

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 238/MUM/2024
Assessment Year: 2014-15**

M/s New Tech Infrastructure Pvt.
Ltd.,
9, Mulji Thakersee Building,
Sindhi Lane, C P Tank,
Mumbai-400 004.

PAN NO. AACCN 4981 A

Appellant

Vs. Income Tax Officer-5(2)(1),
Room No. 567, Aayakar Bhavan,
Mumbai-400020.

Respondent

Assessee by : Mr. Satyaprakash Singh
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 22/05/2024
Date of pronouncement : 28/05/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 20.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15, raising following grounds:

On the facts and in the circumstances of the case and in law, Rs. 2,92,261 the Hon'ble National Faceless Appeal Centre (NFAC) erred in



upholding the decision of Ld.AO of addition of Rs.9,74,200/- on account of difference between sales consideration and market value u/s 43CA(1) of the Income Tax Act, 1961 on basis of insufficient documents and information. The appellant company prays that the said addition may please be deleted.

2. Briefly stated, facts of the case are that the assessee filed return of income on 24.09.2014, declaring total income at Rs.8,90,630/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During the assessment proceedings, the Assessing Officer observed that assessee was engaged in the sale of properties. He further observed difference in sale consideration of the properties recorded in its books of accounts and stamp duty value determined by the Joint Sub-registrar of valuation. The detail of the properties where the differences was noticed by the AO, is as under:

Name of the Buyer and Godown No.	Sale Consideration	Market Value	Addition u/s 43CA
D-18, Jalan Trading Co.	15,00,000/-	22,32,000/-	7,32,000/-
D-19, Jalan Trading Co.	15,00,000/-	22,32,000/-	7,32,000/-
D-7, Komal B Chandan	14,00,000/-	24,74,000/-	10,74,000/-
D-8, Vimla Motilal Jain	15,00,000/-	24,74,000/-	9,74,000/-
D-9, Sanghavi Bothra Engineer	15,00,000/-	24,74,200/-	9,74,200/-
Total	74,00,000/-	1,18,86,000/-	44,86,200/-

2.1 The Assessing Officer invoked section 43CA of the Act and added the difference of Rs.44,86,200/- between the sale consideration recorded in the books of accounts and the stamp duty value determined by the Sub-registrar.



3. On further appeal, the Ld. CIT(A) restricted the disallowance to Rs.9,74,200/- observing as under:

“Through Ground No. 2, the appellant has challenged the addition of Rs. 44,86,200/-u/s 43CA. During the appellate proceeding, the appellant submitted some additional evidences which were not submitted before the AO regarding the sale of properties. The additional evidences were sent to the AO to verify the correctness of the facts. The AO submitted his remand report on 26.04.2019. In his remand report, the AO after verification of the allotment letter issued to the buyer and copy of index 2 registered with Joint SubRegistrar, Ulhasnagar, Taluka-3 in respect of 4 properties except go-down no. D-9 sold to Sanghavi Bothra Engineer accepted the appellant's contention. The AO mentioned in his report that replies by Joint Sub-Registrar, Ulhasnagar to the notices u/s 133(6) of the Act and Index 2 received from him matched with details provided by the appellant. The AO has convinced that the appellant had been able to substantiate the difference of Rs. 35,12,200/- out of Rs. 44,86,200/-, but failed to prove the difference of Rs. 9,74,000/- with respect to sale of godown no. D-9.

Copy of remand report was sent to the appellant for a rebuttal if any. In response the appellant submitted that copy of registered agreement is the only corroborative evidence available with the appellant and no other document is relevant to substantiate transaction entered with the buyer. The appellant also submitted that many a time due to unavoidable circumstances it is required to take decision to sell the property for a price much lower than the stamp duty value such as due to certain business urgencies/sluggish demand in the market.

*I have considered the submission of the appellant, assessment order and subsequent remand report of the AO. **There is no deny the fact that the appellant has sold go-down no. D-9 to Sanghavi Bothra Engineer for sale consideration of Rs. 15,00,000/- whereas market value determined by the Joint Sub-Registrar was Rs.24,74,200/-.** It is also fact that no document was submitted to prove that either any allotment letter was issued to the buyer or any agreement was signed for sale with the buyer prior to final registration. The appellant also failed to submit any document to prove that it had received any part payment from the buyer before the sale deed. Therefore, the AO was correct in invoking the provisions of section 43CA (1) and treated the difference of Rs. 9,74,200/- between sale consideration and market value as income of the appellant. I do not find any infirmity in the action of the AO. The addition of Rs. 9,74,200/- is upheld.”*

4. Aggrieved, the assessee is in appeal before the Tribunal regarding the addition of Rs.9,74,200/- sustained by the Ld. CIT(A).



5. We have heard rival submission of the parties and perused the relevant material on record. The Ld. CIT(A) in respect of property D-9 sold to 'Sanghavi Bothra Engineer', has sustained the difference of Rs.9,74,200/- between sale consideration recorded in the books of accounts and market value on the date of registration determined by the Sub-registrar of Stamp duty, invoking section 43CA of the Act, due to failure in substantiating that on date of allotment of the Flats to buyers, sale value of the property recorded in the books of account is equal to or more than the stamp duty value of the property on that date, which is one of the conditions for exemption from invoking provision of section 43CA of the Act. Before us, the Ld. counsel for the assessee submitted that said documents including allotment letter etc., were readily not traceable at the time of the appeal before the Ld. CIT(A) , but now, the assessee is willing to file all documents, if one more opportunity is provided to the assessee before the Ld. CIT(A). In view of the undertaking given by the Ld. counsel for the assessee and in the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the Ld. CIT(A) for deciding afresh. The assessee is directed to produce necessary evidence in support of its claim before the Ld. CIT(A) who will decide the issue in accordance with law. The ground No. 1 of the appeal of the assessee is allowed for statistical purposes.



6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28/05/2024.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/05/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai