

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.4974/DEL/2019
Assessment Year 2015-16

Bal Kishan Gupta B-24 A4 Shalimar Garden Extn-5 Sahibabad Ghaziabad	Vs.	ACIT Circle-60(1) New Delhi.
TAN/PAN: AIUPG2941A		
(Appellant)		(Respondent)

I.T.A. No.5111/DEL/2019
Assessment Year 2015-16

ACIT Circle-60(1) New Delhi.	Vs.	Bal Kishan Gupta B-24 A4 Shalimar Garden Extn-5 Sahibabad Ghaziabad
TAN/PAN: AIUPG2941A		
(Appellant)		(Respondent)

Assessee by:	Shri C.S. Anand, Adv Shri Ashok Aggarwal, Adv		
Department by:	Shri Kanv Bali, Sr.DR		
Date of hearing:	16	03	2023
Date of pronouncement:	29	05	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned Cross Appeals have been filed by the Assessee and the Revenue against the order of the Commissioner of Income Tax (Appeals)-XIX, New Delhi ['CIT(A)' in short],

dated 27.03.2019 arising from the assessment order dated 30.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. Both Revenue and the Assessee have challenged the first appellate order passed by the CIT(A) dated 27.03.2019 arising from assessment order dated 30.12.2017 passed under Section 143(3) of the Act.

3. The Grounds of appeal raised by the Revenue read as under:

“1. The order of the CIT(A) is bad in law and not in consonance with the facts of the case.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred by down scaling the addition of Rs.3,66,41,140/-.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in giving the assessee the benefit of section 43CA(3) of the I.T. Act.”

4. The Grounds of appeal raised by the assessee read as under:

“1. That on the facts of the case and under the law, the Id CIT(A) had erred in sustaining the addition made by the Id ASSESSEE u/s 43CA, to the extent of Rs.23,23,048/- (as per the details tabulated in respect of Rama Swarn Garden).

The Id. CIT(A) had failed to appreciate (a) that the agreements were entered into by & between the assessee and the buyers, much prior to the date of insertion of section 43CA in the I.T. Act 1961; and the assessee was not in a position to ask for monies, over & above the consideration as already agreed by & between the assessee and the buyers.

2. That on the facts of the case and under the law the Id CIT(A) had erred in sustaining the addition to the extent of Rs. 16,31,225/- (as per the details tabulated in respect of Rama Krishna Farm).

The Id. CIT(A) had failed to appreciate (a) that the agreements

were entered into by & between the assessee and the buyers, much prior to the date of insertion of section 43CA in the I.T. Act 1961; and the assessee was not in a position to ask for monies, over & above the consideration as already agreed by & between the assessee and the buyers.

3. *That on the facts of the case and under the law the Id CIT(A) had erred in sustaining the addition to the extent of Rs.6,24,316/- (as per the r details tabulated in respect of Rama Bankey Bihari Upavan).*

The Id. CIT(A) had failed to appreciate (a) that the agreements were entered into by & between the assessee and the buyers, much prior to the date of insertion of section 43CA in the IT. Act 1961; and the assessee was not in a position to ask for monies, over & above the consideration as already agreed by & between the assessee and the buyers.”

5. Briefly stated, the assessee is engaged in real estate business by way of acquisition, developing and selling of plots. The assessee filed return of income for Assessment Year 2015-16 in question declaring taxable income at Rs.22,48,840/-. The return so filed was subjected to scrutiny assessment. As per the first paragraph of the assessment order, the assessee admittedly appeared before the Assessing Officer from time to time and furnished the relevant details/information/evidences. In the course of the assessment, the Assessing Officer *inter alia* noticed that the assessee has earned income from sale of plot to the tune of Rs.2,35,74,920/-. On perusal of the sale deeds submitted by the assessee in this regard, the Assessing Officer observed that the assessee has sold various plots at a consideration which is lower than the circle rate/stamp duty rate prescribed by the State Government. The Assessing Officer invoked the provisions of Section 43CA of the Act and made an addition of Rs.3,66,41,140/- towards difference between the circle rate and the actual sale consideration received towards sale of plots under its various

plans/schemes.

6. Aggrieved by the additions so made, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee filed detailed submissions and assailed the action of the AO to artificially assume the difference between the circle rate of FY 2014-15 (AY 2015-16) and the agreement value mentioned in sale deeds as deemed income taking shelter of Section 43CA of the Act. The Assessee challenged the very applicability of S. 43CA where the agreement by way of allotment of plots were already reached with the prospective buyers much prior the insertion of S. 43CA in the Statute.

6.1 On facts, the assessee *inter alia* submitted documentary evidences towards allotment to several allottees in the earlier years, receipt of partial payments against agreed consideration in cash and in cheques, ITR, balance sheet, bank statement of the allottees etc. and broadly contended that when reckoned from the date of first payment and allotment letter determining agreement value, the circle rate of the later year would naturally show disparity due to time gap and circle rate would naturally exceed the actual sale considerations realized on sale of plots.

6.2 The CIT(A) called for the remand report on the evidences furnished by the assessee. Rejoinder of the assessee thereon was also taken note of and forms part of the first appellate order. The CIT(A) also analyzed the tabulated data placed before it towards allotment of plot to various parties under different schemes and noted that since the part payments for the plots have been received by the assessee over a period of several years against the

allotment letters, the benefit of Section 43CA(3) and (4) is required to be given and thus actual sale consideration requires to be adopted instead of circle rate wrongly adopted by the AO. It was further observed that provisions of Section 43CA inserted by Finance Act, 2013 came into force w.e.f Assessment Year 2014-15 onwards and since in the instant case, the allotment was issued much prior to that date as tabulated in the first appellate order, impugned additions made by the Assessing Officer by applying provisions of Section 43CA(4) is contrary to the judicial view in this regard. Reference was made to the decision of the Co-ordinate Bench in the case of *Index One Trade Con P. Ltd. vs. DCIT (2018) 97 taxmann.com 174 (Jaipur) (Trib.)* wherein in the similar circumstances, the additions under Section 43CA was reversed.

6.3 The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder for the sake of easy reference.

“7.1 I find that the requisite details as reproduced in para 6 above were before the A.O. On the basis of examination in one case only, the Id. A.O. has hypothesized that cash must have been received for sale. Based upon my examination, I find that this is not the correct position. In almost all cases some amount (or rather the substantive amount or almost the entire consideration) has been received by cheque. However, for purposes of benefit of section 43CA(3), the limiting condition is prescribed in section 43CA(4). Accordingly, it is relevant to find out the instances where amount was received in cash only, on or before the date of agreement. It is only in such cases that benefit of provisions of section 43CA(3) is not available to an assessee.

7.2 I have examined the documents being allotment letter, sale deeds and other records. I have downloaded published circle rate which are available in public domain on the internet. I have required the appellant to provide details, which have been provided by the appellant vide letter dated 04.02.2019 as follows:-

SH. BAL KISHAN GUPTA

Reference No.	Date of Sale Deed	Circle Rate as mentioned in sale deed (per Sq. Mtr)	Area of Plot as mentioned in Sale deed (Sq. Mtr)	A.Y. 2015-16		F.Y. 2014-15		Value Worked out by applying Circle rate as on the date of agreement	Sale Consideration Received as mentioned in sale deed
				Value as per Circle rate as mentioned in Sale Deed	Date of Agreement	Date of First Payment	Circle Rate as on the date Agreement(Sq. Mtr.)		
1	2	3	4	5	6	7	8	9	10
1/1	24.05.14	3900	125.41	490000	01.10.10	09.05.10	325	40758	171000
1/2	08.09.14	3900	418.00	1631000	03.05.12	12.03.12	350	146300	515000
2/1	11.08.14	4950	83.61	414000	20.04.12	02.03.12	3300	275913	224000
2/2	30.07.14	4500	160.5	723000	02.06.12	10.03.12	3000	481500	403200
2/3	02.05.14	4500	83.61	377000	20.04.12	06.03.12	3000	250830	210000
2/4	26.05.14	4500	169.08	761000	20.05.12	10.03.12	3000	507240	424200
2/5	22.04.14	4500	83.61	377000	12.05.12	28.02.12	3000	250830	219000
2/6	02.05.14	4500	83.61	377000	20.04.12	06.03.12	3000	250830	228000
2/7	19.08.14	4950	501.69	2484000	20.09.13	05.02.12	4950	2483366	1323000
2/8	30.07.14	5000	83.61	419000	20.04.12	16.03.12	3000	250830	219000
2/9	07.01.15	5500	83.61	460000	20.04.12	01.03.12	3300	275913	229950
2/10	16.07.14	4500	83.61	377000	10.05.12	06.03.12	3000	250830	229950
2/11	15.04.14	4500	83.61	377000	11.06.12	27.02.12	3000	250830	239400
2/12	09.01.15	5000	83.61	419000	20.04.12	28.02.12	3000	250830	228000
2/13	13.08.14	4500	83.61	377000	25.06.12	27.02.12	3000	250830	219000
2/14	07.01.15	5000	83.61	420000	05.07.12	15.03.12	3000	250830	218000
2/15	30.07.14	4950	168.89	837000	02.06.12	21.01.12	3300	557337	464500
2/16	26.05.14	4500	169.08	761000	04.09.12	06.03.12	3000	507240	483360
2/17	07.06.14	4500	83.61	377000	05.05.12	06.03.12	3000	250830	228000
2/18	30.07.14	4500	83.61	377000	11.05.12	18.03.12	3000	250830	228000
2/19	05.09.14	4500	83.61	377000	11.05.12	01.03.12	3000	250830	229500

2/20	15.04.14	4500								
2/21	26.05.14	4950	167.22	753000	11.05.12	04.03.12	3000	501660	456000	
2/22	07.06.14	4500	83.61	414000	11.05.12	15.03.12	3300	275913	229400	
2/23	31.07.14	4500	83.61	377000	11.05.12	03.03.12	3000	250830	252000	
2/24	11.08.14	4950	83.61	377000	02.06.12	01.03.12	3000	250830	240000	
2/25	07.06.14	4500	83.61	414000	11.05.12	16.03.12	3300	275913	264000	
2/26	28.07.14	4500	83.61	377000	02.06.12	06.03.12	3000	250830	240000	
2/27	11.08.14	4500	83.61	377000	05.05.12	09.03.12	3000	250830	228000	
2/28	16.04.14	4500	83.61	377000	20.09.14	03.03.12	3000	250830	288000	
2/29	31.07.14	4950	83.61	414000	11.05.12	15.03.12	3000	250830	240000	
2/30	15.04.14	4500	83.61	414000	11.05.12	24.03.12	3300	275913	264000	
2/31	15.04.14	4500	83.61	377000	05.07.12	12.04.12	3000	250830	283500	
2/31	30.07.14	4500	167.22	753000	11.05.12	23.04.12	3000	501660	520800	
2/32	11.08.14	4500	83.61	377000	04.06.12	29.04.12	3000	250830	219000	
2/33	05.09.14	4500	83.61	377000	10.05.12	10.05.12	3000	250830	260000	
2/34	09.03.15	5500	83.61	460000	06.03.13	15.01.13	4290	358587	327600	
2/35	07.05.14	4500	83.61	377000	19.07.14	18.01.13	4500	376245	370000	
2/36	22.04.14	4500	167.22	753000	19.05.13	12.05.13	3900	652158	420000	
3/1	09.05.14	4950	836.1	4139000	01.05.06	05.03.06	550	459855	500000	
3/2	01.12.14	5000	836.1	4181000	01.05.06	07.03.06	500	418050	450000	
3/3	01.12.14	5000	836.1	4181000	01.05.06	09.03.06	500	418050	450000	
3/4	01.12.14	5000	836.1	4181000	20.06.06	10.03.06	500	418050	450000	
3/5	28.07.14	4500	376.24	1694000	15.01.07	07.10.06	500	188120	337500	
3/6	28.07.14	4500	376.24	1694000	05.07.07	10.04.07	500	188120	337500	
3/6	28.07.14	4500	376.24	1694000	28.01.07	11.01.07	500	188120	337500	
3/7	28.07.14	4500	376.24	1694000	18.06.07	29.01.07	500	188120	337500	
3/8	28.07.14	4500	376.24	1694000	18.06.07	29.01.07	500	188120	337500	
3/8	28.07.14	4950	418.05	2070000	03.10.06	21.09.06	550	229928	250000	
3/9	28.07.14	4500	418.05	1882000	25.09.07	08.12.06	500	209025	250000	
3/10	24.07.14	4500	418.05	1882000	25.09.07	02.11.06	500	209025	250000	
3/11	24.07.14	4500	418.05	1882000	25.09.07	02.11.06	500	209025	250000	
3/11	24.07.14	4500	418.05	1882000	25.09.07	02.11.06	500	209025	250000	
3/11	24.07.14	4500	418.05	1882000	25.09.07	02.11.06	500	209025	250000	
3/11	24.07.14	4500	418.05	1882000	25.09.07	02.11.06	500	209025	250000	
4/1	08.01.15	5000	83.61	419000	15.09.12	22.06.12	3900	326079	180000	
4/2	08.08.14	4500	167.22	753000	10.11.12	27.07.10	3900	652158	320000	
4/2	08.08.14	4500	167.22	753000	10.11.12	27.07.10	3900	652158	320000	
4/2	08.08.14	4500	83.61	419000	10.09.12	22.06.12	3900	326079	180000	
4/3	08.01.15	5000	83.61	419000	10.09.12	22.06.12	3900	326079	180000	

SH. BAL KISHAN GUPTA				
		A.Y. 2015-16	F.Y. 2014-15	
Reference No.	Sale Consideration Received as mentioned in sale deed	Value Worked out by applying circle rate as on the date of booking	Amount worked out (excess over circle rate value)	Amount Worked out (lessor of Circle rate value)
1	2	3	4	5
1/1	171000	40758	130242	
1/2	515000	146300	368700	
2/1	224000	275913		51913
2/2	403200	481500		78300
2/3	210000	250830		40830
2/4	424200	507240		83040
2/5	219000	250830		31830
2/6	228000	250830		22830
2/7	1323000	2483366		1160366
2/8	219000	250830		31830
2/9	229950	275913		45963
2/10	229950	250830		20880
2/11	239400	250830		11430
2/12	228000	250830		22830
2/13	219000	250830		31830
2/14	218000	250830		32830
2/15	464500	557337		92837
2/16	483360	507240		23880
2/17	228000	250830		22830
2/18	228000	250830		22830
2/19	229500	250830		21330

2/20	456000	501660		45660
2/21	229400	275913		46513
2/22	252000	250830	1170	
2/23	240000	250830		10830
2/24	264000	275913		11913
2/25	240000	250830		10830
2/26	228000	250830		22830
2/27	288000	250830	37170	
2/28	240000	250830		10830
2/29	264000	275913		11913
2/30	283500	250830	32670	
2/31	520800	501660	19140	
2/32	219000	250830		31830
2/33	260000	250830	9170	
2/34	327600	358687		31087
2/35	370000	376245		6245
2/36	420000	652158		232158
3/1	500000	459855	40145	
3/2	450000	418050	31950	
3/3	450000	418050	31950	
3/4	450000	418050	31950	
3/5	337500	188120	149380	
3/6	337500	188120	149380	
3/7	337500	188120	149380	
3/8	337500	188120	149380	
3/9	250000	229928	20072	
3/10	250000	209025	40975	
3/11	250000	209025	40975	
4/1	180000	326079		146079
4/2	320000	652158		332158
4/3	180000	326079		146079
Differncial Amounts			1433799	2947364

For ready reference, I am reproducing the sample rates downloaded from the site igrsup.gov.in/igrsup/getUploadRateListDocForUser, as follows-

मूल्यांकन दर सूची
कार्यालय उप निबंधक
तहसील - छाता
जिला - मथुरा


प्रभावी दिनांक - 01.8.2010

24-7-2012 तक

अतिविशेष ग्राम


ग्राम का नाम	कृषि दर		दिक ग्राम		आवासीय ग्रामीण आवाधी		कृषिजिक दरें क्रिया प्रति का मैदा	
	प्रति हेक्टेयर		प्रति हेक्टेयर		20 फीट से कम चौड़ी सड़क पर	20 फीट से अधिक चौड़ी सड़क पर		राष्ट्रीय राजमार्ग सड़क के दोनों ओर
1. अकलपुर	25.00	22,50,000	30.00	27,50,000	1500	1800	3500	60
2. अजीमपुर	22.50	22,50,000	27.50	27,50,000	1500	1800	4000	60
3. अहमदन	24.00	22,50,000	27.50	27,50,000	1500	1500	4000	60
4. अतीकपुर	27.50	27,50,000	32.50	32,50,000	रेट लिस्ट के अनुसार			
5. मोहरी	25.00	22,50,000	30.00	27,50,000	1200	1500	4000	60
6. छाता	22.50	22,50,000	27.50	27,50,000	रेट लिस्ट के अनुसार			
7. योतान	27.50	22,50,000	30.00	27,50,000	1500	1800	4000	60
8. नवीपुर	27.50	20,00,000	27.50	27,50,000	1000	1200	4000	60
9. नमता इल्लपुर	22.50	20,00,000	27.50	27,50,000	1000	1200	4000	60
10. राहना	27.50	22,50,000	30.00	27,50,000	रेट लिस्ट के अनुसार			
11. रिताही	25.00	22,50,000	27.50	27,50,000	1100	1300	3500	60
12. सेगरी	25.00	25,00,000	27.50	27,50,000	1100	1300	3500	60
13. आइकता	27.50	22,50,000	30.00	27,50,000	1100	1300	4000	60
14. चौमुहा	30.00	27,50,000	35.00	32,50,000	रेट लिस्ट के अनुसार			


34/5/2019


उपनिर्देशक
छाता (मथुरा)


उपनिर्देशक
छाता (मथुरा)


उपनिर्देशक
छाता (मथुरा)


उपनिर्देशक
मथुरा


उपनिर्देशक
वित्त एवं राजस्व, मथुरा


उपनिर्देशक
मथुरा

https://grsup.gov.in/grsup/getUploadKaterList...

