आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 752 & 753/JPR/2023
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Krishnaraj Build Home Private Limited, P. No. 9, Officers Campus Vaishali Nagar, Jaipur	बनाम Vs.	Income Tax Officer Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJCS 5906 P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Mukesh Kumar Sharma (Adv.)
राजस्व की ओर से/ Revenue by : Sh. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 09/01/2024
उदघोषणा की तारीख/Date of Pronouncement: 14/02/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

There are two appeal filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] both for the assessment year 2014-15 and dated 06.12.2023, which in turn arises from the order passed by the ITO, Ward 2(2), Jaipur passed under Section 143(3) & 271(1)(c) of the Income tax Act, 1961 (in short 'the Act') dated 31.10.2016 & 25.04.2017 respectively.

2. In ITA No. 752/JP/2023, the assessee has taken following grounds in this appeal;

> *"1. Under the fact and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 1,26,87,868/- made by the Learned Assessing Officer u/s 43CA of the Income Tax Act, 1961 by considering the value for the purpose of stamp duty at Rs. 2,77,87,868/- as sale consideration against the actual sale consideration of Rs. 1,51,00,000/- and ignoring the 90% payment made by the seller within 4-5 days of agreement dated 10.09.2008 prior to registration date of 21.03.2014.*
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> *2. Under the fact and circumstances of the case the Learned CIT(A) has erred in applying the provisions of section 43CA(1) of the Income Tax Act, 1961 ignoring the proviso to section 43CA(3) and 43CA(4) of the Income Tax Act, 1961.*
>
> *3. The appellant begs permission to add amend or alter any of the grounds of appeal before the hearing of appeal."*

2.1 In ITA No. 752/JP/2023, the assessee has taken following additional grounds;

Additional Ground No.1

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in dismissing the appeal of the assessee without considering the detailed submission made before him on 19/11/2021.

Additional Ground No.2

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in sustaining the addition of Rs.1,26,87,868/- made under section 43CA of the Income Tax Act, 1961, ignoring the fact that the date of agreement for sale of the immovable property is 10/09/2008, which is much prior to the Assessment Year 2014-15, when the provisions of Sec. 43CA have become effective and, as such, the assessee would not have foreseen these provisions at the time of executing agreement to sell that it has to receive the sale consideration by any other mode other than cash before the date of agreement.

Additional Ground No.3
On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in not quashing the assessment order on account failure to follow the mandatory procedure laid down in Sec. 43CA(2) with reference to sub-section (2) and (3) of Section 50 C of the IT Act, 1961."

2.2 In ITA No. 753/JP/2023, the assessee has taken following grounds in this appeal;

> *"1. Under the fact and circumstances of the case the Learned CIT(A) has erred in confirming penalty of Rs. 41,16,578/- u/s 271(1)(c) of the Income Tax Act, 1961 made by the Learned Assessing Officer without considering the submission and case laws referred by the assessee.*
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> *2. Under the fact and circumstances of the case the Learned CIT(A) has erred in confirming penalty of Rs. 41,16,578/- u/s 271(1)(c) of the Income Tax Act, 1961 as the addition was made by the Learned Assessing officer by adopting the stamp duty of Sub-registrar where the assessee has not concealed any income.*
>
> *3. The appellant begs permission to add amend or alter any of the grounds of appeal before the hearing of appeal."*

3. Since both the appeal is of the same assessee and related to same assessment year and argued on the same day we are deciding these two appeal by common order. First, we take up the appeal of the assessee in ITA No. 752/JP/2023.

3.1 The fact as culled out from the records is that the assessee is a Private Limited Company registered with the Ministry of Corporate Affairs under the provisions of Companies Act. The

assessee company is incorporated with an object to work in construction and real estate business. The assessee company had filed its return of income declaring profit of Rs. 16,08,560/-. The case of the assessee was selected for limited scrutiny on the basis of the CASS. Notice u/s. 143(2) was issued on 03.09.2015 and duly served upon the assessee. During the year under consideration the assessee has declared total revenue from operation of Rs. 1,51,00,000/-. Apart from it the assessee has shown other income of Rs. 48,58,057/-. The assessee has declared total revenue receipt from the sale of property to Shri Rajendra Kumar Kedia. Perusal of sale deed, the ld. AO noted that the sub-registrar has adopted the sale consideration of property sold at Rs. 2,77,87,868/-. However, the assessee has shown sale consideration of property at Rs. 1,51,00,000/-. The assessee was asked to furnish the justification of sales consideration less than the value adopted by the Sub-Registrar. The assessee has submitted written reply stating that “assessee is engaged in the business of construction and real estate and the immovable property sold by the assessee is its stock in trade and not capital asset (thus, section 50C is not applicable)”. The assessee has sold

the property in question for a value below the value assessed for stamp duty. The agreement as well as the consideration for the property has been done/ received in the preceding year by banking mode (major payment). The immovable asset being held as stock in trade, section 43CA was not applicable considering the fact that the transaction of sale was over in preceding year only. The copy of ledger of customer Mr. Rajendra Kumar Kedia along with the copes of service tax return were kept on record. The turnover shown in the books matches the service tax return. From the details already on record the ld. AO noted that the assessee has received part payment through cheque on 15/9/2008 that is after the date of agreement and on the date of agreement payment of Rs. 1,00,000 was accepted in cash having date 14/08/2008. Further no such payment was mentioned in the copy of agreement furnished the assessee has received part payment other than cash after the date of agreement therefore in the case of the assessee, the provision of section 43CA(1) is clearly applicable. The assessee has not furnished explanation in spite of providing repeated opportunities and sufficient time. Thus the sale consideration of property sold is adopted as □2,77,87,868 in place

of □1,51,00,000/-. Thus, the addition of □ 1,26,87,868 was made to the total income of the assessee u/s. 43CA.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A)/NFAC. Apropose to the grounds so raised the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below:

"9.0 From the perusal of the assessment order, it is seen that opportunities were provided to the appellant at the time of assessment vide letters dated 28.08.2016, 05.10.2016, 21.10.2016 and 24.10.2016. The appellant initially furnished the details but subsequently did not comply with the opportunities provided by the ld. AO. Under the circumstances, I do not agree with the contention of the appellant that sufficient opportunity was not provided by the ld. AO. From the Assessment Order, it is also clear that the assessee received part payment by cheque on 15.09.2008 i.e., after the date of agreement. The assessee received only cash of Rs. 1,00,000/- at the time of agreement. Therefore in the case of assessee, the provision of section 43CA(1) is clearly applicable. The assessee did not furnish any explanation despite several opportunities provided at the time of assessment. I also do not find that appellant has made any claim before the Ld. AO that the matter of valuation should be referred to valuation officer. Accordingly, I find that the sale consideration of property sold as adopted by Ld. AO at Rs. 2,77,87,868/- based on valuation by the stamp authority is correct. Thus, the addition of Rs. 1,26,87,868/- is made to the total income of the assessee u/s 43CA is upheld. The ground of the appellant is dismissed."

