

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &  
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1438/MUM/2019 (A.Y.2014-15)

M/s Pranjee Properties Pvt Ltd 3060, B-Wing, Oberoi Garden Estate, Andheri (E), Mumbai-400 072 <b>PAN : AADCP8950C</b>	vs	DCIT 10(3)(2), Mumbai Aayakar Bhavan, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Haridas Bhat
Department represented by	Shri Nihar Ranjan Samal, Sr.AR

Date of hearing	27/06/2022
Date of pronouncement	23/09/2022

**ORDER**

**Per Kavitha Rajagopal (JM):**

This appeal filed by the assessee is against the order of the Ld.Commissioner of Income-tax (Appeals)-17, Mumbai dated 15/02/2019 passed under section 250 of the I.T. Act, 1961. This appeal relates to assessment year 2014-15.

2. The brief facts are that the assessee is engaged in the business of construction of building and had filed its return of income on 18/10/2014 declaring total income of Rs.55,92,662/-. Subsequent to this, the assessee's case was selected for scrutiny wherein the Assessing Officer had observed that clause 17 of the tax audit report mentions "land or building or both transferred

during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C". The Assessing Officer observed that the tax auditor has mentioned 4 parties wherein the consideration received or accrued is less than the value adopted or assessed or assessable by the State Government authority, the details of which are hereunder:-

Sr. No	Details of property	Address of Property Line 1	Address Line 2	City or Town or district Line 2	State	Pincode	Consideration received or accrued	Value adopted or assessed
1	Arun Kumar House Property	Chembur	Chembur	Mumbai	Maharashtra	400071	2900000	4467000
2	Arvind Jain House Property	Koparkhairne	Koparkhairne	Navi Mumbai	Maharashtra	400409	2873350	4977000
3	Suresh Kolte House Property	Badlapur	Badlapur	Thane	Maharashtra	421503	737500	873000
4	Suresh Kolte House Property	Badlapur	Badlapur	Thane	Maharashtra	421503	525000	612000

The Assessing Officer has stated that the total consideration received or accrued with regard to the said 4 parties aggregates to Rs.70,35,850/- whereas the value adopted by the State Government authority amounts to Rs.1,09,29,000/- which, on enquiry during the assessment proceedings was not to the satisfaction of the assessing Officer. The Assessing Officer made an addition of Rs.38,93,150/- being the difference amount in the consideration received or accrued and the value adopted by the State Government authority as per the provisions of section 43CA of the Act by considering it to be the deemed value adopted or assessed or assessable by any of the State Government authority, as deemed to be income of the assessee company pertaining to the transfer of the properties. On an appeal before the Ld.CIT(A), the assessee's ground of appeal was dismissed thereby confirming the order of the Assessing Officer.

3. Grounds 1&2 of the assessee pertain to the addition of deemed income made by the lower authorities to the tune of Rs.38,93,150/- under section 43CA. From the facts of the case it is observed that the assessee has received consideration amount from 4 parties aggregating to Rs.70,80,550/- (Rs.29,00,000 + 28,73,350 + 7,37,500 + 5,25,000) and the value adopted by the State Government authority amounts to Rs.1,09,29,000/- (44,67,000 + 49,77,000 +8,73,000 + 6,12,000). The lower authorities by invoking the provisions of section 43CA has held that the value of consideration received or accrued was less than the stamp duty valuation made by the State Government authority thereby taking into consideration the difference amount to be the deemed income of the assessee as full value of consideration. The assessee, on the other hand, relied upon the provisions of sub section (3) of section 43CA wherein the date of agreement should be taken into consideration for the purpose of valuation and the date of the final valuation determined at the time of transfer of assets should not be considered for the purpose. The assessee further stated that the date of agreement and the date of transfer are different.

4. The Ld.AR reiterated the same fact that the assessee's case would be covered under sub section (3) of section 43CA of the Act. It is also pertinent to point out that the assessee has not furnished the copy of agreement before the lower authorities to substantiate its claim. The Ld.CIT(A), in his order, has specifically mentioned that since the assessee has not filed the copy of the agreement, the stamp duty value pertaining to the said date could not be determined thereby rejecting the claim of the assessee. It is hereby decided that the assessee may be given one more opportunity to substantiate his claim before the Ld.Assessing Officer by furnishing the copy of the agreement only

for the limited purpose of ascertaining the stamp duty value as on the date of agreement. The Assessing Officer, on compliance by the assessee will determine whether the assessee's case would fall under sub section (3) of section 43CA. For this purpose, we remand this issue to the Assessing Officer. Grounds 1 & 2 pertaining to the same issue are allowed, for statistical purpose.

5. Ground 3 pertains to the disallowance of Rs.22,987/- being short provision of audit fees debited to the P&L Account. The assessee has claimed miscellaneous expenses of Rs.40,73,073/- debited to the P&L Account under the head, 'other expenses' which includes the said disallowance. The Assessing Officer had made the said disallowance on the ground that the said expenditure is allowed as deduction only in the year when it has been crystallised and has disallowed the same as the same is not crystallised during the impugned year. On an appeal before the Ld.CIT(A), the Ld.CIT(A) has confirmed the said addition made by the Assessing Officer on the ground that the assessee was unable to produce any supporting documents or computation to substantiate the assessee's claim that the audit fee for preceding year was booked on estimate basis as per AS-29. Since the assessee failed to furnish the required details before the lower authorities, the same was disallowed.

6. Before us, the Ld.AR had contended that the assessee has no documentary evidence to substantiate its claim. Owing to the reason that the assessee has failed to prove its claim, this ground of appeal filed by the assessee is dismissed.

7. Ground 4 relates to disallowance of Rs.1,39,874/- on account of TDS borne by the parties and that the lower authorities have ignored the facts and circumstances of the case that only the nomenclature was incorrect but the

same was in the nature of irrecoverable expenses incurred in the ordinary course of business. The Assessing Officer on this ground has disallowed the said deduction under section 40(a)(ii) of the Act on the ground that any amount of tax paid are considered to be not allowable deduction. On an appeal before the Ld.CIT(A) on this ground, the assessee stated that the TDS borne by the parties was termed in a wrong nomenclature and that the impugned amount was in the nature of irrecoverable expenses in the ordinary course of business. The Ld.CIT(A) rejected the contention of the assessee on the ground that the assessee has failed to substantiate the exact nature of expenditure thereby confirming the addition made by the Assessing Officer. Even before us, the assessee has failed to corroborate the said claim with any documentary evidence nor has the assessee proved that the said amount was in the nature of irrecoverable expenses in the course of the assessee's business. Having failed to prove its claim, the assessee fails this ground of appeal.

8. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 23<sup>rd</sup> September, 2022.

Sd/-

sd/-

<b>(PRASHANT MAHARSHI)</b>	<b>(KAVITHA RAJAGOPAL)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated: 23/09/2022

Pavanan

**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,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**