मूल्यांकन सूची विवरण

जनपद: प्रभाग:
 उप निबंधक कार्यालय: सहायक प्रभाग:
 केन्द्र: XGPFVT जलपत्र:
 केन्द्र प्रभार क्षेत्र:

मूल्यांकन सूची देखें

मूल्यांकन सूची अपलोड विवरण
 जनपद: मथुरा, उप निबंधक कार्यालय: सहायक प्रभाग

12

क्र.सं.	मूल्यांकन सूची की अवधि	कब तक	मूल्यांकन सूची की स्थिति
1	14-09-2016		प्रति देखें
2	03-06-2016	11-09-2016	प्रति देखें
3	11-09-2015	11-09-2016	प्रति देखें
4	10-09-2014	10-09-2015	प्रति देखें
5	01-09-2013	09-09-2014	प्रति देखें
6	25-07-2012	24-07-2013	प्रति देखें
7	08-07-2011	24-07-2012	प्रति देखें
8	01-09-2010	31-08-2011	प्रति देखें
9	15-10-2009	31-07-2010	प्रति देखें

सूची में मूल्यांकन सूची नहीं है

9X-224/ 22410/ 17/09/ 15.10.2008

कार्यालय उप-निबंधक मथुरा-प्रथम
कहाँ क्या है?
अनुक्रमणिका (INDEX)

Khaliq Akhmed
S.R. O/S I

नाम	पृष्ठ संख्या
उप-निबंधक के क्षेत्राधिकार का वर्गीकरण संग्रहेत	1-8
1. सेक्टर - A	9-13
2. सेक्टर - B	14-16
3. सेक्टर - C	उप-निबंधक महापत्र का सेट
4. सेक्टर - D	17-18
5. सेक्टर - E	18-23
6. सेक्टर - F	24

1. उप-निबंधक का क्षेत्र - 58
 2. उप-निबंधक का क्षेत्र - 67
 3. उप-निबंधक का क्षेत्र - 85

Further, the appellant's letter dated 18.03.2019 is as follows-

18.03.2019

To,
The Commissioner of Income Tax (Appeals)-19
New Delhi

In re: Appeal No. CIT(A)-19, Delhi/10200/ 2017-18 for A.Y. 2015-16 In the case of
BAL KISHAN GUPTA (PAN:AIUPG2941G) against assessment order dt.
30.12.2017 passed u/s 143(3)

Sir,

It is respectfully submitted that on the last date of hearing, your honour had exhaustively analyzed the documents placed on record and thereafter pointed out that in the case of Hemlata (bearing reference no. 3/10) the initial payment of Rs. 37,500/- was received in cash. Thereafter, your honour had asked to explain as to why in the case of Hemlata, the assessee's claim to apply the circle rate value as on the date of agreement be not rejected and consequently, the circle rate value as on the date of sale deed amounting to Rs. 18,82,000/- be not taken and thus the addition of Rs. 16,32,000/- be not confirmed. In this context, it is respectfully stated that the said Hemlata had deposited Rs. 37,500/- in cash on 08.12.2006 towards booking of a plot (area admeasuring 500 sq. yds) in Rama Krishna Farm (Vrindavan), at the rate of Rs. 500/- per sq. yrd. Thereafter, the assessee had booked the plot no. C-41A (area admeasuring 500 sq. yds) in Rama Krishna Farm (Vrindavan) for the said Hemlata on 22.07.2007. Thereafter the assessee had allotted the plot no. C-41A (area admeasuring 500 sq. yds) in Rama Krishna Farm (Vrindavan) to the said Hemlata on 20.09.2007. Thereafter an agreement was executed by & between the assessee and the said Hemlata in respect of the plot no. C-41A (area admeasuring 500 sq. yds) in Rama Krishna Farm (Vrindavan) on 25.09.2007. Finally, the sale deed was executed by the assessee in favour of the said Hemlata on 24.07.2014. Since the said Hemlata had already been allotted the plot no. C-41A (area admeasuring 500 sq. yds) in Rama Krishna Farm (Vrindavan) by the assessee, against sale consideration of Rs. 2,50,000/- @ Rs. 500/- per sq. yard, the assessee had no choice but to execute the sale deed in respect of the plot no. C-41A (area admeasuring 500 sq. yds) in Rama Krishna Farm (Vrindavan) in favour of the said Hemlata, without asking for even a single penny, over & above the agreed sale consideration amounting to Rs. 2,50,000/-. Your honour will appreciate that the assessee was under a legal obligation to abide by the terms of the Agreement which was entered into in the year 2007. In view of the peculiar facts and circumstances of the case of the said Hemlata, your honour is requested to kindly do not draw any adverse inference in the light of sub section 4 of section 43CA.

That on the last date of hearing, your honour had asked also to explain as to why the figure of Rs. 29,47,364/-, representing the total amount of difference between the Circle Rate Value as on the date of agreement and the actual sale consideration received by the assessee, be not adopted for restricting addition made u/s 43CA. In this context, your honour is requested to kindly at the most restrict the addition made by the Id. A.O. u/s 43CA at Rs. 3,66,41,140/- to Rs. 15,13,565/- (Rs. 29,47,364/- - Rs. 14,33,799/-) only.

Submitted

Rajendra

(APPELLANT)

8. I have analyzed the information available with me. The additions as per provisions of section 43CA(1) till (4) have been worked out hereinafter, for different schemes.

8.1 Rama Bankey Bihar Upvan

NAME OF THE SCHEME: RAMA BANKEY BIHARI UPVAN														
S.NO	Ref. No. (As given by the Appellant)	NAME OF BUYER	Plot NO.	Size of the Plot (In Sq. MTR)	Stamp Duty Rate per sq. mtr. As on date of allotment being date of agreement	Total Value as per stamp duty valuation as on date of agreement	Date of agreement being date of allotment letter	Date of Sale Deed	Stamp Duty Rate per Sq. Mtr. On the date of sale	Total Stamp Duty Valuation as on date of sale/Value Adopted	Sale Price Actually Charged, in case cash was received before date of agreement i.e. before date of allotment letter, specify the date	Difference in sale price and stamp duty price as on date of agreement letter	Whether benefit of section 43CA(B) available	Amount to be brought to tax as per provisions of Section 43CA
A	A1	A2	A3	A4	B	C (A4*B)	D	E	F	G (A4*F)	H	I (H-C)	J	K
1	1/1	Kakoli Sikdar	58	125.41	325	40758	19.08.10	28.05.14	3900	490000	171000	130242	yes	0
2	1/2	Abhishek Itha	C-38	418.06	350	146321	03.02.12	08.09.14	3900	1631000	515000	368700	yes	0

Total of column 'K' is Nil. No addition results with regard to Rama Bankey Bihari Upvan.

8.2 Rama Swarn Garden (Vrindawan)

Name of the Scheme: RAMA SWARN GARDEN (VRINDAWAN)														
S/NO	Ref. No. (As given by the Applicant)	NAME OF BUYER	Plot No.	Size of the Plot (in Sq. Mtrs.)	Stamp duty Rate per Sq. Mtr. As on date of allotment being date of agreement	Total Value as per stamp duty valuation as on date of agreement	Date of Agreement being date of Allotment Letter	Date of Sale Deed	Stamp Duty Rate per sq. mtr. On the date of sale	Total stamp duty valuation as on date of sale	Sale Price Actually Charged, in case cash note received before date of agreement, i.e. before the date of allotment letter, specify the date	Difference in sale price and stamp duty value as on date of agreement letter	Whether benefit of section 43CA (3) available	Amount to be brought in tax as per provisions of section 43CA
A	B1	B2	B3	B4	B5	C (Rs*)	D	E	F	G (Rs*)	H	I (Rs*)	J	K
1	2/1	Manish K. Agrawal	C-133	83.61	3,000	275,913	20.04.12	11.08.14	4500	414,000	234,000	(51,913)	Yes	51913
2	2/2	B. Dayal	B-81	160.50	3,000	481,500	02.06.12	30.07.14	4500	732,000	403,200	(78,200)	Yes	78200
3	2/3	Ashok Kumar Arya	C-05	83.61	3,000	250,830	20.04.12	02.05.14	4500	377,000	230,000	(40,830)	Yes	40830
4	2/4	Bhagwati Charan Dohred	B-69	169.09	3,000	507,240	20.05.12	14.05.14	4500	761,000	424,200	(81,040)	Yes	81040
5	2/5	Nitin Kumar	C-11	83.61	3,000	230,830	12.05.12	22.04.14	4500	377,000	218,000	(21,830)	Yes	21830
6	2/6	Brishabh Modi/Lachhman	C-123	83.61	3,000	230,830	20.04.12	02.06.14	4500	377,000	228,000	(22,830)	Yes	22830
7	2/7	Kareish Kumar	A-024	501.69	4,950	2,482,344	20.09.12	19.08.14	4950	2,484,400	1,313,000	(1,169,344)	Yes	1169344
8	2/8	Sanjay Goel	C-110	83.61	3,000	250,830	20.04.12	30.07.14	5000	419,000	219,000	(11,830)	Yes	11830
9	2/9	Pannu R. Kaur	C-125	83.61	3,300	275,913	20.04.12	07.03.15	5500	460,000	229,500	(65,960)	Yes	65960
10	2/10	Meyyel Sani	C-170	83.61	3,000	230,830	10.05.12	14.07.14	4500	377,000	229,500	(20,830)	Yes	20830
11	2/11	Bhavendra Jha	C-166	83.61	3,000	230,830	11.06.12	16.04.14	4500	377,000	218,000	(11,830)	Yes	11830
12	2/12	Madhu Goyal	C-220	83.61	3,000	230,830	20.04.12	09.01.15	5000	418,000	218,000	(22,830)	Yes	22830
13	2/13	Vikas Seth	C-119	83.61	3,000	230,830	28.06.12	13.08.14	4500	377,000	219,000	(21,830)	Yes	21830
14	2/14	Umesh Jain	C-233	83.61	3,050	230,830	08.07.12	07.06.15	5000	418,000	218,000	(21,830)	Yes	21830
15	2/15	Millesh Chander Tuli	B-50	168.89	3,300	557,337	02.08.12	30.07.14	4950	837,000	464,500	(92,837)	Yes	92837
16	2/16	Kamla Tyagi	B-25	169.08	3,000	507,240	04.09.12	24.05.14	4500	761,000	481,300	(81,840)	Yes	81840
17	2/17	Vedant Sethi	C-10	83.61	3,000	230,830	05.04.12	07.06.14	4500	377,000	228,000	(22,830)	Yes	22830
18	2/18	Suman Lata Sharma	C-126	83.61	3,000	230,830	11.05.12	20.07.14	4500	377,000	228,000	(22,830)	Yes	22830
19	2/19	Pramod Kumar	C-134	83.61	3,000	230,830	11.05.12	05.08.14	4500	377,000	228,500	(21,330)	Yes	21330
20	2/20	Manish Kumar	B-21	167.22	3,000	501,660	11.05.12	15.04.14	4500	733,000	456,000	(65,660)	Yes	65660
21	2/21	Gyan Moha Sharma	C-187	83.61	3,300	275,913	11.05.12	16.05.14	4950	414,000	229,400	(46,513)	Yes	46513
22	2/22	Rajender Kumar Bhasin	C-09	83.61	3,000	230,830	11.04.12	07.06.14	4500	377,000	253,000	1,170	Yes	0
23	2/23	Prakash Chand Sharma	C-106	83.61	3,000	230,830	02.06.12	11.02.14	4500	377,000	240,000	(50,830)	Yes	50830
24	2/24	Shobhit Saraswati	C-192	83.61	3,300	275,913	11.05.12	11.08.14	4950	414,000	264,000	(11,913)	Yes	11913
25	2/25	Archana Kaushik Pandey	C-90	83.61	3,000	230,830	02.06.12	07.06.14	4500	377,000	240,000	(10,830)	Yes	10830
26	2/26	Abhijeet Shekhar	C-67	83.61	3,000	230,830	05.09.12	28.07.14	4500	377,000	228,000	(22,830)	Yes	22830
27	2/27	Surbhi Sarinewat	C-136	83.61	3,000	230,830	20.06.14	14.08.14	4500	377,000	248,000	3,170	Yes	0
28	2/28	Payal Saini	C-18	83.61	3,000	230,830	11.05.12	16.04.14	4500	377,000	240,000	(50,830)	Yes	50830
29	2/29	Manisha Singhal	C-153	83.61	3,300	275,913	11.05.12	31.07.14	4950	414,000	264,000	(11,913)	Yes	11913
30	2/30	Prayish Kumar	C-173	83.61	3,000	230,830	05.07.12	15.04.14	4500	377,000	283,500	51,670	Yes	0
31	2/31	Sangeeta Devi	B-30	167.22	3,000	501,660	11.05.12	30.07.14	4500	733,000	526,800	18,140	Yes	0
32	2/32	Ravinder Kumar	C-125	83.61	3,000	230,830	04.04.12	11.08.14	4500	377,000	219,000	(21,830)	Yes	21830
33	2/33	Puja Bhasin	C-192	83.61	3,000	230,830	10.05.12	08.09.14	4500	460,000	260,000	9,170	Yes	0
34	2/34	Ved Prakash	16-75	83.61	4,200	318,447	04.03.13	08.03.15	5000	377,000	327,600	(11,047)	Yes	31047
35	2/35	Lata Saxena	C-25	83.61	4,500	374,245	19.07.14	07.08.14	4500	377,000	370,000	(6,245)	Yes	6245
36	2/36	Bimal Raj	B-18	167.22	3,000	652,158	15.08.11	22.04.14	4500	733,000	420,000	(232,158)	Yes	232158

Total of column 'K' is Rs. 23,23,048/-. Thus the amount of addition after allowing benefit of section 43CA(1), (2) and (3) is Rs. 23,23,048/-, as per the aforesaid working.

8.3 Rama Krishna Farm

Name of the Scheme: RAMA KRISHNA FARM														
S.NO	Ref. No. (As given by the Appellant)	NAME OF BUYER	Plot NO.	Size of the Plot (in Sq. MTR)	Stamp Duty Rate per sq. mtr. As on date of allotment being date of agreement	Total Value as per stamp duty valuation as on date of agreement	Date of agreement being date of allotment letter	Date of Sale Deed	Stamp Duty Rate per Sq. Mtr. On the date of sale	Total Stamp Duty Valuation as on date of sale	Sale Price Actually Charged, In case cash was received before date of agreement i.e. before date of allotment letter, specify the date	Difference in sale price and stamp duty price as on date of agreement letter	Whether benefit of section 43CA available	Amount to be brought to tax as per provisions of Section 43CA
A	A1	A2	A3	A4	B	C (A*B)	D	E	F	G (A*F)	H	I (H-C)	J	K
1	1/1	ANNU GAUR	B-22	836.1	300	430830	06.03.06	09.05.14	4900	418689	500000	40245	YES	0
2	2/2	SANTOSH GUPTA	C-26	836.1	300	418200	07.08.06	01.12.14	5000	418900	450000	31950	YES	0
3	3/0	PRADIP KUMAR AGARWAL	C-27	836.1	300	418900	09.04.06	01.12.14	5000	418900	450000	31950	YES	0
4	3/1	MEENAKSHI AGARWAL	C-2	836.1	300	418900	10.09.06	01.12.14	5000	418900	450000	31950	YES	0
5	3/2	SURMIT GUPTA	71	376.24	500	188120	07.10.06	28.07.14	4500	169300	337500	149380	YES	0
6	3/3	SUSHANT JAIN	42	376.24	500	188120	10.04.07	28.07.14	4500	169300	337500	149380	YES	0
7	3/4	INDU GUPTA	71	376.24	500	188120	11.01.07	28.07.14	4500	169300	337500	149380	YES	0
8	3/5	NEEMA JAIN	21	376.24	500	188120	29.01.07	28.07.14	4500	169300	337500	149380	YES	0
9	3/6	VIJAY KUMAR GUPTA	258	418.05	500	209025	21.09.06	28.07.14	4500	204948	250000	20079	YES	0
10	3/10	HEMATA	41A	418.05	500	209025	08.12.08	24.07.14	4500	188120	250000/22.07.14	-163225	NO	1631225
11	3/11	PAWAN KUMAR MITTAL	41B	418.05	500	209025	01.11.06	24.07.14	4500	188120	250000	40925	YES	0

Total of column 'K' is Rs. 16,31,225/-. The addition in this case results out of limiting provision of section 43CA(4) and amounts to Rs. 16,31,225/-. This is the amount that has been received on or before the date of agreement only in cash.

8.4 Rama Bankey Bihari Upvan

Name of the Scheme: RAMA BANKEY BIHARI UPVAN														
S.NO	Ref. No. (As given by the Appellant)	NAME OF BUYER	Plot NO.	Size of the Plot (in Sq. MTR)	Stamp Duty Rate per sq. mtr. As on date of allotment being date of agreement	Total Value as per stamp duty valuation as on date of agreement	Date of agreement being date of allotment letter	Date of Sale Deed	Stamp Duty Rate per Sq. Mtr. On the date of sale	Total Stamp Duty Valuation as on date of sale	Sale Price Actually Charged, In case cash was received before date of agreement i.e. before date of allotment letter, specify the date	Difference in sale price and stamp duty price as on date of agreement letter	Whether benefit of section 43CA available	Amount to be brought to tax as per provisions of Section 43CA
A	A1	A2	A3	A4	B	C (A*B)	D	E	F	G (A*F)	H	I (H-C)	J	K
1	1/1	SUNITA DEVI	C-39	83.61	3900	326079	22.06.12	08.01.15	5000	419,000	180,000	(146,079)	yes	146,079
2	2/2	ANSHUMAN DASH	31,32	167.22	3900	652158	27.07.10	08.08.14	4500	753,000	320,000	(332,158)	yes	332,158
3	3/3	SHRISHA CHOUDHARY	C-38	83.61	3900	326079	22.06.12	08.01.15	5000	419,000	180,000	(146,079)	yes	146,079

Total of column 'K' is Rs. 6,24,316/-. Thus the amount of addition after allowing benefit of section 43CA(1), (2) and (3) is Rs. 6,24,316/-.

Thus on the basis of aforesaid analysis, the following additions survive-

Sr. No	Name of the Scheme	Rs.
01	Rama Bankey Bihari Upvan	Nil
02	Rama Swarn Garden (Vrindawan)	23,23,048
03	Rama Krishna Farm (Hemlata)	16,31,225
04	Rama Bankey Bihar Upvan	6,24,316
05	Total	45,78,589

Thus in view of the aforesaid analysis, the addition amounting to Rs.3,66,41,140/- gets down scale to Rs. 45,78,589 /-.

Further the appellant has claimed set off of amounts by pleading "that the circle rate value as on the date of agreement, in few cases exceeds the actual sale consideration received by the assessee and in few cases is less than it is less than the circle rate value as on the date of agreement. The assessee has worked out the figures of such difference and has noticed that the resultant sum is Rs. 15,13,565/- (Rs. 29,47,364 - Rs. 14,33,799).

Your honor is therefore requested to kindly hold that provisions of sub-section 3 of section 43CA applies to the case of the assessee and delete the addition of Rs. 3,66,41,140/- as made by the Id. A.O without prejudice, the addition of Rs. 3,66,41, 140/- may kindly be restricted to Rs. 15,13,565/-."

Even with regard to addition of Rs. 16,31,225/- as in the case of Hemlata, as referred to in para 8.3 above, the appellant pleaded that the intention of law was to provide relief when booking/allotment/agreement was done in the prior year. As such, the condition of not having received cash should not be read into the provisions. To this effect, the appellant sought to rely upon order of Hon ble ITAT in the case of Indexone Tradecone (P) Ltd. vs. DCIT, reported as 97 taxmann.com 174(Jaipur) 172 ITD 396, date of order 16.07.2018. Para 12 and 13 of that order are as follows-

"12. The provisions of section 43CA have been inserted by the Finance Act, 2013 we.f 01.04.2014 relevant to assessment year 2014-15 and if we look at the provisions of sub-section (3) and sub-section (4), it emphasizes a scenario where the date of agreement fixing value of consideration for transfer of the assets and date of registration are not the same and provides that the value as on the date of agreement would be considered provided the amount of consideration or part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the assets.

13. In the present case, where the date of agreement to sell in respect

of the two flats is 9.4.2007, which is much prior to the financial year relevant to assessment year 2014-15 when the provisions of section 43CA have become effective, there is no way the assessee would have foreseen these provisions at the time of entering into the agreement to sell that it has to receive the consideration only by any mode other than cash. At the relevant point in time when it had entered into agreement to sell, there was no such requirement of receiving the whole of the consideration in mode other than cash. Therefore, in order to make the provisions of sub-section (4) workable, in our view, the provisions of sub-section (4) would be applicable in respect of agreement to sell for transfer of an asset which has been executed on or after 1st April, 2013 and thus, not applicable in the instant case. The matter is accordingly remanded back to the file of the Id CIT(A) to determine the valuation of the two properties in terms of sub-section (3) as on the date of agreement to sell which is 9.4.2007 and where it is so determined that such valuation is higher than what has been declared by the assessee, the same can be brought to tax in the year under consideration."

I note that what the appellant want is a different interpretation. In my understanding when the provisions are clear and unambiguous no laws of interpretation or intention have to be referred to. This argument/consideration/ fact was not before the Hon'ble ITAT. Accordingly, the plea of the appellant with regard to addition of Rs. 16,31,225/-, is rejected.

I note that based on my examination and analysis, the addition of Rs. 45,78,589/-, is to survive. The assessee however, has pleaded for a set off as detailed in the earlier paragraph, and after set off, according to the appellant, at best and without prejudice, even the addition of Rs. 29,47,364/- may get down scaled to Rs. 15,13,565/-. I am of the view that law does not provide for such a set off. Therefore, this plea of the appellant is to be rejected summarily. The appellant in his pleadings during the course of hearing explained that even as per the A.O., no amount of sale consideration has been received over and above the sale consideration. The appellant pleaded that there is no concealment whatsoever, and therefore, the income actually received and shown in the sale deeds is to be considered. I note that this is not a case where any concealment has been made or detected. I also note that the case here is not that of receipt of consideration over and above the sale deed consideration.

However, the addition has been made on account of provisions of law contained in section 43CA(1) till 43CA(4) of the Income Tax Act, 1961. In this view of the matter also, the appellant's plea of deletion of addition or restricting the addition to Rs. 15,13,565 /- is also to be rejected.

10. In final analysis, the appellant succeeds in part in this appeal. The addition amounting to Rs. 3,66,41,140/-, gets down scaled to Rs. 45,78,589/-."

7. Based on appreciation of facts and legal position, the CIT(A) in the final analysis granted substantial relief to the assessee and scaled down additions under Section 43CA of the Act from Rs.3,66,41,140/- to Rs.45,78,589/-.

8. Aggrieved by the partial relief, both the Revenue and assessee are in appeal before the Tribunal as per their respective cross appeals.

9. With reference to revenue appeal, the ld. DR for the Revenue supported the action of the Assessing Officer and submitted that the provisions of Section 43CA inserted by Finance Act, 2013, the Assessing Officer has merely adopted the circle rate instead of agreement rate/allotment rate in tune with Section 43CA of the Act. The Ld. DR thus submitted that where the circle rate is in excess of the actual sale consideration, the actual sale consideration is required to be substituted by the deeming provisions of S. 43CA in force and the no fault could be found with the action of AO.

10. As regards appeal of the assessee on the addition of Rs.16,31,225/- in the case of Hemlata as confirmed by the CIT(A), the ld. DR relied upon the averments made in the first appellate order and submitted that the law under Section 43CA has been correctly applied for this allottee.

11. The ld. counsel for the assessee, on the other hand, strongly relied upon the submissions made before the CIT(A) and the findings thereon by the CIT(A). The Ld. Counsel submitted that the payments were received and the allotment letters were issued as tabulated by the CIT(A) in its detailed order while analyzing the factual matrix. It was submitted that the AO has grossly erred in applying the stamp duty rate/ circle rate despite the fact that the

plots were allotted in different years much earlier to the assessment year AY 2014-15 when Section 43CA came into force. It was asserted that at the time of allotment and fixation of sale consideration, the provisions of Section 43CA was not in existence and could not be visualized by the assessee. It was thus submitted that the CIT(A) has rightly endorsed the legitimate action of the Assessee and applied the law correctly in sync with judicial dicta while granting relief.

12. As regards the assessee appeal, the ld. counsel submitted that he does not seek to press all other grounds except ground no.2 concerning addition of Rs.16,31,225/- in respect of plot at Rama Krishna Farm allotted to Hemlata. The ld. counsel thus submitted that all other grounds may be treated as not pressed except ground no.2 of the assessee appeal.

13. As regards the additions under Section 43CA in respect of Hemlata, the ld. counsel submitted that *de facto* agreements were duly entered into by and between the assessee and Hemlata, i.e., the buyer and also other buyers on issuance of allotment letter much prior to the date of insertion of Section 43CA of the Act and therefore, the stamp duty rate / circle rate of the current year cannot be applied for the actual consideration agreed on allotment of plots in the earlier years. The payment in cash was not a bar at the time of allotment. The bar placed by Section 43CA coming into force subsequently could not be adopted for the purposes of disallowance. The ld. counsel thus submitted that while the CIT(A) has applied the principles of law correctly in respect of other allotments, no justifiable reason has been assigned for denying the relief in respect of allottee Hemlata and additions of Rs.16,31,225/- has been wrongly affirmed with the aid of Section 43CA which requires to be

reversed.

14. We have carefully considered the rival submissions and perused the material available on record.

15. The application of Section 43CA in the facts of the case of AY 2015-16 is in question. Section 43CA has been inserted by Finance Act, 2013 and is applicable from Assessment Year 2014-15 onwards corresponding to previous year 2013-14. On a broader reckoning, section 43CA [w.e.f. 1-4-2014] of the Income-tax Act create deeming fiction as regards *full value of consideration received* on transfer of asset, being immovable property. Consequently, where the consideration for the transfer of an asset (other than a capital asset), being land or building or both, is less than the value adopted for stamp duty purposes, the value so adopted or assessed shall be deemed to be the full value of consideration *for the purposes of computing income under the head profits and gains of business or profession.*

15.1 In the case under consideration, the applicability of S. 43CA has been subject matter of controversy. In the present case, the undisputed facts are that the assessee, engaged in real estate business, has received a part consideration of certain mutually agreed sale price and issued allotment letters in lieu thereof towards sale of plots to various allottees. The Assessee has received majority payment through banking channel in the earlier years much prior to the insertion of Section 43CA of the Act w.e.f 1-4-2014 i.e AY 2014-15. The AO however, applied the provisions of section 43CA and substituted the sale consideration determined at the time of allotment of plots to various customers with the corresponding stamp duty valuation applicable for this year where agreement for sale of plot was executed for the purposes of transfer of plots. The CIT(A) took cognizance of the allotment letter and noticed that it is

actually an agreement where the sale consideration is already fixed at the time of allotment in the light of judgment of the Hon'ble Supreme Court in the case of *DLF Universal Ltd. vs. Appropriate Authority & anrs.* 243 ITR 730(SC); *R. N. Sons (P) Ltd. vs. Appropriate Authority* 330 ITR 455(Del.). The CIT(A) thus observed that the date of agreement of transfer (by way of allotment of plots) is different than the date of transfer during the AY 2015-16 in question and hence the stamp duty value as on the date of agreement by way of allotment letter is to be considered as full value of consideration and not the stamp duty value as on the date of transfer. Several decisions of co-ordinate bench of tribunal were referred to and relied upon.

15.2 The assessee points out that the CIT(A) has analyzed the provisions of Section 43CA of the Act in conjunction with the judicial precedents with reference to the purport of allotment letter / agreement with various allottees and found merit in the plea of the assessee towards non applicability of Section 43CA in the facts of the case where the obligation to handover the plots to various allottees at a pre-determined consideration already arose to the assessee prior to the insertion of S. 43CA in the statute. The CIT(A) thus agreed with the contention of the assessee for adoption of predetermined value for sale as the full value of consideration. The CIT(A) found that where the assessee committed for proposed sale and offer were accepted by the allottees of the plots at certain price much prior to the insertion of S. 43CA, the circle rate notified in the year of transfer can not be adopted for the purposes of S. 43CA.

15.3 The Assessee contends that where allotment were issued much prior to the financial year relevant to assessment year 2014-15 when the provisions of Section 43CA have become effective, there is

no way an assessee could have foreseen these provisions at the time of allotment. Besides, at the relevant point in time when the allotment letter were issued there was no such requirement of receiving the whole of the consideration in the mode other than cash. In fact, as stated, the assessee has received majority payment by cheque in the earlier years from various allottees, except in the case of an allottee namely 'Hemlata' where a part of the consideration of Rs. 37500/- was received in cash on 08/12/2006.

15.4 The issue is squarely covered in favour of the assessee by hosts of the judgments including *Index One Trade Con P. Ltd. (supra)*.

16. On appraisal of the factual analysis carried out by the CIT(A) and applicable legal position thereon, we see no perceptible error in the findings rendered by the CIT(A) on first principles that the circle rate on the date of agreement can not be substituted for agreed and actual sale consideration determined in terms of allotment letter whereby the contractual obligations to transfer the plots had already been fastened on the assessee in the earlier years, much prior to insertion of s. 43CA. The relief thus granted by the CIT(A) is in tune with the schematic interpretation of S. 43CA and thus deserves to hold the field. Hence, We decline to interfere. The appeal of the revenue thus fails.

17. We now turn to the appeal of the Assessee seeking to challenge the denial of relief granted in the case of one allottee namely, Hemlata on the ground that allotment letter for transfer of plot has been issued for consideration received in cash albeit in FY 2006-07.

17.1 The CIT(A) denied relief and sustained application of S. 43CA

to transaction carried out in cash in the earlier year taking shelter of sub-section (4) of Section 43CA of the Act. The action of the CIT(A) is squarely opposed to the decision of the co-ordinate bench in *Indexone* (supra). We see no justifiable reason to deny the benefit of agreement value instead of circle rate in the case of Hemlata where the condition of receipt in cheque has been unjustly read into the provisions in contradiction to the judgment of the Co-ordinate Bench in *Index One Trade Con P. Ltd.* The transaction in cash occurred in AY 2007-08 when the provisions of Section 43CA was not at all existing in statute book.

17.2 Significantly, the assessee is in the business of real estate and has issued allotment letters for sale of plot to large number of parties and sold about 70 plots. Thus, the assessee has not entered into an isolated instance of allotment of plot with Hemlata alone. Large number of allotments shows the *bona fide* of the *modus operandi* of the assessee. When tested on the touchstone of preponderance of probabilities, the *bona fide* transaction and contractual commitment with Hemlata way back in FY 2006-07 cannot be doubted merely to invoke and apply a prospective law of S. 43CA. It was only initial payment of Rs.37,500/- which was received in cash from Hemlata. The booking amount in cash was received way back on 08.12.2006 for a plot in Rama Krishna Farm Vrindavan. The formal booking of plot was carried out on 22.07.2007 and allotment letter was accordingly issued to her on 25.09.2007. The sale agreement was executed by and between the assessee and Hemlata for the sale of plot in FY 2014-15 on 24.07.2014 and registered in favour of Hemlata on 28.07.2014. Since the plot was already allotted by the assessee against the sale consideration of Rs.2,50,000/-, the assessee had no choice but to execute the sale deed in respect of plot no. C-41A admeasuring 500

sq. yard in Rama Krishna Farm in favour of Hemlata and in the wake of contractual obligations to abide by the terms of agreement entered in the year 2007, there was no reason to draw adverse inference against the assessee under Section 43CA(4) of the Act inserted w.e.f Assessment Year 2014-15. The addition of Rs. 16,31,225 attributable to allotment carried in the name of Hemlata is thus wholly unjustified.

17.3 Hence, in respect to appeal of the assessee, we find justifiable reason to reverse the action of the CIT(A) to the extent of additions confirmed for transaction with Hemlata amounting to Rs. 16,31,225/-. The action of the CIT(A) to this extent is thus set aside and reversed.

17.4 Other issues raised in the grounds of appeal by the assessee remains uncontested in the course of hearing and are thus dismissed as not pressed.

18. In the result, the appeal of the Revenue is dismissed while the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 29/05/2023

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /05/2023
prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**