

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 2240/Mum/2024  
(Assessment year : 2016-17)**

|  |           |  |
|--|-----------|--|
| <b>Assistant Commissioner of<br/>Income Tax, Kalyan</b><br>1 <sup>st</sup> Floor, Mohan Plaza, Wayle<br>Nagar, Khadakpada, Kalyan<br>West, Maharashtra, 421301 | <b>vs</b> | <b>Ashok Hazarimal Tharwani</b><br>702, A-Building, Pawandeeep<br>Towers, Opp Vishnu Darshan Appt,<br>Near Aman Talkies, Maharashtra,<br>421003<br><b>PAN : ABYPT7798P</b> |
| <b>APPELLANT</b>   |           | <b>RESPONDENT</b>  |

Assessee by : Shri Ajeet Manwani  
Respondent by : Shri Manoj Kumar Sinha (SR.DR.)  
  
Date of hearing : 09/07/2024  
Date of pronouncement : 12/ 07/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the revenue is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2016-17, date of order 18.01.2024. The impugned order was emanated from the order of the Ld. Assistant Commissioner of Income-tax, Circle-2, Kalyan (in short, 'the A.O.')

passed under section 143(3) of the Act date of order 24/12/2018.

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

*"1. On the facts & in the circumstances of the case, the Id. CIT(A), by deleting the addition on account of Flat No.301,402,803, and Shop No.7 made in the assessment order under the provisions of Section 43CA, erred in misinterpreting that the provisions of Section 43CA are not applicable for the present A.Y.2016-17 as part payment of bookings on the aforementioned flats/shop were made before 01.04.2013.*

*2. On the facts & in the circumstances of the case, the Id. CIT(A), erred in misinterpreting that the provisions of Section 43CA are not applicable for the present A.Y.2016-17, by not verifying or directing the AO to ascertain what was the stamp value of the above mentioned respective properties as on the date of agreement fixing the amount of consideration {i.e. part payment} and only then arrive at a conclusion as to whether any addition is warranted or not on account of the provisions of Section 43CA.*

*3. The order of the CIT(A) may be vacated & the matter be set aside to the table of the Assessing Officer.*

*4. The appellant craves leave to add, amend, alter or delete any ground of appeal"*

3. The brief facts of the case are that during the impugned assessment year, the assessee sold 9 flats and 4 shops. Out of that six flats and one shop was sold below the market value. The Ld.AO proceeded for violation of provisions of section 43CA of the Act and the difference amount was added back amount to Rs.1,88,76,150/- with the total income of the assessee. Aggrieved, assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) has accepted the submission of the assessee and issued the notice for issuance remand report to Ld.AO. After

allowing a reasonable time, without receiving the remand report, finally after verification, the Ld.CIT(A) rejected the addition related to sale of flat No.301, 402, 803 and shop No.7 for considering the provisions of section 43CA related to booking prior registration. The provision effective from 1/4/2013 related Finance Act, 2013. But related to flat Nos.1004, 1402 and 1603 as a difference with the market value and the set forth value of the properties. For these three flats, the Ld.CIT(A) remanded back for verification of Ld.AO. Accordingly, the appeal was partly allowed in favour of the assessee. Being aggrieved on the appeal order, the revenue has filed the appeal before us.

4. The Ld.DR argued and placed that the Ld.CIT(A) has done beyond his jurisdiction. The Ld. DR fully relied on the assessment order.

5. The Ld.AR argued and placed that the relevant part of the appeal order paragraphs no 2 to 4 are reproduced as below: -

*"2. In the course of appellate proceedings, the appellant has furnished written submission and documents which were examined carefully.*

*Analysis and decision: -*

*3. I have considered the grounds of appeal and seen the submission made by the appellant and perused the assessment order passed u/s 143(3) of IT Act, 1961. Ground no. 1 to 4 are related to addition made u/s 43CA of the I T Act. Ground no. 5 is general in nature which doesn't require any specific adjudication. The detailed discussion and decision in respect of ground no. 1 to 4 are as under: -*

*3.1 The relevant part of the assessment order is as under: -*

*"5) On going through the details filed it seen that during the year the assessee has sold 9 flats and 4 shops. However in the cases of 6 flats and 1 shop as mentioned below the assessee has sold its flats below the market value:*

| Flat/Shop    | Stamp Duty /<br>Market<br>Value | Agreement Value<br>(Rs) | Diference (Rs)       |
|--------------|---------------------------------|-------------------------|----------------------|
| 301/B        | 83,57,000/-                     | 45,80,000/-             | 37,77,000/-          |
| 402/B        | 1,111,38,100/-                  | 72,30,000/-             | 39,08,100/-          |
| 803/B        | 1,48,79,500/-                   | 1,10,00,000/-           | 38,79,500/-          |
| 1004/B       | 91,56,500/-                     | 78,00,000/-             | 13,56,500/-          |
| 1402/B       | 1,19,90,500/-                   | 99,98,000/-             | 19,92,400/-          |
| 1603         | 1,55,87,550/-                   | 1,47,00,000/-           | 8,87,550/-           |
| Shop-7       | 60,75,000/-                     | 30,00,000/-             | 30,75,000/-          |
| <b>Total</b> |                                 |                         | <b>1,88,76,150/-</b> |