5. As the assessee has not received any relief from the first appellate authority, the assessee prefers the present appeal on the grounds so raised and reiterated herein above. In support of the various grounds so raised the ld. AR appearing on behalf of the

assessee has placed their written submission which is extracted in below;

"The assessee is a private limited company engaged in the business of real estate. The assessee filed return declaring total income of Rs. 16,08,560/- for assessment year 2014-15 on 30/09/2014. The case was selected for limited scrutiny under CASS. The assessment stands completed on total income of Rs. 1,42,96,430/-, vide order u/s 143(3) dated 31/10/2016, by making an addition of Rs. 1,26,87,868 under section 43 CA of the Income Tax Act, 1961, being the difference in the value/sale consideration of the of property as shown by the assessee at Rs.1,51,00,000/- and value adopted by the Sub-Registrar for stamp duty purposes at Rs. 2,77,87,868/-.

Aggrieved with the assessment order, the assessee preferred an appeal before the Learned CIT(A). the Learned CIT(A), NFAC, Delhi, vide order dated 06/12/2023, dismissed the appeal of the assessee without appreciating the facts of the case and the detailed submission made by the assessee.

Aggrieved with the order of the Learned CIT(A), the assessee is in appeal before the Hon'ble Tribunal.

Before discussing the grounds of the case, it would be relevant to discuss the facts of the case in brief hereunder :-

BRIEF FACTS OF THE CASE

The assessee company entered into an agreement on 10/09/2008 with Shri Rajendra Kumar Kedia to sell the immovable property consisting of unit no. 115 to 118 on first floor and unit no. 201 to 218 on second floor of Arcade Building constructed on plot no. K-12, Malviya Marg, C-Scheme, Jaipur for a consideration of Rs. 1,51,00,000/-. The total consideration was received as under :-

S.No	Amount (Rs)	Mode of payment	Date	Bank
1	1,00,000	Cash	14/08/2008	--
2	1,34,90,000	Ch.No.141213	15/09/2008	ICICI Bank C

				Scheme, Jaipur
3	14,94,900	Ch.No.352562	19/03/2004	Vijaya Bank, Vidhyadhar Nagar, Jaipur
4.	15,100	Adjustment of TDS vide challanNo.48378 dated 20/03/2014 HDFC Bank		

During the year under consideration, i.e. Assessment Year 2014-15, sale deed was registered on 21/03/2014, wherein the Stamp Valuation Authority adopted the value at Rs.2,77,87,868/- as against sale consideration of Rs. 1,51,00,000/- received by the assessee. Thus, the value adopted by the Sub-registrar for purposes of Stamp Duty & Registration at Rs. 2,77,87,868/- was much more than the actual sale consideration (i.e. Rs.1,51,00,000) by Rs. 1,26,87,868/-. Copy of agreement executed on 10/09/2008 is available on Paper Book Page No. 1-12 and sale deed registered on 21/03/2014 is available on Paper Book Page No.13-34. The Learned Assessing Officer did not accept the contention of the assessee that provisions of Sec. 43 CA are not applicable in its case as the agreement for sale of the immovable property was executed on 10/09/2008, which is much prior to the A.Y. 2014-15, when the provisions of Sec. 43 CA became applicable. The assessee also contended that the immovable property was sold below the stamp duty value adopted by the Stamp Valuation Authority. However, the Learned Assessing Officer did not accept the submissions of the assessee, nor the case was referred the matter of valuation to the Valuation Cell of the Department in view of the provisions of Sec. 43 CA(2) read with section 50C(2)(a) of the IT Act,1961. The Learned Assessing Officer had straight way made an addition of Rs. 1,26,87,868/- (Rs.2,77,87868 – 15100000) u/s 43CA of the Income Tax Act,1961. No effective opportunity was granted to the assessee for putting the defense. Further the Learned Assessing Officer has also not followed the statutory procedure laid down u/s 43CA of the Income Tax Act, 1961.

Against the assessment order, the assessee preferred appeal before the ld CIT(A). The learned CIT(A), NFAC, vide order appellate order dated 06/12/2023, dismissed the appeal of the assessee, without even considering the detailed submissions filed online by the assessee on 19.11.2021.

Aggrieved with the order of the Learned CIT(A), the assessee has filed appeal before the Hon'ble Tribunal. The assessee, while filing of appeal before the Hon'ble Tribunal , due to inadvertence, could not take grounds of

appeal which go to the root of the matter. Separate application has been filed for admitting the additional grounds. It is submitted that the additional grounds arise out of the order of the Learned Assessing Officer/CIT(A) and do not require any additional evidence. The same are first taken for discussion.

Additional Ground No.1

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in dismissing the appeal of the assessee without considering the detailed submission made before him on 19/11/2021.

It is submitted that the assessee had filed a detailed reply along with paper book before the Learned CIT(A) on 19/11/2021, vide acknowledgement No.856678541191121. In the remarks column of e-proceedings response form, the assessee had also submitted that if the CIT(A) requires further clarification on the issue, the assessee is ready to file the same. A copy of the detailed reply submitted is available on Paper Book Page No.35-43. However, the Learned CIT(A) has not made any discussion in respect of the various points raised, submissions made and case laws cited in the reply by the assessee . The assessee had filed a detailed submission of 1-18 pages, wherein various points, such as violation of procedure laid down u/s 43 CA read with section 50C, infringement of right of the assessee, valuation adopted by the Registration authority is not to be followed as a rule of thumb, not allowing the benefit of provisions of Sec. 43CA(3) and 43CA(4) etc., were raised. Decisions rendered by various Courts were also quoted to support the submission made. The Learned CIT(A) failed to deal with the points raised by the assessee in support of the grounds of appeal and passed the appellate order after quoting the paras of the assessment order passed by the Learned Assessing Officer. On page 4 to 7, the Learned CIT(A) has merely quoted the order of the Learned Assessing Officer. The Learned CIT(A) miserably failed to discuss the grounds and submissions made and case-laws quoted in support of the same by the assessee in its reply dated 19/11/2021 and to give his findings on the same. The Learned CIT(A) , being a quasi-judicial authority, ought to have dealt with the grounds raised by the assessee, submissions made in support of the grounds and case laws cited in support of the submission and passed a speaking order in accordance with law. Having not done this, the order passed by the Learned CIT(A) is in violation of the principles of natural justice and, therefore, the same deserves to be quashed. The following case-laws are quoted in support :-

(1) Kishan Lal v. UOI [1998] 97 Taxman 556 (SC)

A speaking order reduces arbitrariness. A reasoned order speaks for itself. It embodies in itself the principles of natural justice.

(2) ACCT Contract and Leasing Quota v. Shukla & Bros. [2010] (4) JT 35 (SC)
It shall be obligatory on the part of the judicial or quasi-judicial authority to pass a reasoned order while exercising statutory jurisdiction. In the absence of a reasoned order, it would become a tool for harassment.

(3) S. N. Mukherjee v. Union of India AIR 1990 SC 1984
"Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities"

(4) Woolcombers of India Ltd. v. Woolcombers Workers' Union AIR 1973 SC 2758
"...The giving of reasons in support of their conclusions by the judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done."

(5) Baidya Nath Sarma v. CWT [1983] 11 Taxman 158 (Gauhati)
"...The duty to give reasons is a safety-valve against arbitrary exercise of discretionary power. If such quasi-judicial authorities are permitted to render order without reason, apart from arbitrariness there might be potent danger.

(6) Rasiklal Ranchhodbhai v. CWT [1980] 121 ITR 219 (Guj.),
The Hon'ble Court struck down the order of the Commissioner by observing that passing a cryptic order without giving reasons violates the principles of natural justice. It was observed that reasons must be substantial and cogent.

Additional Ground No.2

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in sustaining the addition of Rs.1,26,87,868/- made under section 43CA of the Income Tax Act, 1961, ignoring the fact that the date of agreement for sale of the immovable property is 10/09/2008, which is much

prior to the Assessment Year 2014-15, when the provisions of Sec. 43CA have become effective and, as such, the assessee would not have foreseen these provisions at the time of executing agreement to sell that it has to receive the sale consideration by any other mode other than cash before the date of agreement.

As stated in the brief facts of the case, the agreement to sell the immovable property for a consideration of Rs. 1,51,00,000/- was executed on 10/09/2008. Further, 90% of the total consideration was also received by the assessee within five days of the execution of agreement, which is evident from the details of payments quoted below :-

S.No	Amount (Rs)	Mode of payment	Date	Bank
1	1,00,000	Cash	14/08/2008	--
2	1,34,90,000	Ch.No.141213	15/09/2008	ICICI Bank C Scheme, Jaipur
3	14,94,900	Ch.No.352562	19/03/2004	Vijaya Bank, Vidhyadhar Nagar, Jaipur
4.	15,100	Adjustment of TDS vide challanNo.48378 dated 20/03/2014 HDFC Bank		

Thus, the peculiar feature of the case is that 90% of the sale consideration was received within just five days of the agreement executed on 10/09/2008. Thus, it is clear that the agreement to sell was executed on 10/09/2008 whereas the provisions of Section 43CA have become effective from 01/04/2014, i.e. from assessment year 2014-15. The provisions of section 43 CA are quoted below :-

"43CA (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of theconsideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset."

When the provisions of sub-section (3) and (4) are read together, it pinpoints a situation where the date of agreement fixing the value of consideration for transfer of the property and the date of registration are not the same., then the value as on the date of agreement would be considered provided the amount of consideration or part of thereof has been received by any mode other than cash on or before the date of agreement for transfer of the property. In the case of the assessee, there is no dispute that the date of agreement for sale of the property for a consideration of Rs. 1,51,00,000/- is 10/09/2008, i.e. much before introduction of provisions of Section 43CA from 01/04/2014, i.e. Assessment Year 2014-15. Then how the assessee could foresee and visualize these provisions enacted from assessment year 2014-15 at the time of executing the agreement on 10/09/2008. That apart, it is of much significance that in the case of the assessee, 90% of the sale consideration was received within just five days of the date of agreement on 10/09/2008, i.e. by 15/09/2008 (Rs. 100000 on 14/08/2008 in cash and Rs.1,34,90,000 through cheque on 15/09/2008). Copy of bank account reflecting the above payment is available on Paper Book Page No. 43-49. Further, the entire balance consideration of Rs. 14,94,000/- was also received on 19/03/2014. Copy of ledger account of the buyer, Shri Rajendra Kedia is available on Paper Book Page No. 51-52. These facts cannot be brushed aside, particularly when the assessee would not have anticipated or visualized the enactment of new provisions of Sec. 43 CA from assessment year 2014-15 while executing the agreement to sell on 10/09/2008. The plea of the assessee, therefore, is that the provisions of Sec. 43CA are not applicable in the facts and circumstances of the case and the Learned Assessing Officer has erred in making the impugned addition by invoking Sec. 43 CA. The Learned CIT(A) also erred in sustaining the impugned addition made by the

Learned Assessing Officer without considering the facts of the case and detailed submission made by the assessee. The Hon'ble Tribunal is, therefore, requested to delete the addition made by the Learned Assessing Officer and sustained by the Learned CIT(A).

The following case-laws are cited in support :-

(1) M/s Reegal Construction Vs. ITO (ITAT,"A" Bench, Kolkata)ITA No.354/Kol/2023
Order dt. 13/07/2023

The Hon'ble ITAT by placing reliance on the decision of the Hon'ble High Court of Bombay in the case of PCIT vs. Swananda Properties (P) Ltd. [2019] 111 taxmann.com 94 (Bombay) allowed the appeal of the assessee holding that since the provisions to section 43CA have been introduced w.e.f. 01.04.2014 and the 'agreement to sell' was entered prior to the 1st April 2014 and therefore, the condition of payment or part payment of consideration on or before the date of agreement cannot be imposed back-dated as the assessee could not have foreseen the introduction of section 43CA.

(2) Indexone Tradecone (P) Ltd Vs. DCIT
(2018) 172 ITD 396 (ITAT Jaipur)

"The provisions of section 43CA have been inserted by the Finance Act, 2013 w.e.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."

(3) PCIT Vs. Swananda properties (P) Ltd (2019 111 taxmann.com 94
The Hon'ble High Court observed the provisions in the form of Sec. 43 CA has been introduced with effect from 1st April, 2014 and by plain language of this provision, it is not retrospective

(4) M/s Spenta Enterprises Vs. ACIT
I.T.A. No. 2133/Mum/2019

Order dated 27/1/2022

"….I note that this is assessees plea that section 43CA was introduced w.e.f. 01.04.2013 and the agreement under consideration were entered into prior to 31.03.2013. Further, this is assessees plea that difference is only 5% between the ready recokner rate and sale consideration. Hence, this is assessees plea that the same has to be ignored on the touchstone of ITAT, Mumbai decision in the case of Krishna Enterprises vs ITA No.2133/M/2019 5 ACIT. I am of the considered opinion that the asessees succeeds on both the counts. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

(5) Disha Construction Vs. JCIT 25(2),Mumbai
ITAT, D Bench, Mumbai
Date Order : 17/06/2021
The Hon'be Tribunal observed that .."section 43CA cannot be made applicable to the facts of the present case. By the plain language of this provision it is not retrospective. Thus, there is no statutory provision based on which the stamp duty valuation could have been made a basis in the present case."

The ratio of the aforesaid decisions are squarely applicable to the facts of the assessee's case. The assessee had entered into the sale agreement for sale of the immovable property for a consideration of Rs. 1,51,00,000/- on 10/09/2008, i.e. much earlier to enactment of provisions of Sec. 43CA in the statute w.e.f. 01/04/2014 applicable from assessment year 2014-15. Then how the assessee could foresee and visualize these provisions enacted from assessment year 2014-15 at the time of executing the agreement on 10/09/2008. That apart, the peculiar feature of the case is that in the case of the assessee, 90% of the sale consideration was received within just five days of the date of agreement on 10/09/2008, i.e. by 15/09/2008 (Rs. 100000 on 14/08/2008 in cash and Rs.1,34,90,000 through cheque on 15/09/2008)

Further, the entire balance consideration of Rs. 14,94,000/- was also received on 19/03/2014. Thus, the assessee would not have anticipated or predicted the enactment of new provisions of Sec. 43 CA from assessment year 2014-15 while executing the agreement to sell on 10/09/2008. In view of these facts and the decisions of various courts quoted above, the Hon'ble ITAT is requested to delete the addition made by the learned Assessing Officer by invoking Section 43 CA.

Additional Ground No.3

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in not quashing the assessment order on account failure to follow the mandatory procedure laid down in Sec. 43CA(2) with reference to sub-section (2) and (3) of Section 50 C of the IT Act, 1961.

(a) Provisions of Sec 43CA are pari materia the provisions of Sec. 50 C

It is submitted that the assessee company had sold immovable property consisting of unit no. 115 to 118 on first floor and unit no. 201 to 218 on second floor of Arcade Building constructed on plot no. K-12, Malviya Marg, C-Scheme, Jaipur for an apparent consideration of Rs. 1,51,00,000/-. As against this apparent consideration of Rs. 1,51,00,000/-, the sub-registrar has valued the property for purposes of Stamp Duty & Registration at Rs. 2,77,87,868/- i.e. Rs. 1,26,87,868/- more by which sale deed was registered on 21.03.2014. While framing the assessment, the Learned Assessing Officer adopted the value of the property as adopted by the Stamp Valuation Authority at Rs.2,77,87,868/- as against apparent sale consideration of Rs. 1,51,00,000/- and consequently made an addition of Rs. 1,26,87,868/- under section 43CA of the IT Act, 1961.

In this regard, the assessee's submission is that the provisions of Sec. 43CA were not applicable to the case of the assessee as the sale agreement was executed on 10/09/2008, much before the enactment of provisions of Section 43CA w.e.f. 01/04/2014 and, therefore, the addition made by the Learned Assessing Officer deserves to be deleted. Apart from this submission, the assessee pleads that 90% of the sale consideration stood received by the assessee within five days of the date of agreement as stated supra. Remaining consideration was also received by the assessee before 31/3/2014. At the time of execution of the agreement, the assessee could not have visualized that a new enactment will become effective from 01/04/2014.

It is further submitted that the Learned Assessing Officer has also failed to appreciate the fact that the provisions of Sec. 43CA are pari materia the provisions of Sec. 50 C of the Income Tax Act, 1961 except that the provisions of Sec. 50C applies to transfer of a capital asset being land or buildings or both whereas Sec. 43CA applies to transfer of an asset, other than capital asset, being land or building or both. The provisions of Section 43 CA applicable for the year under consideration are quoted below :-

[Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.

43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.]

The clause (2) of Sec. 43CA makes it clear that the provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

Now the provisions of Section 50 C are quoted below :-

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or

both, is less than the value adopted or assessed [51][or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [51][or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where—

(*a*) the assessee claims before any Assessing Officer that the value adopted or assessed [51][or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(*b*) the value so adopted or assessed [51][or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (*i*) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

[*Explanation 1*].—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

[*Explanation 2.*—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed [53][or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed [53][or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]

From the above, it is clear that the provisions of Sec. 43CA are pari material the provisions of Sec. 50C of the IT Act, 1961. The procedure for making reference to valuation cell is the same in both these section. As held by various Courts in several cases, even the valuation report obtained from the Valuation Cell is not always the last word. The Learned Assessing Officer is required to bring some material on record to establish that money other than the apparent consideration mentioned in the sale deed was exchanged between the buyer and seller parties. In the case of the assesse, no material whatsoever has been brought on record to establish that assessee received money over and above the consideration shown in the sale deed. The position being so, there was no case for making any addition in the case of the assessee. The following case-laws are quoted in support.

(i) Meenakshi Vs. ACIT (High Court of Madras)

(2010) 326 ITR 0229

Applicability of s. 50C vis-a-vis reference to DVO—Assessee stated to have sold the property for a sum of Rs. 99 lakhs while the stamp duty paid by the purchaser under the sale deed was on the valuation of Rs. 3,92,68,800—Therefore, the only available remedy to the assessee in respect of her capital gain is under s. 50C, which cannot be dispensed with merely due to the reason that the Valuation Officer has not chosen to pass orders regarding the valuation in time—Therefore, order passed by AO accepting stamp duty value without waiting for report of DVO is liable to be set aside—By virtue of the powers under s. 153(3)(ii) the AO is directed to proceed with the assessment of capital gain immediately after the valuation report is filed by the authority to whom the matter was referred by the respondent at the instance of the assessee

(ii) Commissioner of Income Tax Vs. Chandni Bhuchar

(High Court of Punjab & Haryana)

(2010) 232 ITR 0510

In the absence of any admissible evidence valuation done stamp duty authorities could not be taken as actual sale consideration and the value shown in the sale deed had to be accepted.

(b) There is infringement of right of the assessee on account of failure of the Learned Assessing Officer to refer the case to Valuation Cell

During the course of assessment proceedings, the assessee, vide letter dated 29/08/2016, had submitted that the immovable property was sold below the stamp duty value adopted by the Stamp Valuation Authority. Therefore, in view of the provisions of Sec. 43 CA read with section 50C(2)(a) of the IT Act,1961, the Assessing Officer was required to refer the matter of valuation of the property to the Valuation Cell before completing the assessment. Having not done so, the Learned Assessing Officer has violated the statutory provisions and mandatory procedure as laid down in Sec. 43CA/50C(2) of ther IT Act, 1961. This has rendered the assessment proceedings invalid. Even in a case where no such prayer for referring the case to Valuation Cell is made by the assessee, the Assessing Officer, discharging a quasi-judicial function, is duty bound to act fairly and give a fair treatment to the assessee by giving him an option to follow the course provided by law as held by the Hon'ble Kolkata High Court in the case of CIT Vs. Sunil Kumar Agarwal 372 ITR 0083 (Cal). The observations of the Hon'ble Court is reproduced below

CIT Vs. Sunil Kumar Agarwal (372 ITR 0083 (Cal)

"We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has not been met by the assessee can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of clause (a) of sub-Section 2 of Section 50C was met by the assessee.

8. We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the

valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

9. For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

In the light of discussion made above, the Hon'ble Tribunal may kindly observe that the Learned Assessing Officer failed to follow the mandatory procedure laid down in Sec. 40CA(2) with reference to sub-section (2) & (3) of Section 50 C of the IT Act, 1961.

The Hon'ble Kolkata High Court in the aforesaid case of Shri Sunil Kumar Agarwal observed that even in a case where no prayer is made by the assessee, the Learned Assessing Officer, who is a quasi-judicial authority, is duty-bound to act fairly and to give a fair treatment to the assessee by him an option to follow the course provided by the law to avoid miscarriage of justice. The provisions of Sec. 43 CA read with section 50 C enshrines a right of the assessee for making a reference to valuation cell and protects him form the arbitrary actions of the Stamp Valuation Authority. In these circumstances, failure on the part of the Learned Assessing Officer to refer the matter to the valuation cell has resulted in infringement of right of the assessee provided to him under the provisions of law and this has vitiated the assessment proceedings. Therefore, the additions made deserves to be deleted.

(c) Value taken by stamp valuation authority not to be <u>allowed as a rule of thumb</u>

The assessee, during the course of assessment proceedings had submitted that the property was sold below the value assessed for stamp duty purposes

by the Stamp Valuation Authority. The Learned Assessing Officer did not refer the matter to the Valuation Cell as laid down in Sec. 43CA(2) read with Sec. 50C(2). Without referring the matter to Valuation and without bringing any material on record to establish that the assessee had received amount other than the sale consideration as per the sale deed, the Learned Assessing Officer proceeded to make the impugned addition. There is a catena of decisions where the Hon'ble Courts have held that the valuation taken by the Stamp Valuation Authorities is not to be followed as a rule of thumb. The following case-laws are quoted in support :-

(i) Executive Engineer Karnataka Power Transmission Corporation Ltd Vs. Assistant Commissioner and Land Acquisition Officer (2010) 15 SSC 60 (Supreme Court)

Consideration mentioned in the sale cannot be ignored. High market value cannot be inferred from higher stamp duty paid thereon. Higher stamp duty could have been paid for various reasons. In the absence of proof of under valuation, it is not possible to ignore sale price mentioned in sale deed which is accepted for computing market value.

(ii) Mrs. Nirmal Laxminarayan Grover Versus Appropriate Authority & Ors Bombay High Court (Nagpur Bench) (1997) 223 ITR 0572

Purchase of immovable property – Fair market value – The test is of a prudent buyer and a prudent seller and the rates determined by the State Government for purpose of checking evasion of stamp duty are not a good guide.

(iii) Commissioner of Gift Tax Vs. R Jawahar

(High Court of Madras) 217ITR 0059

Valuation for stamp duty purposes by the Sub-Registrar of properties cannot be the guiding factor for determining the value of gifted immovable property…. Tribunal holding that different between returned value of gift and the valueof the Sub-Registrar's is not a deemed gift – Finding of Tribunal based on an earlier judgment and also on the fact that considered received by assessee was fair and reasonable – No referable question arises.

(iv) Commissioner of Gift Tax Vs. R Damodaran (High Court of Madras (2001) 247 ITR 0698)

Valuation for stamp duty purposes by the Sub-Registrar of the properties cannot be the guiding factor for determining the value of gifted immovable property – The re-opening of the assessment was, therefore, invalid.

(v) Commissioner of Income Tax Vs.

Krishan Kumar &Ors. Rajasthan High

Court (2009) 315 ITR 0204

Stamp Valuation Authority's rates of property fixed for purposes of registration of sale deeds cannot, by itself, be taken to be the price for which the property was purchased for the purpose of computing undisclosed income under s. 158BB—Under s. 158BB, the computation of undisclosed income is to be made on the basis of the evidence found as a result of search, or requisition of books of account, or other documents, and such other materials or information, as are available with the AO, and relatable to such evidence and it does not include any fictional or presumptive income, to be liable to, or capable of being included in the aggregate of the undisclosed income—Sec. 50C also does show, that the valuation put by the Stamp Valuation Authority is not required to be adopted as the valuation of the property, as a rule of thumb.

(vi) Commissioner of Income Tax Vs. KK Enterprises (High Court of Rajasthan) (2008) 13 DTR 0289

Income from undisclosed sources—Addition—Sale of land at low price—Assessee sold plots at an average rate of Rs. 18.66 per sq. ft.—AO determined the sale price of the plots by adopting the rate of Rs. 40 per sq. ft. on the basis of the rates taken by sub-Registrar and made addition to assessee's income—Not justified—Apparently, there was no other reliable material on record before the assessing authority to assume sale of plots at Rs. 40 per sq. ft.—In the absence of any evidence on record, it cannot be presumed that land has been sold by the assessee at a higher price than the consideration shown in the registered sale deeds—Rates of property fixed by the Stamp Valuation Authority for registration purposes cannot be applied to arrive at the price for which the property might have been sold—Thus, there was no justification for the AO to estimate the selling price of land at Rs. 40 per sq. ft.

(vii) Commissioner of Income Tax Vs. Khandelwal Shringi & Co (High Court of Rajasthan (2017) 398 ITR 0420 (Raj)

Income from undisclosed sources—Unexplained investments—Purchase of agricultural land—Deletion of addition—Tribunal deleted addition made by AO on account of unexplained investment in purchase of agricultural land on basis of sale agreement and other documents found and impounded during course of survey u/s 133 in which sale consideration was specified amount—

Held, while computing undisclosed income, rates of property fixed by Stamp Valuation Authority for purposes of registration of sale deeds, could not be taken to be price for which property was purchased—In absence of evidence on record, higher price for sale of land could not be presumed from consideration shown in registered sale deeds and rates of property fixed by Stamp Valuation Authority for registration purposes could not be taken to be price for which property might had been sold—There was no justification for AO to estimate selling price of land at Rs. 40 per sq.ft. instead of Rs. 20 per sq.ft. and for CIT(A) to presume selling price at 22 per sq.ft—Tribunal committed no error in allowing appeal of assessee—Revenue's appeal dismissed.

The ratio of these decisions are squarely applicable to the facts of the case. In the case of the assessee, the Learned Assessing Officer failed to refer the matter of valuation to the Valuation Cell as as laid down in Sec. 43CA(2) read with Sec. 50C(2) of the Income Tax Act, 1961. Without referring the matter to Valuation and without bringing any material on record to establish that the assessee had received amount other than the sale consideration as per the sale deed, the Learned Assessing Officer proceeded to make the impugned addition of Rs. 1,26,87,868/-. The aforesaid decisions rendered by various courts, including the jurisdictional High Court, lays down that the valuation of the Stamp Valuation Authority is not required to be adopted as the valuation of the property as a rule of thumb.

In the light of discussion made above, the Hon'ble Tribunal is, therefore, requested to delete the addition so made by the Learned Assessing Officer.

Now the regular grounds No. 1 & 2, being inter-connected, are taken up together for discussion :-

Ground No.1

Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 1,26,87,868/- made by the Learned Assessing Officer u/s 43 CA of the Income Tax Act, 1961 by considering the value for the purpose of stamp duty at Rs. 2,77,87,868/- as sale consideration against the actual sale consideration of Rs. 1,51,00,000/- and ignoring the 90% payment made by the seller within 4-5 days of agreement dated 10/09/2008 prior to registration date of 21/3/2014.

AND

Ground No.2

Under the facts and circumstances of the case, the learned CIT(A) has erred in applying the provisions of Sec. 43CA(1) of the Income Tax Act, 1961 ignoring the provisions of Sec. 43CA(3) and 43CA(4) of the Income Tax Act, 1961.

As stated in the statement of facts, the sale consideration of Rs. 1,51,00,000/- was received by the assessee as under :-

S.No	Amount (Rs)	Mode of payment	Date	Bank
1	1,00,000	Cash	14/08/2008	--
2	1,34,90,000	Ch.No.141213	15/09/2008	ICICI Bank C Scheme, Jaipur
3	14,94,900	Ch.No.352562	19/03/2004	Vijaya Bank, Vidhyadhar Nagar, Jaipur
4.	15,100	Adjustment of TDS vide challanNo.48378 dated 20/03/2014 HDFC Bank		

From the above, it may kindly be observed that 90% of the sale consideration was received by the assessee within just five days of the date of execution of the agreement on 10/09/2008, i.e. by 15/09/2008 through cheque. Though technically the assessee did not receive the part of consideration before the execution of agreement, but the same was received within five days. The delay of just five days is negligible. For all the intents and purposes, the spirit of the provisions of sub-section (3) & (4) of Sec. 403CA stands fulfilled. In these circumstances, the value of consideration should have been taken as on the date of agreement and not the value taken by the stamp valuation authority at the time of registration on 21/3/2014. The Learned Assessing Officer should have considered the spirit of the provision, particularly when the agreement was executed on 10/09/2008, much earlier to 01/04/2014, when the provisions of Section 43CA became effective from AY assessment year 2014-15. The registration was done almost five and half years later than the date of agreement whereas 90% of the consideration stood received within just five days of the agreement executed on 10/09/2008.

When the facts of the case are taken in totality, the assessee is entitled to relief as provided u/s 43CA(3) & (4) of the IT Act, 1961. The Learned Assessing Officer denied the benefit of Sec. 43CA(3) and (4) to the assessee without considering these vital facts. The Learned CIT(A) also erred in sustaining the addition made by the Learned AO without considering the aforesaid facts and legal position and the detailed submission filed before him.

