IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

1. ITA No. 1537/Mum/2023 (A.Y. 2015-16)

DCIT CC-4(2), Central Range-4,
R. No. 1921, 19th Floor,
Air India Building,
Nariman Point,
Mumbai-400 020 ..... Appellant

Vs.

M/s. Neev Infrastructure Pvt. Ltd.
101 Sunder Apartments,
Nesbit Road, Mazgaon Circle
Mazgaon, Mumbai-400 010
PAN: AABCC7395N **.**..... Respondent

&

2. CO No. 111/Mum/2023 (A.Y.2015-16)

M/s. Neev Infrastructure Pvt. Ltd.
101 Sunder Apartments,
Nesbit Road, Mazgaon Circle
Mazgaon, Mumbai-400 010
PAN: AABCC7395N **.**..... Appellant

Vs.

DCIT CC-4(2), Central Range-4,
R. No. 1921, 19th Floor,

Air India Building,
Nariman Point,
Mumbai-400 020 ..... Respondent

Appellant by	:	Shri Ashok Kumar Ambastha, Ld. DR
Respondent by	:	Shri Rahul Hakani, Ld. AR
Date of hearing	:	13/12/2023
Date of pronouncement	:	26/02/2024

ORDER

PER GAGAN GOYAL, A.M:

These appeal by revenue and cross appeal by assessee are directed against the order of Ld. CIT (A)-52, Mumbai, dated 13.02.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16 respectively.

2. The revenue has raised the following grounds of appeal:-

1. "Whether on the facts and in the circumstances of the case the Ld.CIT(A) is justified in deleting the addition made to the total income @ 8% of the WIP 1 without appreciating the fact that the assessee has not substantiated that the revenue recognised is under percentage completion method which is as per accounting standards."

2. "Whether on the facts and in the circumstances of the case the Ld. CIT(A) is justified in deleting the addition made to the total income @ 8% of the WIP without appreciating the fact that the assessee has not provided before the AO the project wise breakup of revenue recognition."

3. "Whether on the facts and in the circumstances of the case, the Ld.CIT (A) is justified in deleting the addition made u/s. 14A on the ground that the assessee made disallowance which is more than the exempt income earned by overlooking the clarification of legislative intent provided by the CBDT vide circular no. 5/2014 dated 11.02.2014 and to this effect an amendment was also made by Finance Act, 2022 by way of insertion of Explanation to Section 14A?"

4. "Whether the amendment made by the Finance Act, 2022 by way of insertion of Explanation u/s. 14A will have effect only from A.Y. 2022-23 and subsequent assessment years or it will have effect even in respect of earlier assessment years pending on or after 01.04.2022?"

5. "Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is justified in deleting the addition made to the total income u/s. 37(1) of the Act amounting to Rs. 6,89,438/- on account of interest on VAT without appreciating the fact that such interest payment is penal in nature."

3. The brief facts of the case are that the assessee is a company involved in the business of estate developers and construction activities. Filed its return of income on 30-11-2015, declaring total income at Rs. 4, 33, 96,430/-. The case of the assessee was selected for scrutiny under CASS and assessed at a figure of Rs. 48,01,01,200/-. Assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), who in turn partly allowed the appeal of the assessee. Against this order of Ld. CIT (A), the revenue is in appeal before us and the assessee challenged the same through filing of cross-objection (C.O.).

4. As the main appeal in this case is of the revenue, we deem it fit to deal with the main appeal first and then the C.O. filed by the assessee. We have gone through the order of AO passed u/s. 143(3) of the Act, order of the Ld. CIT (A) and submissions of the assessee along with grounds taken by both the parties under consideration.

5. Ground Nos. 1 & 2 are interrelated and hence taken up together for adjudication. On this issue, contentions of the AO were that as the assessee is following the “Percentage completion Method” for revenue recognition, hence amounts of WIP shown in the Balance-Sheet are also liable to declare revenue on a due basis @8%. We observed that there is no project-wise specific addition has been quantified by the AO and an Ad-hoc addition @8% was made by him. Now,

the question before us is whether the assessee has furnished the break-up of WIP or not before the AO with relevant figures like the Total value of the contract, Construction work completed by the assessee in terms of value and percentage, amounts of receipts on running bills/advance etc. If this information was there before the AO for verification and the assessee was available to explain the same in terms of the methodology adopted for revenue recognition along with supporting vouchers of expenditure and revenue, no ad-hoc addition can be made. We have gone through page nos. 90 to 93 of the Paper Book-I, wherein the assessee furnished the calculations of revenue recognized in its books for taxation purposes. The AO was well within its authority to examine the same further for every project on the benchmark of the accounting system consistently followed by the assessee.

6. The AO was well-versed with the facts of the matter and fully empowered to examine every project of development/construction by the assessee. Despite this, The AO opted for an ad-hoc disallowance, which can't be held justified and the AO can't be allowed another opportunity for this act of non-competence/negligence at his end. If it would have been a matter of assessment completed u/s. 144 of the Act, certainly ITAT would have re-stored the matter back to the file of the AO. **Given the above, we do not see any error in the findings of Ld. CIT (A) and the same is sustained. Resultantly, ground nos. 1 & 2 raised by the revenue is dismissed.**

7. Ground nos. 3 & 4 are again interrelated, hence taken up together for adjudication. These grounds pertain to disallowance made u/s. 14A of the Act. During the assessment proceedings, the AO observed that the assessee has an

investment as of 31-03-2015 to the tune of Rs. 6, 15, 48,003/-. The assessee claimed Rs. 1, 61,059/-as exempt income from these investments and hence made a Suo-Moto disallowance of Rs. 2, 70,177/-. Whereas the AO applied Rule 8D of the I.T. Rules, 1962 and disallowed an amount of Rs. 34, 16,740/-.

8. During the year under consideration the assessee has its own funds amounting to Rs. 93.65 Crores and following the decision of Hon'ble Apex Court in the case of **[2021] 130 taxmann.com 178 (SC) South Indian Bank Ltd. *v.* CIT,** it can be safely concluded that no disallowance under section 14A of the Act read with Rule 8D can be there. Relevant findings of the Hon'ble Apex Court are as under:

> *"Where the assessee has mixed fund made up partly of interest-free funds and partly of interest-bearing funds and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest-free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the revenue to make an estimation of a proportionate figure. [Para 17]*
>
> *The disallowance would be legally impermissible for the investment made by the assessee in bonds/shares using interest-free funds, under section 14A. In other words, if investments in securities are made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities then in such cases, disallowance under section 14A cannot be made. [Para 20]*
>
> *The proportionate disallowance of interest is not warranted, under section 14A for investments made in tax-free bonds/securities which yield tax-free dividends and interest to assessee banks where, interest-free own funds available with the assessee, exceeded their investments. [Para 27]"*

9. Further, as held by the Hon'ble Apex Court in the case of **[2019] 112 taxmann.com 322 (SC) PCIT-2 v. Caraf Builders & Constructions (P.) Ltd.**

> *"Section 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not included in total income (Rule 8D) - The assessment year 2009-10 - High Court by the impugned order held that upper*

disallowance cannot exceed the exempt income of relevant year and; therefore, where for a year in question, finding of fact was that assessee had not earned any tax-free income, corresponding expenditure could not be worked out for disallowance - Whether Special leave petition filed against impugned order was to be dismissed - Held, yes [Paras 25 and 26][In favour of assessee]"

Given the above, we are not inclined to interfere in the order of Ld. CIT (A) and the same is confirmed. Resultantly, ground nos. 3 & 4 raised by the revenue are dismissed.

10. Ground No. 5 pertains to the disallowance of interest paid to the VAT department amounting to Rs. 6, 89,438/- u/s. 37 of the Act. During the assessment proceedings, the AO pointed out that the assessee paid Rs. 6, 89,438/- as interest on VAT and Rs. 637/- as a penalty. On this issue Ld. CIT (A) relied on the decision of the Hon'ble Apex Court in the case of **[2002] 22 Taxman 828 (SC) Lachmandas Mathuradas v. CIT**

"While granting special leave to appeal, the appeal has been confined to question Nos. 1 and 2 only. The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench's decision in Saraya Sugar Mills (P.) Ltd. v. CIT [1979] 116 ITR 387 (All.) The learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in Triveni Engg. Works Ltd. v. CIT [1983] 144 ITR 732 (All.) (FB), wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this Court in Civil Appeal No. 830 of 1979 titled Saraya Sugar Mills (P.) Ltd. v. CIT decided on 29-2-1996. In that view of the matter, the appeal is allowed and question Nos. 1 and 2 are answered in favour of the assessee and against the revenue. No order as to costs."

11. We do not find any error in the findings of Ld. CIT (A) on this issue of interest paid to the VAT department, hence sustained. **Resultantly, the ground raised by the revenue is dismissed.**

12. **In the Result, the appeal of the revenue is dismissed.**

CO. No. 111/Mum/2023

13. The assessee has raised the following grounds through this CO are;

1. The Ld CIT(A) erred in confirming addition u/s. 43CA of Rs 10,43,500/- w.r.to Flat No 805 in Neev Amberwood building being the difference between stamp value on date of registration of Agreement Rs 2,00,43,500/- and Agreement Value Rs 1,90,00,000/- without appreciating that the difference is 5.20%, which is within the tolerance limit as per Section 43CA and even-otherwise to be ignored and thus the addition of Rs 10,43,500/- should be deleted.

1.1 Without prejudice to Ground No 1, the stamp duty value to be adopted should be Rs 1,91,33,831 as prevailing on the date of allotment i.e. 28/11/2014 and thus the difference is 0.70% which is within the tolerance limit as per Section 43CA and even-otherwise to be ignored and thus the addition of Rs 10,43,500/- should be deleted.

1.2 Without prejudice to Ground No 1 and 1.1, the difference is stamp value and agreement value arose as said flat was sold without amenities and thus the stamp value cannot be adopted as fair market value and hence the addition of Rs 10,43,500/- may be deleted.

1.3 Without prejudice to ground No 1 to 1.2, the stamp duty value to be adopted should be Rs 1,91,33,831 as prevailing on the date of allotment i.e. 28/11/2014 and thus the addition should be restricted to Rs 1,33,831/-.

2 The Ld CIT(A) erred in confirming addition u/s 43CA of Rs 10,43,500/- w.r.to Flat No 1105 in Neev Amberwood building being the difference between stamp value on date of registration of Agreement Rs 2,00,43,500/- and Agreement Value Rs 1,90,00,000/- without appreciating that the difference is 5.20 %, which is within the tolerance limit as per Section 43CA and even-otherwise to be ignored and thus the addition of Rs 10,43,500/- should be deleted.

2.1 Without prejudice to Ground No 2, the difference is stamp value and agreement value arose as said flat was sold without amenities and thus the stamp value cannot be adopted as fair market value and hence the addition of Rs 10,43,500/- may be deleted.

3. The Ld CIT (A) erred in restricting disallowance u/s 14A r. w. Rule 8D to the extent of Rs 2, 70,177/- being the suo moto disallowance made by the Assessee without appreciating that disallowance u/s 14A r. w. rule 8D cannot exceed exempt income of Rs 1, 61,059/- and hence the disallowance u/s 14A in excess of exempt income i.e. Rs 1, 09,118/- may be deleted.

4. The Ld CIT(A) erred in confirming disallowance of Rs 43,82,459/- being 20% claim of debit/credit balances written off (net) of Rs 2,19,12,295/- without appreciating that the ad-hoc disallowance made by the AO was not in accordance with law and hence the disallowance of Rs. 43,82,459/- may be deleted.

5. The Ld CIT(A) erred in confirming addition of Rs 2,24,850/- u/s 2(24)(x) r.w.s 36(1) (va) of Rs 2,24,850/- without appreciating that the addition is not in accordance with law and hence same may deleted.

6. the respondent craves leave to add, amend, alters or varies the grounds of appeal at the time of or before the date of the hearing.

14. The cross-objection filed by the assessee is delayed by 53 days. For condonation of the same assessee filed an application along with an affidavit of its director explaining its delay vide dated: 24.11.2023. We have gone through the application along with the affidavit filed by its director and found the same to be in order, hence delay in filing of cross objection is condoned and the matter is allowed for hearing and adjudication on merits of the case.

15. Ground nos. 1 & 2 with their sub-grounds are interrelated and hence taken up together for adjudication. During the assessment proceedings the AO pointed out that 3 flats were sold below the value declared by the stamp value authorities as per the table reproduced below regarding para 9 of the assessment order as under:

*"9. Sale **consideration addition u/s. 43CA of the Act:***

During the course of assessment proceedings it was found from the Form No.3CD filed by the assessee as per Clause No. 17 of Form No.3CD and as per details of Index-II that the assessee who is a real estate builder and developer has sold certain flats during the year under consideration on which sales consideration has been shown at lower than the value of property adopted by the stamp valuation authority for the purpose of payment of stamp duty values. The details of same are as below:

Sr.	*Description of Property*	*Sale Consideration*	*Stamp Value*

No.		*offered for taxation in Rs.*	*Authorities in Rs.*
1.	*805, Neev Amberwood, Village Ambivali, Andheri West - 400 058*	*1,90,00,000/-*	*2,00,43,500/-*
2.	*1105, Neev Amberwood, Village Ambivali, Andheri West-400 058*	*1,90,00,000/-*	*2,00,43,500/-*
3.	*Neev Amberwood, Village Ambivali, Andheri West - 400 058*	*93,35,000/-*	*1,04,12,500/-*

It is hard to believe in the present case of the assessee that being a real estate builder having huge projects and doing business to earn some income, it has sold its property at a price which is almost less than half the value adopted by the stamp duty valuation authority. A Real Estate developer generally holds the immovable property as stock-in-trade. Real Estate developer operates, inter- alia, in a manner where registration of the documents transferring the property is executed in favor of the buyer when the full consideration of the sale value is received or determined and at the time of convenience of the buyer before handing over the possession. It is a known fact that the sale consideration agreed between the parties at the time of entering into such agreement is generally higher than the prevailing reckoner value of the property applicable at that time.

During the course of assessment proceedings, the assessee was asked to explain as to why the income has been offered from sale of such properties as stated above for computing its total income at a price lower than the ready reckoner value of the property adopted by the Stamp duty Valuation authority (state government) and further it was asked to explain as to why the difference in amount of the sale value consideration as per registered agreement value and that of the reckoner value of the property be not added to the total income of the assessee and brought to tax being the deemed business income of the assessee.

In response to same, the assessee has submitted its reply vide letter dated 22-12-2017 but the same is not acceptable. Since the stock-in-trade is transferred by the assessee being a real estate developer/ builder for a value which is far less than the circle rate or a ready reckoner value notified by the stamp duty valuation authority, the ready reckoner value in such a case should be deemed to be the full value of the sale consideration. The intention of law for introducing the provisions of section 43CA to the Income-tax Act is very clear and by introducing this section the provision of Section 50C applicable in the case of "capital asset" has been extended to real estate developer/ builder holding land or building/flat as stock in trade. Before introducing such section to the Act, there was no check on the assessee holding the property as stock-in trade and only the assessee having capital asset were covered by the provision of section 50C of the IT Act. Therefore, to do the justice with the both type of the assessee i.e. one holding the property as capital asset and other holding the property as stock in trade, the provision of section 43CA of the IT Act has been introduced wherein also the stamp duty valuation of the property has been

taken as the base just like the provision of section 50C of the IT Act. The intention of law is very much clear and it has covered such transactions where builders are not disclosing the true value of sale consideration by introducing a provision in the Income Tax Act to catch such irregularities and bring the undisclosed money to tax. When the intention of law is clear and unambiguous it is not permissible for assessee to take undue benefit for itself by disclosing any lower amount out of the higher real value of transaction done by the assessee.

Circle Rate /ready reckoner value is minimum value at which the property can be sold or purchased as it is the correct market value of the property as per local state government. The state government maintains circle rate at par with current market value to avoid any leakage of revenue from stamp duty and property registration. It is not an unknown fact that buying or selling of properties at a value lower than this value is very much prevalent in such transactions of property so as to save the stamp duty on registration, which causes loss of revenue to the government. Loss is not of just stamp duty revenue but also of income tax revenue that is to be paid by assessee on income under head business income. Since the state government maintains circle rate at par with current market value, the reason why the assessee is selling its properties at a value far way less than the circle rate is not known or is best known to assessee. Therefore in order to plug such loss to revenue it is necessary to bring such income to tax which is not disclosed by the assessee.

It is also well settled legal position that tax authorities are entitled to look into surrounding circumstances to find out the real transaction by applying the test of human probability as per the principle laid down by the Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More 82 ITR 540 (SC). The Hon'ble Supreme Court has further held that "Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence. But, in that sphere, the decision of the final fact-finding authority is made conclusive by law."