Since the assessee has sold the flats and shops below the market value as per the provisions of section 43CA the difference between the market value and agreement value is required to be added. Though the assessee in his submissions has stated that assessee had undertaken a development project in the year 2006, by paying corpus to each member. The assessee had started bookings of the flat in the year 2006. The allotment letters were issued to the prospective buyers at the rate prevailing in the market at that time. Hence the difference. The submissions made by the assessee are considered but cannot be accepted. Since the assessee in the submission itself tried to clarify the issue and has filed copy of Index-2, he could have filed the copy of allotment letter or any other documentary evidence which he failed to do. As can be seen he has sold the remaining flats and shops either at the market value or more than the market value. Therefore, the submissions of the assessee cannot be accepted and the difference of Rs.1,88,76,150/- is added to the income of the assessee.”

3.2 The submission of the Appellant is as under:-

“Under instructions from our abovementioned Client and with reference to Notice issued by you fixing hearing on 25.04.2019, we submit as under: GROUND NO.1: Ld A O has made additions to the income of Appellant behind his back without giving any opportunity to explain the proposed additions. GROUND NO 2: Ld A O did not give any opportunity to the Appellant that Appellant has booked the flats at the then prevailing market value

*much prior to introduction of Section 43CA. Appellant humbly submits that as is clear from the record that after issue of notices by Kalyan Income Tax Office on 19.07.2017 & 03.08.2017, the PAN of the Appellant was migrated to Navi Bombay due to change of the address of the Appellant. But. Thereafter, the Appellant was called upon by the Ld. A O to submit the details as per telephonic instructions. Appellant furnished the details by his letter dated 14.12.2018 on the basis of communication through email. Thereafter, Ld AO has unilaterally made additions to the Appellant's income without giving him any opportunity or issuing any show cause notice calling upon him to furnish any further details or explanation with regard to the additions proposed to be made by him. The appellant was therefore at a loss to know as to how the additions were made by the Ld. AO in his order dated 24.12.2018 without calling for any other information after submission of details on 14.12.2018. Ld AO therefore has himself assumed and presumed the applicability of section 43CA to the transaction of sale of flats sold by the Appellant at the then prevailing market rates which are seen to be lesser than the rates as determined by the Stamp Valuation Authorities at the time of registration of Agreements. Thus the additions made by Ld AO are behind the back of the Appellant without giving him any opportunity to explain the reason for having sold the flats at the then prevailing market rates before introduction of section 43CA. GROUND NO.3: Ld A O has aided erred to Rs.1,88,76,150/- u/s 43CA of IT Act. make additions of Rs. 1,88,76,150/- u/s 43CA of IT Act. GROUND NO 4: Appellant submits that all the flats are sold prior to introduction of Section 43CA and also at the then prevailing market rates and therefore the additions are uncalled for. Appellant further submits that the additions made by LdAO on the basis of tabular Information reproduced on page 2 of assessment order as compared with the following details will prove that the additions of Rs.1,88,76,150/-ought not to have been made.*

| <b>Flat No</b> | <b>Sale Date</b> | <b>Sale Value</b> | <b>Regn Date</b> | <b>Mkt Value</b> | <b>Diff</b> |
|----------------|------------------|-------------------|------------------|------------------|-------------|
| 301            | 16.09.11         | 45,80,000         | 05.02.16         | 83,57,000        | 37,77,000   |
| 402            | 22.05.12         | 72,30,000         | 29.07.16         | 1,11,38,000      | 39,08,100   |
| 803            | 16.10.12         | 1,10,00,000       | 12.04.16         | 1,48,79,500      | 38,79,500   |
| 1004           | 24.07.13         | 78,00,000         | 30.07.15         | 91,56,500        | 13,56,500   |
| 1402           | 14.09.14         | 99,98,000         | 12.06.15         | 1,19,90,500      | 19,92,500   |
| 1603           | 28.02.15         | 1,47,00,000       | 29.04.15         | 1,55,87,550      | 8,87,550    |
| Shop No.<br>7  | 18.02.10         | 30,00,000         | 07.09.15         | 60,75,000        | 30,75,000   |

