

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI****BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER****ITA No. 1188/Mum/2020
(A.Y.2014-15)**

M/s Deva Realtors Shop No. 33/34, Maruti Paradise, Sector 15, CBD Belapur, Navi Mumbai – 400614	Vs.	ITO 28(1)(3) Room No. 331, Tower No. 6, 3 rd Floor, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai 400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAGFD8536Q		
Appellant	..	Respondent

Appellant by :	Shri Prakash Pandit
Respondent by :	Smt. Mahita Nair

Date of Hearing	01.11.2022
Date of Pronouncement	14.12.2022

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 Id. CIT(A)-26, Mumbai, dated 11.12.2019 for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. *In the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming addition of Rs. 66,28,637/- made by A. O. by applying the provisions of section 43CA of the Income Tax Act 1961.*
2. *Reasons given by the CIT(A) for confirming addition of Rs.66,28,637/- made by A. O. by applying the provisions of section 43CA of the Income Tax Act 1961, are wrong insufficient and contrary to the facts and evidence on record*
3. *The assessee craves leave to add, amend, alter, modify or omit any of the aforesaid Grounds of Appeal as occasion may arise of demand.”*

2. There was a delay of 4 days in filing the appeal. Looking to the marginal delay in filing this appeal, the delay is condoned for deciding the appeal on merit.

3. The solitary issue in the ground of appeal of the assessee is confirming the addition of Rs.66,28,637/- made by the A.O by applying the provisions of Sec. 43CA of the Act.

4. The fact in brief is that return of income declaring total income of Rs.14,46,230/- was filed on 30.07.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.08.2015. During the course of assessment on perusal of the AIR information the A.O noticed that assessee had made sale deed registration in respect of two flats. On examination of the registration deed A.O found that sale consideration on the sale of two flats and other detail as under:

1	2	3	4	5	6=(4-5)
Flat No.	Purchasers Names	Date of Agreement	Market value of the flat as per Index - II	Sale consideration Received as Per Index-II	Difference of M.V. and Sale Consideration
901	Sudhir M. Koli & Sunita S Koli	31.05.2013	69,50,000	17,49,363	52,00,637
902	P.B. Maitam & S.P. Maitam	31.05.2013	54,28,000	40,00,000	14,28,000

After considering the fact that the sale consideration has reflected in the sale agreement was lower than the market value as determined by the stamp duty authority the A.O asked the assessee as to why provisions of section 43CA of the Act should not be applied in its case. The assessee explained that the firm has completed its project in FY. 2012-13 and received the occupancy certificate. The aforesaid flat no. 901 and 902 were withdrawn by one of the partner of the firm, Mr. Sudhir Koli against his capital contribution in F.Y. 2012-13. Accordingly, an amount of Rs.54,98,396/- being fair market value of flat no. 901 on that date was credited to the profit and loss account for the year ended on 31.03.2013. However, the agreement for the flat no. 901 was registered by Shri Sudhir Koli in subsequent financial year 2013-14. Due to the same there was variation in value as adopted by Stamp Duty Authority and the value at which it was recorded in the books of account. The assessee submitted that the transaction were recorded in the earlier years at the prevailing rate and amounts have been adjusted against partner's/personal capital account therefore objected for adding difference between amount credited to books of account and value adopted by stamp duty authorities u/s 43CA of the Act.

Similarly, in respect of flat no. 902 the assessee explained that the firm has completed its project in F.Y. 2012-13 and the said flat was withdrawn by one of partner of the firm Mr. Sudhir Koli against his capital contribution in F.Y. 2012-13. Accordingly, an amount of Rs.40 lac being fair value of said flat as on date was credited in the P & L account for the year ended on 31.03.2013 and it was also reduced from his capital in the books of account of the firm. This flat was also registered in subsequent financial year 2013-14 because of which there was a variation in value as adopted by Stamp Duty Authority and the

value at which it was recorded in the books of account. Therefore assessee requested the A.O to adopt the same value and objected for adding the difference between amount credited to books of account and value adopted by Stamp Duty Authorities u/s 43CA of the Act.

However, A.O has not agreed with the submission of the assessee and computed the sale consideration as per Sec. 43CA of the Act as under:

<i>1</i>	<i>2</i>	<i>3</i>	<i>4=(2-3)</i>
<i>Flat No.</i>	<i>Market Value of the Flat as per Index -II</i>	<i>Sale consideration Received as Per Index-II</i>	<i>Addition u/s43CA of the Act (M.V. – Sale consideration)</i>
901	69,50,000	17,49,363	52,00,637
902	54,28,000	40,00,000	14,28,000
		<i>Total</i>	66,28,637

Accordingly, an amount of Rs.66,28,637/- was added u/s 43CA of the Act to the total income of the assessee.

5. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts stated by the A.O.

6. Heard both the sides and perused the material on record. During the course of assessment as per AIR information the A.O noticed that assessee had sold two flats i.e No. 901 and 902 respectively as per agreement of sale dated 31.05.2013 for Rs.17,49,363/- and Rs. 40 lac respectively whereas the market value of the said flats have been determined by Stamp Duty Authority at Rs.96,50,000/- and Rs.54,28,000/- respectively. Therefore, the A.O assessed the difference between market value and sale consideration of Rs.52,00,637/- and Rs.14,28,000/- u/s 43CA of the Act. However, on perusal of the material on record it is noticed that vide letter dated 14.12.2016 the assessee

explained to the A.O that the project was completed in the F.Y. 2012-13 and after receiving the occupation certificate the sale consideration of Rs.54,98,396/- being the fair market value of flat no. 901 on 31.03.2013 was debited to one of the partner shri Sudhir Koli's capital account and credited to sale account. In respect of flat no. 902, sale consideration of Rs.40 lac being the fair market value as on 31.03.2013 was also debited to the capital account of partner shri Sudhir Koli and credited to sale account for the assessment year 2013-14. In case of flat no. 901 the A.O had taken the sale consideration at Rs.17,49,363/-, however, the actual sale consideration credited to the sale account was Rs.54,94,396/- and also the same amount was debited to the partner capital account. Therefore, the only difference comes to Rs.14,55,604/-. We have perused the copies of document from page no. 1 to 161 of the paper book dated 09.02.2022 which were also submitted before the A.O and ld. CIT(A) during the course of assessment and appellate proceedings. The return of income for assessment year 2013-14 was filed on 30.09.2013, the profit and loss account and balance sheet duly audited were also filed on 30.09.2013. As per profit and loss a/c the total sale was shown at Rs.15,31,51,782/- for the year under ended 31.03.2013 and book profit was shown at Rs.1,50,32,441/-. The capital account of partner Shri Sudhir Koli was debited by Rs.54,98,396/- as on 31.03.2013 as per ledger account and the same amount was reflected in the sale account at Rs.54,98,396/- for F.Y. 2012-13. However, the agreements for sale of two flats were registered in F.Y. 2013-14 due to which it was reflected in the AIR of the assessee firm pertaining to assessment year 2014-15. However, it is demonstrated from the copies of document i.e return of income, sale account, computation of income, copy of capital account of partners, that the assessee had actually shown sale in the F.Y. 2012-13

and actual difference of sale consideration as per stamp value authority and actual sale shown by the assessee in respect of flat no. 901 was only Rs.14,55,604/- as against Rs.52,00,637/- added by the assessing officer.

It is also noticed that return of income for assessment year 2014-15 was selected for scrutiny assessment only on 28.08.2015 by issuing of notice u/s 143(2) of the Act. However, the return of income showing profit before tax of Rs.1,50,32,441/- which also included sale proceeds of the said two flats was filed on 30.09.2013. The ld. D.R submitted that Sec. 43CA was inserted by the Finance Act, 2013 w.e.f 01.04.2014 and placed reliance on the decision of ITAT, Jaipur in the case of Spytech Buildcon Vs. ACIT vide 190 ITD 325 wherein held that merely because an agreement had taken place prior to 01.04.2013 would not take away transactions from ambit of provisions of Sec. 43CA of the Act. The ld. Counsel relied on the decision of Hon'ble jurisdictional High Court, in the case of Zain Construction vide writ Petition No.345 wherein held that Sec.43CA was inserted w.e.f 01.04.2014 and therefore had no applicability to the assessment year 2013-14 in that case the assessment year in question was assessment year 2013-14. In the case of the assessee it is undisputed fact that the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such assets were same as 31.05.2013, therefore, the provisions of section 43CA are applicable in the case of the assessee being A.Y.2014-15. The assessee has already credited sale consideration of Rs.54,98,396/- to the sale account as against sale consideration of Rs.17,49,363/- considered by the A.O, therefore, we direct the A.O to restrict the addition u/s 43CA in respect of flat no. 901 to the amount of Rs.14,55,604/- as against Rs.52,00,637/-. Accordingly, the appeal of the assessee is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.12.2022

Sd/-

(Vikas Awasthy)
Judicial Member

Place: Mumbai

Date 14.12.2022

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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.