On the basis of above discussion and relying on various judicial pronouncements I am of the view that a certain amount of consideration or a part thereof has been received by assessee in a mode other than cheque which was not disclosed by assessee in its return of income and hence the deemed income of assessee has to be calculated considering the ready reckoner value of the property as the real sale consideration of the property sold by the assessee. The stamp duty value is being taken as the full value of consideration received on transfer of these assets. The deemed sale value calculated for the above stated properties is as stated below:-

Sr. No.	*Description of Property*	*Sale Consideration offered for taxation in Rs.*	*Stamp Value Authorities in Rs.*	*Difference to be taxed as deemed business income not disclosed in books of account*

1.	*805, Neev Amberwood, Village Ambivali, Andheri West - 400 058*	*1,90,00,000/-*	*2,00,43,500/-*	*10,43,500/-*
2.	*1105, Neev Amberwood, Village Ambivali, Andheri West-400 058*	*1,90,00,000/-*	*2,00,43,500/-*	*10,43,500/-*
3.	*Neev Amberwood, Village Ambivali, Andheri West - 400 058*	*93,35,000/-*	*1,04,12,500/-*	*10,77,500/-*
	Total			*31,64,500/-*

In view of the provisions of sub-section 3 of section 43CA of the IT Act which is reproduced 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 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.]*

Thus, perusal of section 43CA (3) of the IT Act elucidates that the sales consideration of the properties sold by the assessee during the year under consideration' has to be taken at the stamp duty valuation determined. After taking the sales consideration value as per stamp duty valuation determined, the excess value of the fair market value than the sale consideration value taken by the assessee is added to the total income of the assessee. Hence as discussed above, the total difference amount of ₹ 31, 64,500 i.e. the amount by which fair market value exceeds the sales consideration offered by the assessee for taxation is added to the total income of the assessee within the provisions of section 43CA

of the IT Act, 1961 and is being taxed as business income which has not been disclosed by the assessee in its books of account. The assessee failed to offer its income from sale of properties with the application of provision of section 43CA of the IT Act in its return of income which shows its willful attempt to evade tax. In view of the fact mentioned above, I am satisfied that the assessee has furnished inaccurate particulars to conceal the income of 31, 64,500. Accordingly, penalty proceedings u/s 271(1) (c) of the IT Act is initiated separately for the concealment of income and for furnishing inaccurate particulars of the income."

16. For better understanding and analysis of the issue we are reproducing herein below the provisions of section 43CA as under:

*"[**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:*

*[**Provided** that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and [ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:]*

*[**Provided further** that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent", the words "one hundred and twenty per cent" had been substituted, if the following conditions are satisfied, namely: —*

(i)	*the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;*
(ii)	*such transfer is by way of first-time allotment of the residential unit to any person; and*
(iii)	*The consideration received or accruing as a result of such transfer does not exceed two crore rupees.]*

(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 way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account] [or through such other electronic mode as may be prescribed] on or before the date of agreement for transfer of the asset.]

[Explanation: —For the purposes of this section, "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.]"

17. Here the AO made the addition on account of the fact that agreement price is lower than the stamp duty value on the first date of payment made by purchaser by any other mode other than cash. In this case we would like to rely on [2014] 49 taxmann.com 249 (SC) CIT (Central)-I, New Delhi *v.* Vatika Township (P.) Ltd. "*where a benefit is conferred by legislation, the rule against a retrospective construction is different. If legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant it to be given a retrospective effect". The net effect of this judgment is that if a fresh benefit is provided by the Parliament in an existing provision, then such an amendment should be given retrospective effect."*

18. Keeping in view the ratio laid down in Vatika Township (P.) Ltd. (supra) the benefit granted by 1st proviso to section 43CA (1) is applicable in the case of assessee also, which is again reproduced herein below as under:

> *"[**Provided** that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not **exceed one hundred and [ten] per cent of the consideration received** or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:]"*

19. Assessee's sale price and market value does not exceed in this case more than 10% hence no addition can be made. Our view is being fortified by following judicial pronouncements of coordinate benches/Hon'ble High Courts:-

> ***[2022] 144 taxmann.com 168 (Pune - Trib.) Sai Bhargavanath Infra v. ACIT***
>
> ***[2021] 123 taxmann.com 252 (Mumbai - Trib.) Maria Fernandes Cheryl v. Income Tax Officer, (International Taxation)***

20. We further rely upon the ruling of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Chandani Bhuchar [2010] 323 ITR 510/191 Taxman 142 (Punjab & Haryana) for the preposition that *"The valuation done by any State Agency for the purpose of stamp duty would not ipso facto substitute the actual sale consideration as being passed on to the seller by the purchaser in the absence of any admissible evidence. The Assessing Officer is obliged to bring on record positive evidence supporting the price assessed by the State Government for the purpose of stamp duty. From a plain reading of the provision, it emerges that the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of land or building or both, shall for the purpose of Section 48 of the Act be deemed to be the full value of the consideration received or accruing as a result of transfer. It nowhere provides that the valuation done by the State Government for the purpose of stamp duty etc., would ipso facto take place the actual consideration as being passed on to the seller by the purchaser in the absence of any other evidence. The Assessing*

Officer is required to bring positive evidence on record indicating the fact that assessee has paid anything more than the one disclosed in the purchase deed."

21. The view of the High Court of Punjab & Haryana with respect to the deeming provision of section 50C of the Act is that onus of proof lies on the Department/Revenue to bring on record any evidence to the effect that higher amount of sale consideration had passed on to the seller from the buyer in addition to the amount of sale consideration recorded in the deed. The amount at which valuation has been done by the stamp authorities could not be taken as actual sale consideration and the value shown in the sale deed has to be accepted. The circle rates as stipulated under section 50C of the Act cannot be sole concluding reason to hold that there is an understatement of sale consideration and adopt the valuation done for the purpose of stamp duty.

22. In view of above discussions revenue has failed to discharge its burden of proof that higher amount of sale consideration had passed on to the seller from the buyer in addition to the amount of sale consideration recorded in the deed. **In the result, Ground raised by the assessee is allowed and AO is directed to delete the addition made on this count.**

23. Ground No. 3 pertains to disallowance made u/s. 14A of the Act. This issue has already been adjudicated against the revenue in their appeal (supra). But the assessee is raising a legal issue through this C.O. keeping in view the decision of the Hon'ble Apex Court in the case of **[2019] 112 taxmann.com 322 (SC) PCIT-2 v. Caraf Builders & Constructions (P.) Ltd.** The Hon'ble Apex Court held as under:

> "*Section 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not included in total income (Rule 8D) - The assessment*

year 2009-10 - High Court by the impugned order held that upper disallowance cannot exceed the exempt income of relevant year and; therefore, where for a year in question, finding of fact was that assessee had not earned any tax-free income, corresponding expenditure could not be worked out for disallowance - Whether Special leave petition filed against impugned order was to be dismissed - Held, yes [Paras 25 and 26][In favour of assessee]"

24. Considering the binding nature of the decision rendered by the Hon'ble Apex Court discussed (supra), this ground of the C.O. raised by the assessee is allowed and disallowance u/s. 14A of the Act is restricted up to the actual amount of exempted income, i.e. Rs. 1,61,059/-. **Resultantly, ground no. 2 is allowed.**

25. Ground No. 4 pertains to disallowance @ 20% amounting to Rs. 43, 82,459/- on debit/credit balances written off (Net). During the year under consideration, the AO observed that the assessee has claimed debit/credit balances written off (Net) amounting to Rs. 2,19,12,295/-. It is observed by the AO that no specific ledgers were submitted along with documentary evidence to substantiate the same. Resultantly, in the absence of material relevant to the claim, the AO disallowed the same by 20% on an Ad-hoc basis. The Ld. CIT (A) also confirmed the same in the absence of material relevant to the claim.

25. We have gone through the order of both the lower authorities along with submissions of the assessee and deem find the assessee's claim logical that no Ad-hoc disallowance can be made on this count. Given the above, we restore the matter to the file of the AO and direct that every constituent of the debit/credit written-off claimed is to be examined individually and then only disallowance is to be made sighting reasons for the same. AO is directed to examine the matter in the light of the directions given above after giving the assessee a proper opportunity to be heard and the assessee is directed to cooperate in the

proceedings with relevant ledgers and other details as desired by the AO relevant to the matter under consideration. **Resultantly, this ground of C.O. raised by the assesses is allowed for statistical purposes.**

26. Ground No. 5 pertains to the disallowance of Rs. 2, 24,850/-made u/s. 36(1) (va) r.w.s. 2(24) (x) of the Act. It is observed that ESI liability amounting to Rs. 12,744/- and PF liability amounting to Rs. 2, 12,106/- were discharged after the due date (including the grace period) as prescribed in the respective statutes. This issue is squarely covered by the decision of the Hon'ble Apex Court in the matter of **[2022] 143 taxmann.com 178 (SC) Checkmate Services (P) Ltd. vs. CIT.** Now there is no scope for any confusion or argument on this issue post Checkmate (supra), hence ground raised by the assessee is not tenable. **Resultantly, this ground of C.O. is dismissed.**

27. In the net result, the appeal filed by the revenue is dismissed and C.O. filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26th day of February, 2024.

Sd/-	Sd/-
(ABY T VARKEY)	(GAGAN GOYAL)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 26/02/2024
Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-

4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai