

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2924/Mum/2022
(A.Y: 2014-15)

ACIT, Circle – 14(1)(1), Room No. 432, 4 th Floor, Aayakar Bhavan, MK Road, Mumbai- 400020.	Vs.	M/s. Akshay Infrastructure Pvt Ltd. 102, Siddhivinayak CHSL, Tilak Nagar, Chembur, Mumbai-400089
PAN/GIR No. : AAHCA2331A		
Appellant	..	Respondent

Cross Objection No. 53/Mum/2023
(A.Y: 2014-15)

M/s. Akshay Infrastructure Pvt Ltd. 102, Siddhivinayak CHSL, Tilak Nagar, Chembur, Mumbai-400089	Vs.	ACIT, Circle – 14(1)(1), Room No. 432, 4 th Floor, Aayakar Bhavan, MK Road, Mumbai- 400020.
PAN/GIR No. : AAHCA2331A		
Appellant	..	Respondent

Assessee by :	Mr.AjaySingh&Mr.YogeshJojode,AR
Revenue by :	Mr.Manoj Kumar Singh,DR

Date of Hearing	13.07.2023
Date of Pronouncement	25.07.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the CIT(A)/National Faceless Appeal Centre (NFAC), Delhi passed u/s 250 of the Act and the assessee has filed cross objections.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay of 150 days in filing the cross objections (CO) before the Hon'ble Tribunal and filed an affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld.DR has no specific objections. Accordingly, condone the delay and admit the CO.

3. The revenue has raised the following grounds of appeal.

1"On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the A.O of Rs. 4,28,02,896/- on account of disallowance u/s 43CA of the Income Tax Act merely relying on the submissions made by the A.R. of the assessee and on the basis of various judicial decisions made by the courts without considering the genuine fact of the case".

2. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

3. "The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary."

4. The brief facts of the case are that, the assessee company is engaged in the business of construction of residential and commercial complexes and construction of own building for lease and job works related to infrastructure. The assessee has filed the return of income for the A.Y 2014-15 on 30.11.2014 disclosing a total income of Rs. Nil and carry forward current year loss is Rs.1,86,2714/-.Subsequently, the return of income was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with the questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. Further, the Assessing Officer(A.O) has issued notice u/s 142(1) of the Act dated 07.11.206 to submit the details of the flats sold during the year along with the name of the purchaser, PAN, consideration received, stamp value of the property, market value of the property and the brokerage on sale of flat. In compliance to the notice, the assessee has filed the submissions on 07.12.206. The AO on

perusal of the facts and information submitted by the assessee found that during the F.Y 2013-14 the assessee has received Rs.6,23,79,202/- as sale consideration in respect of properties/flats and whereas the market value of the same properties are valued at Rs.10,47,81,896/- and the A.O has issued show cause notice to the assessee to explain why the sale consideration of the flats sold during the year should not be considered at market value as per the provisions of Sec.43CA of the Act.

5. Whereas the assessee has filed detailed submissions on 19.12.2016 placed at Para 3.3 of the assessment order mentioning that the flats were booked by the customers in the F.Y.2010-11 and were registered in F.Y 2014-15, hence the value of sale consideration should be stamp value as on the date of booking be adopted. The A.O found that the assessee has submitted only a letter head mentioning the aggregate price exclusive of car park, deposits and saleable area referred at Para3.4.1 of the order and not the agreement of sale specifying the booking amount paid as per Sec43CA(4) of the Act. The AO has dealt on the explanations and is of the opinion that there is a

transfer of property and the provisions U/sec43CA of the Act shall come into force in the A.Y 2014-15 as the agreements are registered and the market value as per stamp duty authorities has to be adopted. The A.O observed that the assessee could not substantiate that the agreement of sale was entered. Further there is no compliance to the provisions of Section 43 CA(3) of the Act that consideration or part thereof is to be paid on or before date of agreement by any mode other than cash. Whereas, the consideration disclosed in respect of one flat purchaser vide letter dated 30.11.2010 is Rs.24,98,250 but only Rs.11,000/- paid and the letter does not specify the mode of payment other than cash. Finally the A.O was not satisfied with the explanations as the provisions of Sec.43CA of the Act are very clear with respect to the transfer of the assets and the market value. The A.O has made an addition of difference in market value of flats and sale consideration received of Rs.4,28,02,896/- and passed the order u/s 143(3) of the Act dated 26.12.2016.

6. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has

considered the grounds of appeal, submissions of the assessee and findings of the AO and judicial decisions and deleted the addition and allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal.

7. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in granting the relief to the assessee overlooking the facts that the provisions of Sec. 43CA of the Act are to be interpreted as per the law and the CIT(A) has considered only the submissions of the assessee and relied on the judicial decisions and granted the relief. Further there is no clarity on the reference to booking amount paid and the agreement of sale was not produced before the AO in the assessee proceedings and the Ld.DR prayed that the order of the AO be restored and allow the revenue appeal.

8. Per Contra, the Ld.AR supported the order of the CIT(A) on this disputed issue and the assessee has filed the cross objections for the additional relief. The Ld.AR submitted that the assessee has a good case on merits and has filed an application for admission of

the additional evidence under Rule 29 of ITAT rules and prayed for admission of additional evidence and substantiated the submissions with the factual paper book.

9. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in deleting the addition u/sec43CA of the Act though the transactions are not supported with the documentary evidences and the CIT(A) has relied only on the assessee submissions. Whereas, the Ld.AR emphasized that the assessee has submitted the details as called for by the authorities. And now, the assessee is filling the application for admission of additional evidences under Rule 29 of ITAT rules with the copy of valuation report of flats, shops and sale agreement which were not available earlier and could not produce before the lower authorities. Further the evidences play important role in decision making in the adjudicating proceedings. The Ld.DR referred to page 174 of the paper book where the sale deed has been placed and there is no mention of payment of Rs.11,000/- other than cash at the time of booking.

Therefore, considering the facts, circumstances and evidences, we are of the opinion that the assessee should not suffer for non filing of material information. Hence, to meet the ends of justice, we set aside the order of the CIT(A) and restore the entire disputed issues to the file of the CIT(A) decide afresh on merits and the assessee should be provided adequate opportunity of hearing to file the information and evidences. Accordingly, we allow the grounds of appeal of the revenue for statistical purposes.

CO. No. 53/Mum/2023, A.Y 2014-15

10. Since the revenue appeal is restored to the file of the CIT(A) to adjudicate afresh on merits and accordingly C.O filed by the assessee for claim of further relief is also restored to the file of the CIT(A).

11. In the result, the appeal filed by revenue and the C.O filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 25.07.2023.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER
Mumbai, Dated 25.07.2023

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

ITA Nos. 2924/Mum/2022
CO No. 53/Mum/2023
M/s Akshay Infrastructure Pvt Ltd., Mumbai.

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KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//0

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(Asst. Registrar)
ITAT, Mumbai