

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI****BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER****ITA No. 2124/Mum/2022  
(A.Y.2013-14)**

M/s Anky Developers C/o Saud K. Solanki 1002, Pioneer Heights, 3 <sup>rd</sup> Road, Opp Gurudwara, Khar West, Mumbai – 400 052	Vs.	ITO-22(1)(1) Room No. 319, 3 <sup>rd</sup> Floor, Piramal Chambers, Lalbaug Mumbai – 400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAQFA8594H		
Appellant	..	Respondent

Appellant by :	K. Gopal & Om Kandalkar
Respondent by :	Mehul Jain

Date of Hearing	22.11.2022
Date of Pronouncement	28.11.2022

**आदेश / O R D E R****Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi, dated 12.07.2022 for A.Y. 2014-15.

The assessee has raised the following grounds before us:

- “1. *The National Faceless Appeal Centre, Delhi (hereinafter referred to as the [NFAC] erred in passing the order dated 22.03.2022 upholding the assessment order passed under section 143(3) of the Income tax Act, 1961 [hereinafter referred as 'the Act'] without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the order passed by the NFAC is against the provisions of law. Hence, the same may be quashed and set aside.*

2. *The NFAC failed to appreciate that the action of the Ld. AO in determining the total income at Rs. 4,44,95,870 as against the returned income of Rs. 13,71,370/- is arbitrary and unreasonable.*
3. *The NFAC failed to appreciate that the agreement dated 17.12.2013 was entered into by the Appellant in the regular course of its business. The consideration was provided to be accruing to the Appellant at different stages of the project on achieving certain milestones and satisfying of certain conditions. Thus, the action of the Ld. AO to add the notional income which is going to accrue at a future date is not at all justified and the same is arbitrary and unreasonable. Hence, the addition of Rs.4,31,24,500/- is unjustified and the same may be deleted.*
4. *The NFAC erred in ignoring the fact that the said two flats are not in existence till date as the said project has not yet commenced since the project plan has not yet been approved by the concerned authority. The Appellant, therefore, prays that the Ld. A.O. erred in considering Rs.4,31,24,500/- as income accrued in the hands of the Appellant even though no real income was accrued to the Appellant in the year under consideration. Thus, the addition of Rs.4,31,24.500/- is unjustified and the same may be deleted.*
5. *The NFAC erred in confirming the actions of the Ld. A.O. in suo moto determining the value of the said two flats at Rs.4,61,24,500/- as against the value ascertained by the Stamp Duty authority at Rs.1,07,66,000/- as per the agreement dated 17.12.2013. Hence, the Appellant prays that such action of the Ld. A.O. is against the provisions of section 43CA of the Act and thus, the said addition is unjustified and the same may be deleted.*
6. *The Appellant seeks leave to add, alter and amend the above grounds whenever required.”*

2. Fact in brief is that assessee is a partnership firm engaged in the business of dealing in properties and constructing building. During the course of assessment the return of income of income declaring total income at Rs.13,71,370/- was filed on 19.12.2016. The case was subject to scrutiny assessment and noticed u/s 143(2) of the Act was issued on 01.09.2015. During the course of assessment proceedings the A.O noticed that assessee had sold a property being land for a consideration of Rs. 1,56,21,000/- but offered only Rs.30 lac as sale consideration. On

verifying the sale agreement the A.O noticed the sale consideration as under:

- “1. Monetary consideration of Rs. 30,00,000/-, paid vide cheque no. 816017 for an amount of Rs 15,00,000/- dated 06.03.2013 drawn on HDFC bank and pay order of Rs. 15,00,000/- dated 17.12.2013 drawn on HDFC bank.
2. Constructed area of 1335 sq. ft. (Carpet) either in a single self-contained flat of -- BHK or in two self contained flats of -BHK each in the proposed new building on the said property to be given by the purchasers to the vendors free of cost, on ownership basis and as and by way of permanent alternate accommodation.
3. A further constructed area of 667.50 sq ft (Carpet) by way of a two bed room) hall Kitchen in the proposed new building, however the shall be entitled to exercise the option of receiving a sum of Rs. 1,00,00,000/- in lieu of area of 667 sq. ft. The said option shall be exercised on or after 01.12.2014.”

The AO by issuing of notice u/s 133(6) to the Joint Registrar Andheri asked for determining the value of abovementioned proposed constructed area of 1335 sq. ft. and proposed area on 667.50 sq. ft. The Joint Registrar worked out the value of the proposed constructed area at Rs.2,87,49,650/- and Rs. 1,43,74,850/- respectively. On query, the assessee explained that being a builder and developer the proposed constructed area cannot be accounted as sale since the said project has not been approved and started. The A.O has not agreed with the submission of the assessee and treated the entire amount of Rs.4,61,24,500/- as income of the assessee as against Rs. 30 lac on the basis that assessee was following mercantile system accounting.

3. Assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal.

4. During the course of appellate proceedings before us Id. Counsel contended that assessee is a builder and developer and the proposed constructed area was not accounted as sale because even the project has not been started and the plan was also not proved. He submitted that the lower authorities have not considered the terms and conditions mentioned in the deed of conveyance dated 17.12.2013. He also submitted that lower authorities has also not controverted the submission of the assessee regarding applicability of the Sec. 43CA in determining the value of the property since the same was of the nature of stock in trade in the hands of the assessee. The Id. Counsel has filed a copy of notice dated 11.10.2022 issued to the buyer of the assets regarding termination of registered deed of conveyance dated 17.12.2013 in respect of the impugned property on account of failure of the buyer to make compliance with the option of the assessee to provide Rs.1 crore in lieu of the said proposed construction area of 667.50 sq. ft.

On the other hand the Id. D.R contended that information about termination of the registered deed of conveyance dated 17.12.2013 and exercising of option of receiving Rs.1 crore in lieu of the said area of 667.50 sq. ft. were not in the knowledge of the A.O.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, we consider that A.O has to examine the applicability of section 43CA in the case of the assessee. Section 43CA is applicable to assessee who held land or building as stock in trade. Therefore, we direct the A.O to examine the applicability of section 43CA in computing the business profit from the transfer of such asset. Further, we find merit in the contention of the Id. D.R that breach of the condition as agreed in the said deed of conveyance dated

17.12.2013 about the failure of the buyer to pay Rs.1 crore to the assessee instead of constructed area of the 667.50 sq. ft. was not in the knowledge of the Assessing Officer. Therefore, we are of the considered view that it will be appropriate to restore this case to the file of the A.O for deciding de novo after examination and verification of the aforesaid referred material. Needless to say that assessee is at liberty to file the relevant documents and written submission before the A.O during the set aside assessment proceedings. Accordingly, the ground of appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.11.2022

Sd/-  
(Rahul Chaudhary)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 28.11.2022

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.