *Commissioner of Income Tax- ,*
- (5) *The Departmental Representative*
- (6) *Guard File*

By order

*Senior Private Secretary/DDO
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.