The Hon'ble Tribunal is, therefore, requested to consider the submission made above and grant relief to the assessee by deleting the addition made by the Learned Assessing Officer.

Conclusion

From the detailed submissions made above, the Hon'ble Tribunal would kindly appreciate that the Learned Assessing Officer erred in making the impugned addition of Rs. 1,26,87,868/- by invoking the provisions of Section 43 CA of the IT Act, 1961 and the ld CIT(A) grossly erred in sustaining the addition, ignoring the facts that the date of agreement for sale of the immovable property is 10/09/2008, which is much prior to the Assessment Year 2014-15, when the provisions of Sec. 43CA have become effective and, as such, the assessee would not have foreseen these provisions at the time of executing agreement to sell that it has to receive the sale consideration by any other mode other than cash before the date of agreement. The provisions of Sec. 43CA being pari materia the provisions of Sec. 50 C of the IT Act, 1961 the Learned Assessing Officer, being a quasi judicial authority, was duty bound to refer the matter to valuation cell as held by the Hon'ble Kolkata High Court in the case of CIT Vs. Sunil Kumar Agarwal (supra). The Learned Assessing Officer as well as the Learned CIT(A) failed to appreciate the fact that 90% of the sale consideration was received by the assessee within just five days from the execution of agreement on 10/09/2008 and such delay being negligible, the benefit of provisions of Sec. 43CA(d) & (4) should not have been denied to the assessee. the Learned CIT(A) has grossly erred in not considering the detailed submission filed by the assessee during the course of appellate proceedings and in not passing a speaking and well-reasoned order, dealing with the grounds , submissions and case laws cited by the assessee.

The Hon'ble Tribunal is, therefore, humbly requested to consider the facts of the case, submission made and case laws cited by the assessee and delete the addition made by the Learned Assessing Officer and sustained by the Learned CIT(A).

Ground No.3

The assessee begs permission to add, amend or alter all or any grounds of appeal before or at the time of hearing.

The Hon'ble Tribunal is requested to consider the additional grounds taken above and also the submissions made and case-laws cited and decide the appeal in favour of the assessee and oblige."

6. The ld. AR of the assessee has also moved a petition raising the additional ground as the additional ground being technical in nature considering the specific following prayer of the assessee the same is accepted:

"In this case, appeal for assessment year 2014-15 stands filed on 11/12/2023. However, while filing the appeal, due to inadvertence, following grounds could not be taken. These grounds are purely of legal nature and arise out of the order of the learned Assessing Officer/learned CIT(A). These go to the root of the matter. These additional grounds do not require any additional evidence. Therefore, the Hon'ble Tribunal may kindly give permission for taking the addition grounds., which are as under :-

Additional Ground No.1

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in dismissing the appeal of the assessee without considering the detailed submission made before him on 19/11/2021.

Additional Ground No.2

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in sustaining the addition of Rs.1,26,87,868/- made under section 43CA of the Income Tax Act, 1961, ignoring the fact that the date of agreement for sale of the immovable property is 10/09/2008, which is much prior to the Assessment Year 2014-15, when the provisions of Sec. 43CA have become effective and, as such, the assessee would not have foreseen these provisions at the time of executing agreement to sell that it has to receive the sale consideration by any other mode other than cash before the date of agreement.

Additional Ground No.3

On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in not quashing the assessment order on account failure to follow the mandatory procedure laid down in Sec. 43CA(2) with reference to sub-section (2) and (3) of Section 50 C of the IT Act, 1961.

The additional grounds noted above arise out of the order of the learned CIT(A)/Assessing Officer and do not require support of any additional evidence,hence, the same deserve to be admitted by the Hon'ble Bench.

The following decisions are quoted in support –

(i) National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)

The view that the Tribunal is confined only to issues arising out of appeal before the CIT(A) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

(ii) Ravindra Arora vs. Assistant Commissioner of Income Tax (2018) 404 ITR 452 (Rajasthan High Court)

ITAT is bound to accept additional ground if facts are on record.

(iii) Sharwan Beniwal Vs. Income Tax Officer Bikaner ITA No. 292/JU/2008 dated 14.01.2009

ITAT can admit additional ground of appeal later on in case the issue raised is legal and goes to the root of the matter.

(vi) Jora Singh Vs. ITO (2010) 42 DTR 409 (Lucknow)

Admissibility of additional ground …….. validity of assessment. Notice u/s 148 issued even when lime limit of issuing notice u/s 143(2) was available. A pure question of law – additional ground is admitted.

(v) CIT Vs. Kerala State Co-operative Marketing Federation Learned. (1992) 193 ITR 624 (Ker)

An appellant before the Tribunal can raise any new or additional point for the first time in appeal before the Tribunal.

(vi) Mahindra & Mahindra Ltd. Dy. CIT (2009) 122 TTJ 577 (Mub)(SB)

Appeal (Tribunal)-Additional ground-Question of limitation-Special Bench having been constituted for deciding the question of limitation on the request of Revenue, the objection as to raising of additional ground by assessee is not maintainable now Further, there can be no embargo on any party to raise a legal ground for the first time before the Tribunal provided the relevant material for deciding that question already exists on record and no further investigation of facts is required-Question of limitation goes to the very

jurisdiction of the matter-It is not only the right of the parties but also the duty of the Tribunal to consider the question of limitation notwithstanding the fact that it is not raised before it-Additional ground admitted.

(vii) Sunil Kumar Pugalia (HUF) Vs. ITO (2009) 120 TTJ 1001 (Jodh)

Appeal (Tribunal)- Additional ground-Admissibility-Ground challenging jurisdiction of AO to initiate reassessment proceedings not raised before AO or CIT(A)-Being a pure question of law can be raised before the Tribunal for the first time."

6.1 Apropos to the additional ground the ld. AR of the assessee submitted that the because the assessee has received the money to the extent of 90% in just five days of agreement in 2008 the valuation of the property be considered based of the year 2008. The matter was not referred to the DVO to verify correct value of the property in 2008. The ld. AR of the assessee based on the above contention relied upon the written submission so filed and summarily submitted that since 90 % of the payment received within 5 days the provision of section 43CA is not appliable as the said provision was not in the statue book and even though the stamp duty value of 2008 should be applied not of the year when the final sale agreement is executed.

7. The ld DR is heard who has relied on the findings of the lower authorities. The ld. DR vehemently argued that the provision of the

section 43CA is squarely applicable to the present case as the assessee has not received any money on the date of agreement by an account payee cheque, therefore, provision of section 43CA is not applicable to the assessee and same will be applicable if the assessee would have received the money by an account payee cheque on the date of agreement i.e 10.09.2008. As regards the contention that the matter was not referred to the DVO, the ld. DR argued that as the assessee has not made any such request to the ld. AO. Therefore, this plea of the assessee is also not maintainable. The ld. DR also relied upon the decision of Jaipur tribunal in the case of Spytech Buidcon 129 taxmann.com 175 wherein the tribunal held that when the only a registered document will not help the assessee the consideration should blow on the date of agreement.

8. We have heard the rival contentions and perused the material placed on record. The brief fact of the present case is that the assessee is a private limited company engaged in the business of real estate. The assessee filed a return of income declaring total income of Rs. 16,08,560/- for assessment year 2014-15 on

30/09/2014. The case was selected for limited scrutiny under CASS. The assessment stands completed on total income of Rs. 1,42,96,430/-, vide order u/s 143(3) dated 31/10/2016, by making an addition of Rs. 1,26,87,868 under section 43CA of the Income Tax Act, 1961, being the difference in the value of sale consideration of the of property as shown by the assessee which at Rs.1,51,00,000/- and value adopted by the Sub-Registrar for stamp duty purposes at Rs. 2,77,87,868/-. This addition made by the ld. AO was challenged before the ld. CIT(A) / NFAC the Learned CIT(A), NFAC, Delhi, vide order dated 06/12/2023, dismissed the appeal of the assessee by observing that ;

> From the Assessment Order, it is also clear that the assessee received part payment by cheque on 15.09.2008 i.e., after the date of agreement. The assessee received only cash of Rs. 1,00,000/- at the time of agreement. Therefore in the case of assessee, the provision of section 43CA(1) is clearly applicable. The assessee did not furnish any explanation despite several opportunities provided at the time of assessment. I also do not find that appellant has made any claim before the Ld. AO that the matter of valuation should be referred to valuation officer. Accordingly, I find that the sale consideration of property sold as adopted by Ld. AO at Rs. 2,77,87,868/- based on valuation by the stamp authority is correct. Thus, the addition of Rs. 1,26,87,868/- is made to the total income of the assessee u/s 43CA is upheld. The ground of the appellant is dismissed."

From the records and orders of the lower authority the non-disputed fact related to the challenged addition is that the assessee company entered into an agreement on 10/09/2008 with

Shri Rajendra Kumar Kedia to sell the immovable property consisting of unit no. 115 to 118 on first floor and unit no. 201 to 218 on second floor of Arcade Building constructed on plot no. K-12, Malviya Marg, C-Scheme, Jaipur for a consideration of Rs. 1,51,00,000/-. The total consideration was received as under :-

S.No	Amount (Rs)	Mode of payment	Date	Bank
1	1,00,000	Cash	14/08/2008	--
2	1,34,90,000	Ch.No.141213	15/09/2008	ICICI Bank C Scheme, Jaipur
3	14,94,900	Ch.No.352562	19/03/2014	Vijaya Bank, Vidhyadhar Nagar, Jaipur
4.	15,100	Adjustment of TDS vide challanNo.48378 dated 20/03/2014 HDFC Bank		

The sale deed of the above referred property was registered on 21/03/2014 and the same falls in the year under consideration. For this property the Stamp Valuation Authority adopted the value at Rs.2,77,87,868/- as against sale consideration of Rs. 1,51,00,000/- received by the assessee in the year 2008 in accordance with the agreement dated 10/09/2008. Copy of agreement executed on 10/09/2008 is available on Paper Book Page No. 1-12 and sale deed registered on 21/03/2014 is available on Paper Book Page No.13-34. As, the value adopted by the Sub-registrar for purposes

of Stamp Duty was much more than the actual sale consideration the difference (i.e.Rs. 2,77,87,868/- less Rs.1,51,00,000) by Rs. 1,26,87,868/- was added as income contending that provisions of Section 43 CA are not applicable in the facts of the case of the assessee as the agreement for sale of the immovable property was executed on 10/09/2008, which is much prior to the A.Y. 2014-15. The immovable property was sold in the year under consideration at below the stamp duty value adopted by the Stamp Valuation Authority and the agreement to sale was executed by an agreement dated 10/09/2008 and on the date of agreement the assessee has not received any amount by an account payee cheque and therefore, the revenue contended that the provision of section 43CA not applicable. Whereas, the assessee contended the agreement was executed in 2008 and the consideration to the extent 90 % is received by the assessee by an account payee cheque the assessee cannot expect that the law will change and even though the matter of valuation was also not referred to the Valuation Cell of the Department in view of the provisions of Sec. 43 CA(2) read with section 50C(2)(a) of the IT Act,1961. The assessee also contended that no effective opportunity was granted

to the assessee for putting the defense and not followed the statutory procedure laid down u/s 43CA of the Income Tax Act, 1961 by the ld. AO.

The ld. CIT(A) does not appreciate the facts available on record, even though the facts were already on record that the assessee has executed an agreement to sell the property in 2008 and the 90 % payment received in within 5 days of agreement and therefore, the stamp value of the year 2008 is to be adopted not on the date when the sell deed is made considering the specific exclusion given in the provision of section 43CA of the Act. Before the ld. CIT(A) the assessee could not take the legal grounds of appeal which go to the root of the matter therefore, the same is taken by filling a prayer for raising the additional legal ground and as the additional grounds arise out of the order of the Learned Assessing Officer/CIT(A) and do not require any additional evidence being the legal ground in nature the bench has admitted the same for deciding the issue in the present case.

In support of the additional ground the ld. AR of the assessee submitted that the assessee had filed a detailed reply along with paper book before the Learned CIT(A) on 19/11/2021, vide

acknowledgement No.856678541191121. In the remarks column of e-proceedings response form, the assessee had also submitted that if the CIT(A) requires further clarification on the issue, the assessee is ready to file the same. A copy of the detailed reply submitted is available on Paper Book Page No.35-43. However, Learned CIT(A) has not made any discussion in respect of the various points raised in the written submissions made support with the evidence. Even the case laws cited in the reply filed by the assessee were not appreciated. The assessee had filed a detailed submission of 1-18 pages, wherein various points, such as violation of procedure laid down u/s 43 CA read with section 50C, infringement of right of the assessee, valuation adopted by the Registration authority is not to be followed as a rule of thumb, not allowing the benefit of provisions of Sec. 43CA(3) and 43CA(4) etc., were raised. On page 4 to 7, the Learned CIT(A) has merely quoted the order of the Learned Assessing Officer. Assessee contended that the Learned CIT(A), being a quasi-judicial authority, ought to have dealt with the grounds raised by the assessee, submissions made in support of the grounds and case laws cited in support of the submission and should have passed a

speaking order in accordance with law but in fact it is not so and the order is passed in very cryptic way.

As regards the second additional ground assessee submitted that the learned CIT(A) has erred in sustaining the addition of Rs.1,26,87,868/- made under section 43CA of the Income Tax Act, 1961, ignoring the fact that the date of agreement for sale of the immovable property is 10/09/2008, which is much prior to the Assessment Year 2014-15, the assessee would not have foreseen the provision. Even the provision of section 43CA gives exception that if the agreement fixing the value of consideration for transfer of asset and the date of registration of such transfer of asset are not the same, the value referred as on the date of agreement be considered for the payment of stamp duty on the date of such agreement, which in this case is of year 2008. The agreement to sell the immovable property for a consideration of Rs. 1,51,00,000/- was executed on 10/09/2008. Further, 90% of the total consideration was also received by the assessee within five days of the execution of agreement, which is evident from the details of payments as quoted herein above. Thus, the peculiar feature of the case is that 90% of the sale consideration was

received within just five days of the agreement executed on 10/09/2008. Thus, the agreement to sell was executed on 10/09/2008 whereas the provisions of Section 43CA have become effective from 01/04/2014, i.e. from assessment year 2014-15. The provisions of section 43 CA reads as under:-

> *"43CA (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of theconsideration received or accruing as a result of such transfer.*
>
> *(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).*
>
> *(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*
>
> *(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset."*

When the provisions of sub-section (3) and (4) are read together, it pinpoints a situation where the date of agreement fixing the value of consideration for transfer of the property and the date of registration are not the same, then the value as on the date of

agreement would be considered provided the amount of consideration or part of thereof has been received by any mode other than cash on or before the date of agreement for transfer of the property. In the instant case of the assessee, there is no dispute that the date of agreement for sale of the property for a consideration of Rs. 1,51,00,000/- is 10/09/2008, i.e. much before introduction of provisions of Section 43CA from 01/04/2014, i.e. Assessment Year 2014-15. Then how the assessee could foresee and visualize these provisions enacted from assessment year 2014-15 at the time of executing the agreement on 10/09/2008. That apart, it is of much significance that in the case of the assessee, wherein 90% of the sale consideration was received within just five days of the date of agreement on 10/09/2008, i.e. by 15/09/2008 (Rs. 100000 on 14/08/2008 in cash and Rs.1,34,90,000 through cheque on 15/09/2008). Copy of bank account reflecting the above payment is available on Paper Book Page No. 43-49. Further, the entire balance consideration of Rs. 14,94,000/- was also received on 19/03/2014. Copy of ledger account of the buyer, Shri Rajendra Kedia is available on Paper Book Page No. 51-52. These facts already on record cannot be

ignored when even the provision of the law deals with such situation. The assessee would not have anticipated or visualized the enactment of new provisions of Sec. 43 CA from assessment year 2014-15 while executing the agreement to sell on 10/09/2008. The plea of the assessee, therefore, is that the provisions of Sec. 43CA are not applicable in the facts and circumstances of the case and the Learned Assessing Officer has erred in making the impugned addition by invoking Sec. 43 CA without dealing with the provision of the act read with the facts placed on record. Based on these arguments on facts, to drive home to the contentions so raised that the provision of section 43CA which deals with the exception circumstance that is present in this case and also support the following case laws:

> M/s Reegal Construction Vs. ITO (ITAT,"A" Bench, Kolkata)ITA No.354/Kol/2023 Order dt. 13/07/2023
> *The Hon'ble ITAT by placing reliance on the decision of the Hon'ble High Court of Bombay in the case of PCIT vs. Swananda Properties (P) Ltd. [2019] 111 taxmann.com 94 (Bombay) allowed the appeal of the assessee holding that since the provisions to section 43CA have been introduced w.e.f. 01.04.2014 and the 'agreement to sell' was entered prior to the 1st April 2014 and therefore, the condition of payment or part payment of consideration on or before the date of agreement cannot be imposed back-dated as the assessee could not have foreseen the introduction of section 43CA.*
>
> Indexone Tradecone (P) Ltd Vs. DCIT (2018) 172 ITD 396 (ITAT Jaipur)
> *"The provisions of section 43CA have been inserted by the Finance Act, 2013 w.e.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."

PCIT Vs. Swananda properties (P) Ltd (2019 111 taxmann.com 94
The Hon'ble High Court observed the provisions in the form of Sec. 43 CA has been introduced with effect from 1st April, 2014 and by plain language of this provision, it is not retrospective

M/s Spenta Enterprises Vs. ACIT I.T.A. No. 2133/Mum/2019
Order dated 27/1/2022

"….I note that this is assessees plea that section 43CA was introduced w.e.f. 01.04.2013 and the agreement under consideration were entered into prior to 31.03.2013. Further, this is assessees plea that difference is only 5% between the ready recokner rate and sale consideration. Hence, this is assessees plea that the same has to be ignored on the touchstone of ITAT, Mumbai decision in the case of Krishna Enterprises vs ITA No.2133/M/2019 5 ACIT. I am of the considered opinion that the asessees succeeds on both the counts. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

Disha Construction Vs. JCIT 25(2),Mumbai, ITAT, D Bench, Mumbai, Date Order : 17/06/2021

The Hon'be Tribunal observed that .."section 43CA cannot be made applicable to the facts of the present case. By the plain language of this provision it is not retrospective. Thus, there is no statutory provision based on which the stamp duty valuation could have been made a basis in the present case."

The provision of section 43CA and case laws cited herein above support the contentions so raised and the facts of the case is that assessee had entered into the sale agreement for sale of the immovable property for a consideration of Rs. 1,51,00,000/- on 10/09/2008, i.e. much earlier to enactment of provisions of Sec. 43CA in the statute w.e.f. 01/04/2014 applicable from assessment year 2014-15. That apart, the peculiar feature of the case is that in the case of the assessee received 90% of the sale consideration within just five days of the date of agreement on 10/09/2008, i.e. by 15/09/2008 (Rs. 100000 on 14/08/2008 in cash and Rs.1,34,90,000 through cheque on 15/09/2008) Further, the balance consideration of Rs. 14,94,000/- was also received on 19/03/2014 at the time of final sale deed. Thus, the assessee would not have anticipated or predicted the enactment of new provisions of Sec. 43 CA from assessment year 2014-15 while executing the agreement to sell on 10/09/2008 and even the provision of section 43CA (3) deals with such a situation. The revenue's only contention is that on the date of the agreement the assessee is has not received any money and on this aspect of ld. DR relied on the decision of Spytech Buildcon (Supra). But the

facts that pari materia different is that in this case the agreement is supported by the flow of consideration by an account payee cheque and 90 % of the money received in the 5 days of the agreement to sale in year 2008. The bench noted section 43CA provides that when an assets being stock in trade on the date of agreement provided the consideration or a part of it has been received by him on or before the date of agreement. In other words, in case the date of agreement fixing consideration and date of registration are different, then for the purposes of determination of value under the section, the value as on the date of agreement shall be considered, provided the consideration or part of consideration is received the value as on the date of agreement shall be considered, provided the consideration or part of consideration is received prior to date of agreement by any mode other than cash. The bench noted that the assessee when entering into the final sell deed also has reference to the same consideration that has been flowed in 2008 and based on that agreed rate the sell deed is executed. The provision of section 43CA(3) already dealt with the exception and therefore, we found merits in the facts that the assessee has agreed by an agreement

to sell the property at predetermined price at Rs. 1,51,00,000/- and the consideration to that has been flowed for an amount of Rs. 1,35,90,000 and a sum of Rs. 1,34,90,000 received by a banking challan. Based on that set of facts provision of section 43CA(3) clearly attract and thus, the addition of Rs. 1,26,87,868/- is vacated.

Since we have considered the additional ground no. 2 raised by the assessee the other grounds raised by the assessee becomes educative in nature.

Based on the above observation the appeal of the assessee in ITA No. 752/JP/2023 is allowed.

In ITA No. 753/JP/2023

9. In this appeal the assessee has challenged the levy of penalty of Rs. 41,16,578/- levied u/s. 271(1)(c) of the act on account of the addition of Rs. 1,26,87,868/- made u/s. 43CA of the Act. Since the bench has deleted the said addition in ITA NO. 752/JP/2023 being the quantum appeal of the assessee. Therefore, the consequent order for levy of penalty does not survive.

Based on these set of facts the appeal in ITA no. 753/JP/2023 becomes infructuous.

In the result the appeal no 752/JP/2023 and 753/JP/2023 are allowed as indicated here in above.

Order pronounced in the open court on 14/02/2024.

Sd/-	Sd/-
(संदीप गोसाई)	(राठौड कमलेश जयंतभाई)
(Sandeep Gosain)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 14/02/2024
*Ganesh Kumar, PS
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Krishnaraj Buildhome Pvt Ltd., Jaipur
2. प्रत्यर्थी/ The Respondent- Income Tax Officer, Jaipur
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA Nos. 752 & 753/JPR/2023}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar