

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

I.T.A. No. 1660/Mum/2019 (Assessment Year 2014-15)

Faber Construction 2/B, Ground Floor Kapur Mansion, 10 Moreland Road Agripada, Mumbai 400 011.  PAN : AACFF0436F (Appellant)	Vs.	ACIT-21(1) Piramal Chambers Lalbaug, Parel Mumbai-400 012.  (Respondent)
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Assessee by	None
Department by	Shri Milind Chavan
Date of Hearing	01.11.2021
Date of Pronouncement	02.11.2021

ORDER

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] 30.1.2019 pertaining to assessment year (AY) 2014-15.

2. The grounds of appeal read as under :-

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

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 for the impugned flats were lower than the sale value, despite the fact that copies of Agreements in respect of the said flats along with Ledger extract of the purchasers accounts were filed which proves the date of first payment towards purchases ,

1.2 the fact that it is clearly mentioned in the grounds of appeal and submissions filed before the Learned CIT(A) that the ready reckoner rates are lower, on the date of first payments, than the document value, and the additions are wrongly made.

Hence, the addition of Rs 6,60,750/- wrongly upheld by the Learned CIT(A) be deleted .

The appellant craves leave to add to, alter and /or amend the above grounds of appeal as the occasion may demand or circumstances require.

3. Brief facts of the case are that the Assessing Officer in this case made addition under section 43CA of the I.T. Act by observing as under :-

During the course of assessment proceedings, the assessee was asked to furnish the details of sale of various units, sample registered agreement of the project and also asked, if any case of sale, the valuation as per Stamp Duty Authority exceeds the agreement value in respect of any flat, units, show cause as to why the same should not be brought to tax u/s.43CA of the IT Act, 1961.

In response to the same, the AR of the assessee vide letters dt.21/11/2016 and 28/11/2016, furnished the details of the same. On verification of the same, it is found that the assessee has registered two agreements during the year wherein Stamp Duty Valuation is more than the agreement value. The details of the same are as under :-

Sr. No.	Name of flat owner	Floor	Flat No.	Agreement area	Agreement date	Agreement value
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Feroz Ismail Ansari	10 <sup>th</sup>	1003	48.77	09/12/2013	3600000
2.	Shahid Mir	6 <sup>th</sup>	603	37.16	13/12/2013	3500000

Market value as per regn date	Allotment letter date	Date of Payment on allotment	Amount received on booking	Total amount Received	R.R. value on allotment	Difference Between market value on allotment date of allotment
(8)	(9)	(10)	(11)	(12)	(13)	(14)
5835500	10/02/2010	10/02/2010	1000000	3600000	3365130	-234870
4501485	02/04/2011	02/04/2011	1000000	3500000	3047120	-425880

As regards to the show cause, as to why the income should not be brought to tax u/s.43CA of the IT Act, 1961, the assessee has stated as under :-

*".....1) With regard to provisions of section 50C and 43CA, we enclose herewith a chart of 5 flats registered during the year indicating various*

*details such as flat number, agreement date, agreement value, allotment letter date, amount received on booking and the ready recknor value as on the allotment date. Further, copies of the ready recknor for the respective years in which the flats were booked are enclosed herewith. From the chart it can be verified that there is a marginal difference in the value between the value of the flat in terms of the ready recknor value than and the agreement value entered into. There is a marginal difference in two cases as reflected in the chart and since the same is less than, 50% of the value and hence, not taxable as even under the Bombay Stamp Act if the difference between market value and agreement value is less than 10%.*

*2) Without prejudice to our above contention it is submitted that since the flats are agreed to be sold prior to 31/03/2013 the provisions of section 50C and 43CA would not be sold prior to 31/03/2014 the provisions of section 50C and 43CA would not be applicable in our client's case as they are builder.*

*3) Statement of advance received against sale of flats in your desired format."*

5. The explanation of the AR of the assessee has been considered and found to be no tenable for the reasons that as per section 43CA of the IT Act, 1961, any property registered and Stamp Duty Valuation is more than agreement value, then, the value as per the Stamp Duty Authority at the date of agreement should be taken. In the aforesaid cases, the date of allotment was 10/02/2010 and 02/04/2011, respectively, hence, the value of the same is taken as on that date which is exceeds agreement value. Therefore, difference is hereby added to the total income of the assessee u/s.43CA of the IT Act, 1961."

4. Against the above order the assessee appealed before learned CIT(A). Learned CIT(A) noted the submission of the assessee as under :-

"(1) The only major argument of assessee is that assessee's flats were under construction stage and, therefore, cannot be compared with other buildings in the same locality and that ready reckoner rates were for the ready to move-in flats and not flats under construction.

(2) Another argument of assessee is that rates as per Ready Reckoner is lower than the Agreement Value, thus thee cannot be any addition."

5. Learned CIT(A) discussed the language of the Statute and concluded as under:-

"Therefore, since the language of section 43CA is absolutely clear, any difference how so ever small must be brought to tax as such is the intention of law.

5.1,4 As per the details given in para 4.1 of the order, which is not disputed by assessee, the fact is that stamp duty valuation is more than the consideration shown in the transfer documents. Infact, though it has been claimed, however, there are no details/proof of any agreement signed by assessee with buyer before Registration. Infact, content and nature of any agreement were never filed/produced. In the light of these facts, clearly provisions of section 43CA are attracted and addition made by AO is upheld and all grounds of appeal are dismissed singly and collectively.”

6. I have heard learned Departmental Representative and perused the record. Upon careful consideration I note that perusal of the assessment order shows that the total amount received as per column 12 of the assessment order is higher than the ready reckoner value in column 13. In these circumstances I fail to understand how there can be an addition when agreement value is more than the ready reckoner value. Learned CIT(A) has also not at all appreciated the issue. Hence, this addition is not at all sustainable when the stamp value rate itself written by the Assessing Officer is lower than the agreement value, no addition can be made under section 43CA of the Act. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

7. In the result, appeal filed by the assessee is allowed.

Pronounced in the open court on 2.11.2021.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 02/11/2021

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

PS