*All the aforesaid Flats & Shop except those highlighted were booked long before 01.04.2013 when the section 43CA was introduced by the Finance Act, 2013. Not only that the amounts for booking were made by Account payee cheques as is the exception to the application of section 43CA of the Act. Thus, as far as these transactions are concerned there can be no application of Section 43CA and additions cannot be made. In evidence of the aforesaid plea, we are enclosing the copies of Allotment Letters issued to the parties and copies of their Bank Accounts reflecting the payments made prior to 01.04.2013. Hence, the additions in respect of Flat Nos. 301, 402, 803 & Shop No.7 for the alleged difference between the market value as determined by stamp authorities and the amount mentioned in Agreement cannot be made. Copies of Allotment Letters in respect of aforesaid Flat/shop alongwith the copy of Bank Passbook of the parties are hereto annexed which Your Honor may admit as evidence under rules as no opportunity was given to the Appellant to submit the same during assessment proceeding. Appellant*

further submits that in respect of Flat Nos. 1004, 1402 & 1603 which are shown in bold in the aforesaid table, it is important to note that even though these have been booked after introduction of Section 43CA, the same have been sold at the then prevailing market rates. The difference in the transaction value and market value as worked out by the Ld A O while making additions is only due to the Registration of Sale Agreements subsequently long after the date on which these deals were finalized and amounts accepted by the Appellants through Account payee cheques. To prove that the sales in respect of these Flats were made at the market value Appellants are enclosing the Valuation chart of the properties during those periods as determined by the Stamp duty authorities as under:

Flat 1004> area 80.25mts> rate 80,000 Mkt Vale 64,20,000

**Agreement Value is Rs.78,00,000/-**

Flat 1402> area 100.mts> rate 92,000>Mkt Vale 92,30,360

**Agreement Value is Rs. 99,98,000/-**

Flat 1603> area 100.33mts> rate92,000>Mkt Value 1,19,89,440

**Agreement Value is Rs.1,47,00,000/-**

Considering the aforesaid working on the strength of the valuation certificates of the market rates as determined by the stamp valuation authorities applied to the sales made by the Appellants it is clear that all the flats/shop sold by the Appellants are at the then prevailing market rates only and the difference between the Agreement Value and the Value as determined by the Stamp duty authorities is only due to deferment of registration of the Agreement by the Appellants and the Flat buyers due to different reasons. Hence, it can be concluded that the Appellants have sold all the flats/shop at the market value and the additions made in the Appellant's income was uncalled for. Evidence of Stamp Valuation chart for the relevant period is enclosed. In the premises Appellants pray that the additions made in the Appellant's income may kindly be deleted for which the Appellant shall always remain grateful."

3.3 I have gone through the assessment order and the submission of the Appellant. The Appellant, in respect of the addition u/s 43CA made by the AO, submitted that :-

*“Appellant further submits that the additions made by Ld A O on the basis of tabular information reproduced on page 2 of assessment order as compared with the following details will prove that the additions of Rs.1,88,76,150/-ought not to have been made.*

| <i>Flat No.</i>   | <i>Sale Date</i> | <i>Sale Value</i>  | <i>Regn Date</i> | <i>Mk Value</i>    | <i>Diff</i>      |
|-------------------|------------------|--------------------|------------------|--------------------|------------------|
| <i>301</i>        | <i>16.09.11</i>  | <i>45,80,000</i>   | <i>05.02.16</i>  | <i>83,57,000</i>   | <i>37,77,000</i> |
| <i>402</i>        | <i>22.05.12</i>  | <i>72,30,000</i>   | <i>29.07.16</i>  | <i>1,11,38,000</i> | <i>39,08,100</i> |
| <i>803</i>        | <i>16.10.12</i>  | <i>1,10,00,000</i> | <i>12.04.16</i>  | <i>1,48,79,500</i> | <i>38,79,500</i> |
| <i>1004</i>       | <i>24.07.13</i>  | <i>78,00,000</i>   | <i>30.07.15</i>  | <i>91,56,500</i>   | <i>13,56,500</i> |
| <i>1402</i>       | <i>14.09.14</i>  | <i>99,98,000</i>   | <i>12.06.15</i>  | <i>1,19,90,500</i> | <i>19,02,500</i> |
| <i>1603</i>       | <i>28.02.15</i>  | <i>1,47,00,000</i> | <i>29.04.15</i>  | <i>1,55,87,550</i> | <i>8,87,550</i>  |
| <i>Shop No. 7</i> | <i>18.02.10</i>  | <i>30,00,000</i>   | <i>07.09.15</i>  | <i>60,75,000</i>   | <i>30,75,000</i> |

*All the aforesaid Flats & Shop except those highlighted were booked long before 01.04.2013 when the section 43CA was introduced by the Finance Act, 2013. Not only that the amounts for booking were made by Account payee cheques as is the exception to the application of section 43CA of the Act. Thus, as far as these transactions are concerned there can be no application of Section 43CA and the additions cannot be made. In evidence of the aforesaid plea we are enclosing the copies of Allotment Letters issued to the parties and copies of their Bank Accounts reflecting the payments made prior to 01.04.2013. Hence, the additions in respect of Flat Nos. 301, 402, 803 & Shop No.7 for the alleged difference between the market value as determined by stamp authorities and the amount mentioned in Agreement cannot be made. Copies of Allotment Letters in respect of aforesaid Flat/shop alongwith the copy of Bank Passbook of the parties are hereto annexed which Your Honor may admit as evidence under rules as no opportunity was given to the Appellant to submit the same during assessment proceeding.*

*“3.4 Appellant further submits that in respect of Flat Nos. 1004, 1402 & 1603 which are shown in bold in the aforesaid table, it is important to note that even though these have been booked after introduction of Section 43CA, the same have been sold at the then*

prevailing market rates. The difference in the transaction value and market value as worked out by the Ld A O while making additions is only due to the Registration of Sale Agreements subsequently long after the date on which these deals were finalized and amounts accepted by the Appellants through Account payee cheques. To prove that the sales in respect of these Flats were made at the market value Appellants are enclosing the Valuation chart of the properties during those periods as determined by the Stamp duty authorities as under:-

Flat 1004> area 80.25mts> rate 80,000 Mkt Vale 64,20,000

**Agreement Value is Rs.78,00,000/-**

Flat 1402> area 100.mts> rate 92,000>Mkt Vale 92,30,360

**Agreement Value is Rs. 99,98,000/-**

Flat 1603> area 100.33mts> rate92,000>Mkt Value 1,19,89,440

**Agreement Value is Rs.1,47,00,000/-**

*Considering the aforesaid working on the strength of the valuation certificates of the market rates as determined by the stamp valuation authorities applied to the sales made by the Appellants it is clear that all the flats/shop sold by the Appellants are at the then prevailing market rates only and the difference between the Agreement Value and the Value as determined by the Stamp duty authorities is only due to deferment of registration of the Agreement by the Appellants and the Flat buyers due to different reasons. Hence, it can be concluded that the Appellants have sold all the flats/shop at the market value and the additions made in the Appellant's income was uncalled for. Evidence of Stamp Valuation chart for the relevant period is enclosed."*

*The claim of the Appellant with respect to the flat No. 1004, 1402 and 1603 were verified from the documents submitted by the Appellant that the flats were booked after 01.04.2013 and the part payments were also made through bank accounts in these cases at the time of booking. However, registration of sales were made at later dates. The AO has taken the stamp duty valuation on the date of sale registration whereas the AO should have taken the stamp duty valuation on the date of agreement. Further, these documents*

*submitted by the Appellant were sent to the AO for verification at the end of the AO and Remand Report was asked vide letter dated 07.01.2020, 23.03.2021, 31.05.2021, 13.09.2023 & 09.11.2023. However, the AO didn't submit any Remand Report in this case despite of giving ample opportunities and time. The Appellant has further submitted that the sale value of these flats are more than the market value as on the date of agreement.*

*In view of these facts, the AO is directed to take the stamp duty valuation on the date of agreement with respect to the flat No. 1004,1402 and 1603 to compute the addition u/s 43CA of the IT Act, if any and verify the claim of the Appellant if the claim of the Appellant is correct, the addition made with respect to the flat No. 1004,1402 and 1603 is to be deleted.”*

6. We heard the rival submission and considered the documents available in the record. On perusal of the appeal order, we find that the Id.CIT(A) allowed the reasonable opportunity to Id. AO and different dates were allowed for calling of the remand report. But Ld.AO was reluctant and did not issue any remand report and did not inform to the Id. CIT(A) at his end. Finally, the Ld.CIT(A) has considered the verification and related to Flat No.301, 402, 803 and shop No.7. The booking was done prior to impugned assessment year and accordingly, section 43CA is not applicable as per amendment introduced from 01/04/2013, Finance Act, 2013. Not only that, but the amounts are also paid through account payee cheque and the entire issue was duly verified by the Ld.CIT(A) by executing its right for verification. But related to flat No.1004, 1402 and 1603 as difference in the registration value and the setforth value of the properties. the assessee has filed the valuation report in respect of his claim. So, the issue was duly resolved before Ld.CIT(A) and the Ld.CIT(A) correctly remanded back the matter to the file of Ld.AO for verification. We find no reason to interfere in the impugned appeal

order. The Ld.DR has not been able to submit any contrary view against the appellate authority. In our considered view, the appeal order should be upheld. Accordingly, the ground of the revenue is dismissed.

7. In the result, the appeal of the revenue bearing **ITA No.2240/Mum/2024** is dismissed.

Order pronounced in the open court on 12<sup>th</sup> day of July, 2024.

Sd/-

(PRASHANT MAHARSHI)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 12/07/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai