

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.879/Bang/2024
Assessment Year: 2016-17

Green Orchard Farm Houses No.10/1 Lakshminarayana Complex Palace Road Vasanthnagar Bangalore 560 052 PAN NO : AAGFG4507Q	Vs.	ACIT Central Circle-2(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Sri Saravanan B., D.R.

Date of Hearing	:	10.07.2024
Date of Pronouncement	:	22.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) dated 20.3.2024 for the assessment year 2016-17. The assessee raised following grounds of appeal:

- 1. The ld. CIT(A) has erred in upholding the validity of the reopening of the assessment u/s 147.*
- 2. The ld. CIT(A) should have appreciated that the assessment order passed u/s 147 amounts to a review of the earlier assessment order passed u/s 143(3) dated 24.12.2018, which is without jurisdiction, and hence is invalid.*
- 3. The ld. CIT(A) has erred in confirming the action of Assessing Officer in making the addition of Rs.33,29,08,000/- under section 43CA without appreciating that the sale price was fixed in 2009.*

2. Facts of the case are that for the assessment year under consideration, assessee filed a return of income on 16.10.2016

declaring an income of Rs.6,39,86,840/-. The return was originally processed u/s 143(1) of the Income Tax Act, 1961 (in short "The Act") on 8.11.2016. Later, the assessment was completed u/s 143(3) of the Act vide order dated 24.12.2018. Subsequent to this, there was an order u/s 154 of the Act on 15.10.2019 where the payable income has been determined at Rs.32,83,70,789/-. Later notice u/s 148 of the Act was issued for reopening the assessment on 31.3.2021 after obtaining approval from competent authority u/s 151 of the Act. Same was served to the assessee on 25.01.2021, wherein the ld. AO recorded the reasons for reopening of assessment as follows:

"2. An Inquiry has been conducted in the case of M/S. Manipal Academy of Higher Education and notice u/s 133(6) has been issued and subsequently it was seen that M/S Manipal Academy of Higher Education has purchased lands from M/S. Green Orchard Farm Houses at Rs.150,00,00,000/-

3. M/S Green Orchard Farm Houses (GOFH) had entered into an agreement to sell for 190 acres of land with Manipal University in 2009 for a sale consideration of Rs.2 crores per acre. GOFH had received the amount of Rs.150 crores as advance till January 2010. Sale deeds for 50 acres were also executed in June 2007. Subsequently, there was a dispute and the matter went into arbitration.

4. The arbitration Award ordered to execute the sale deeds pertaining to approx 79 acres in fav of Manipal University in lieu of the advance of Rs.150 crores received by GOFH till January 2010. The stamp duty has been correctly paid as per the stamp value on the dates of execution of the 3 sale deeds. The sale consideration of Rs.150 crores although determined by the Arbitration Award on the basis of the advances received till 2010, actual full value of consideration should have been Rs.183,29,08,000/-.

S.No.	Date	Document No.	Stamp duty valuation	Agreement value	Difference
1.	16.01.2016	4526	73622000	69882710	3739290
2.	21.09.2015	2447	1240646000	921226415	319419585
3.	31.03.2016	6081	518640000	508B90875	9749125
			1832908000	1500000000	332908000

2. Hence, there was reason to believe that there was an escapement of income during the financial year 2015-16 (A. Y. 2016-17) in the case of the assessee within the meaning of Section 147 and the case was reopened by issue of notice u/s. 148 dated 31.03.2021 after obtaining approval from the statutory authorities u/s 151 of the Income Tax Act, 1961. The notice was duly served to the assessee on 25.01.2021.

3. In accordance to the notice u/s.148 of the IT Act, 1961 the assessee was required to file the return of income within 30 days from the date of receipt of notice u/s. 148, i.e., by 30.04.2021. However, the assessee has not filed the return of income in response to the notice u/s.148. Thereby, reminder was issued to the assessee for filing of return in response to notice u/s 148 on 16.08.2021. The same is also served to the assessee via e-proceedings. Further it was seen that the assessee has filed the return in response to notice u/s 148 of the IT Act, 1961 on 22.08.2021 but the assessee has not e-verified the same. Subsequently, the reminder for was issued to the assessee on 15.11.2021 to e-verify the return. However, the assessee has not e-verified the same. Thus, showcauses was issued to the assessee on 10.01.2022. Thereafter, the assessee has e-verified the return of income on 17.01.2022. A notice u/s 143(2) of the IT Act, 1961 was issued through ITBA and duly served upon the assessee on 11.03.2022.”

2.1 Accordingly, the ld. AO invoked the provisions of section 43CA of the Act. He computed the difference between stamp duty value and consideration passed between the parties as income of the assessee u/s 43CA of the Act as below:

No	Sale deed date	Consideration	Area	SDV	Sy.Nos
1	21.09.2015	92,12,26,415	48A 32.65G	124,06,46,000	Vasudevapura -Syno- 9,10,14-17 Kenchanahalli-Sy No-2, 3,4,5,8,12
2	31.03.2016	50,88,90,875	27A 0.5G	51,86,40,000	Govindapura Sy Nos- 4,5,14,16,17
3	16.01.2016	6,98,82,710	3A 28.19G	7,36,22,000	Vasudevapura Sy Nos- 10,12,13,14,15/3,16/3,17/3,18,19

8.9 Thus, there is difference of Rs 33,29,08,000/- in sale consideration and stamp duty value of the above mentioned sites and thus in view of detailed discussion above, the same is added u/s 43CA of the Income Tax Act, 1961.

[Addition: Rs 33,29,08,000/-]

2.2 Later, this order was subject matter of proceedings u/s 154 of the Act and vide order dated 15.10.2019, wherein the ld. AO determined the income u/s 154 of the Act as follows:

ORDER U/S.154 OF THE I.T. ACT, 1961

The assessee has filed his return on 16/10/2016 and declaring a return of income of Rs.6,39,86,840/-. The assessment order u/s 143(3) of the IT Act, 1961 was concluded on 24.12.2018 and the assessed as accepting the return of income. On a perusal of the assessment records, it is seen from the income computation statement that the income returned was arrived at after setting off losses relating to earlier assessment years aggregating to Rs.57,23,31,048/- as follows:

Loss relating to A.Y.2012-13	Rs.26,43,83,949/-
Loss relating to A.Y.2013-14	Rs.30,21,21,262/-
Loss relating to A.Y.2014-15	Rs. 58,18,909/-

2. It is however noticed that the loss related to A.Y. 2012-13 has been disallowed in scrutiny assessment in March 2014 and the disallowance upheld by CIT (Appeals) II, Bangalore in order dated 15 March 2016. As such there was no loss relating to A.Y. 2012-13 available for set off and the set off of Rs.26,43,83,949/- including the same loss may be disallowed and added to the income for the A.Y. 2016-17.

3. A notice u/s 154 of the IT Act, 1961 dated 16.06.2019 was issued to the assessee proposing the rectification of the above mistakes. Accordingly, to rectify the above mistake apparent from records, an order u/s 154 of the IT Act, 1961 was passed modifying the order u/s 143(3) dated 24.12.2018 as under:

Total Income Assessed as per Order u/s 143(3) dated 24.12.2018	6,39,86,838
Revised Income u/s 154:	32,83,70,789

2.3 Now the assessee filed appeal before us, primarily challenging the reopening of assessment by way of ground Nos.1 & 2.

3. The ld. A.R. submitted that consequent to the filing of the return u/s 139(1) on 16-10-2016, the assessment was completed u/s 143(3) on 24-12-2018 by DCIT, Central Circle 2(2), Bangalore, accepting the income returned of Rs.6,39,86,840/-.

3.1 Subsequently, the assessment was reopened under section 147 of the Act by issue of notice under section 148 of the Act dated 31-03-2021. In view of the technical glitches in the new Income Tax e-filing portal, the return could not be filed online. Hence it was submitted manually on 17-06-2021, wherein the income returned remained the same, that is, Rs.6,39,86,840/-. Notices under section 142(1) were issued on various dates, in response to which all the

details called for were furnished. After examining the details furnished, the Learned Assessing Officer completed the assessment under 147 vide order dated 24-03-2022 wherein an addition of Rs.33,29,08,000/- was made under section 43CA of the Income Tax Act. Being aggrieved by this order of the Learned Assessing Officer, the assessee filed appeal, before NFAC, who has confirmed the order of ld. AO.

3.2 The ld. A.R. submitted that an Agreement of Sale was executed on 01-06-2009 between the Assessee and Manipal University for the sale of land to the extent of 190 acres at a rate of Rs.2 crores per acre, for which an advance of Rs. 150 crores was received by the Assessee through account payee cheques. Consequent to this agreement, 50 acres of land were transferred to Manipal University for a consideration of Rs. 100 crores, by four different sale deeds executed in the month of June 2009. The balance of land could not be transferred in view of certain legal issues and pending litigation with regard to those lands, aggrieved by which Manipal University filed a suit in the Court of City Civil Judge at Bangalore numbered as OS No. 2963/2011 for refund of all monies paid to the Assessee along with appropriate compensation and costs. At the request of the Assessee, the matter was referred for Arbitration under the Arbitration and Conciliation Act 1996, and the Hon. Court, vide order dated 31-07-2012 appointed Justice M. Ramakrishna, a former judge of the Karnataka High Court, as the Sole Arbitrator.

3.3 After examining all the issues, the Hon. Arbitrator, passed award on 02-09-2015, where, amongst other issues, and after cancelling the four sale deeds executed in June 2009, the following orders were passed in respect of the transfer of land:

- i.
- ii
iii
- iv. *In lieu of an amount of fis. ISO,00, 00,OFF/- (Rupees One Hundred and*

*Fifty Crores Only) that is due and payable by the Respondents to the Claimant, an extent of 79 Acres 21 89 Guntas (excluding Kharab) of contiguous land in various survey numbers **situated** at Kenchenahalli village, Vasudevapura Village. and Govidpura village, Yelahanka Hobli, Bangalore, which are described in Schedule B, hereto i.e., Schedule B Property, shall be conveyed by the Respondents to the Claimant as follows:*

- (a) *An extent of 52 Acres 21.39 Guntas (excluding Kharab) of contiguous land in various survey numbers situated at Kenchenahalli village, Vasiidevapura Village, and Govindpura village, Yelahanku Hobli. Bangalore. which are described in Schedule C hereto. i.e., Schedule C Property shall be conveyed by the Respondents to the Claimant under a separate registered Sale Deed towards an amount of Rs. 702,00,00,000/- (Rupees One Hundred and Two Crores) within 7 (seven) days from the date of this Award, and*
- (b) *An extent of 27 acres 0.50 juntas (excluding kharab) of contiguous land in various survey numbers situated at Kenchenahalli village, Vasudevapura Village, and Govidpura village. Yelahanka Hobli. Bangalore, which are described in Schedule D hereto, i.e., Schedule D Property shall be conveyed by the Respondents to the Claimant under a separate registered Sale Deed towards an amount of Rs.48,00,00,000 (Rupees Forty Eight Crores) within 120 (One Hundred and Twenty) days from the date of this Award*
- v. *Claimant shall not be able to pay any further amounts to the Respondents in lieu of the cancellation of the Agreement and Registered Sale Deeds which amounts paid thereunder by Claimant to Respondents shall stand as paid on the sale deed with respect to Schedule B Property.*

3.4 She submitted that the Award also orders that the Claimant and Respondents are entitled to execute such other documents as may be necessary to fully give effect to the settlement arrived at by and amongst the Parties under the Compromise Petition. Based on the orders of the Award, Sale Deeds were executed by the Assessee in favour of Manipal University. It is clear from the orders in the Award that the Assessee would get only Rs 150 crores for the transfer of 79 acres of land, irrespective of the Stamp Duty Valuation of the land. This price was fixed by the Hon. Arbitrator by taking into consideration all the facts of the case, including the Agreement of Sale executed in June 2009.

3.5 She submitted that the Learned Assessing Officer however, in the assessment order under section 147 dated 24-03-2022, held that the provisions of section 43CA are applicable and, based on the Stamp duty Valuation of the land at Rs. **183,29,08,000/-**, made an addition of Rs.33,29,08,000/-. The reasons given by the Learned Assessing Officer for making the addition are that the Survey numbers mentioned in the Agreement of Sale dated 01-06-2009 and the three sale deeds executed in Fin. Year 2015-16 are not the same, nor has the sale price of Rs.2 crores per acre been adopted. While coming to these conclusions, the Learned Assessing Officer has completely ignored the orders of the Hon. Arbitrator, Justice M. Ramakrishna in the Compromise Petition. The assessment order of the Learned Assessing Officer making the addition of Rs.33,29,08,000/- is not acceptable for the following reasons:

Validity of reopening of assessment:

3.6 The ld. A.R. submitted that consequent to the filing of the return u/s 139(1) of the Act on 16-10-2016, the assessment was completed u/s 143(3) on 24-12-2018 by DCIT, Central Circle 2(2), Bangalore, accepting the income returned of Rs.6,39,86,840/-. Once the assessment has been completed by the Central Circle, it is presumed that complete scrutiny has taken place and all aspects of income and deductions have been examined thoroughly. There is no change in the facts or circumstances as on the date of the original assessment u/s 143(3) or on the date of the issue of notice u/s 148. The "evidences" relied upon by the Learned Assessing Officer for making the additions u/s 43CA are the Sale Deeds and the Stamp duty Guidance Values which existed even at the time of the original assessment. Hence, the reopening of the assessment and consequent addition under section 43CA only amounts to a change of opinion on the part of the Learned Assessing Officer or a review of the original assessment.

3.7 She submitted that once the issue has been decided in the assessment order u/s 143(3) any deviation from this decision without the benefit of any additional information or tangible material by the Assessing Officer in an assessment reopened under section 147 would amount to change of opinion. This would result in a review of the earlier assessment order, for which no powers have been vested with the Assessing Officer under the Income Tax Act.

3.8 In this regard, she placed reliance on the decision of the Hon. Supreme Court in the case of **CIT Vs. Kelvinator of India Ltd.** reported in 320 ITR 561 (SC). 174, wherein it has been held that:

.... Section 147 would give arbitrary powers to the Assessing Officer to re- open assessments on the basis of “mere change of opinion”, which cannot be per se reason to re-open. We must also keep in mind the conceptual differences between power to review and power to re-assess. The Assessing Officer has no powers to review; he has the power to re-assess.

3.9 She also placed reliance on the decision of the Hon. High Court of Karnataka in the case of **CIT v. Chaitanya Properties (P) Ltd.** Reported in ITA no. 205 of 2015 where the Hon. Court held that:

“Where during assessment, though assessee disclosed before Assessing Officer about joint development agreement with developer and conversion of land by it as investment into stock-in-trade, Assessment Officer did not invoke Section 45(2) to tax consideration as capital gains, subsequent reopening for imposing capital gains was not proper.”

3.10 Further she submitted that para 5 of the decision observes that:

5. On the question of law, the Tribunal has gone by the decision of the Apex Court in the case of CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561/187 Taxman 312 in addition to other decisions of Karnataka High Court. In our view, if the Tribunal has taken the view based on the decision of the Apex Court and also of the jurisdictional High Court i.e., High Court of Karnataka, we do not find that any substantial questions of law would arise for consideration, as sought to be canvassed.

3.11 She submitted that considering the decision of the Hon. Karnataka High Court in the case of **CIT v. Kalappa, Forest Contractor** in IT Reference Case No. 112 of 1982, where the Hon. Court held that:

As held by Supreme Court in the case of Genuine Leather Stores v. ITO [1975] 100 ITR 1, where the assess has disclosed primary facts relating to transactions, it is for the officer to make the necessary enquiries and draw a proper inference as to whether the income returned is correct or not. If he does not make an enquiry, it is a case of oversight and it cannot be said that income chargeable to tax has escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts.

3.12 Hence, she submitted that the reopening of the assessment under section 147 is bad in law and consequent addition made under section 43CA is invalid and requires to be cancelled on this ground alone.

4. The ld. D.R. submitted that the assessment order and material available on records shows that there was fresh material on hand with the AO to formulate an opinion that income has indeed escaped assessment and only on the basis of this fresh material the AO proceeded to re-open the assessment. The fresh material was obtained during an enquiry conducted in the case of M/s. Manipal Academy of higher education. During the course of this enquiry, the AO came in possession of material indicating that M/s. Manipal Academy Higher Education had purchased land from the assessee for a consideration of Rs. 150 crores. It came to light that the assessee had entered into an agreement to sale for 190 acres of land for an agreed consideration of Rs. 2 crores per acre. The assessee had received Rs. 150 crores as advance till January, 2010. Sale deed for 50 acres of land was executed in June, 2007. Subsequently, there was a dispute between the two parties and the matter went into to

arbitration. The arbitration award ordered to execute sale deed pertaining to around 70 acres favouring M/s Manipal Academy of higher education for a consideration received Rs. 150 crores. The Id. AO noted that full value of consideration of the said 79 acres of land is Rs.183,29,08,000/-. Based on this new information, the Id. AO proceeded to reopen the assessment u/s 147 of the Act.

5. We have heard the rival submissions and perused the materials available on record. In this case, the original assessment u/s 143(3) of the Act was completed on 24.12.2018 as follows:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2(2), BLR

To, GREEN ORCHARD FARM HOUSES NO.10/1, NO.10/1, LAKSHMINARAYANA COMPLEX, PALACE ROAD, 560052,Karnataka India	
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PAN: AAGFG4507Q	AY: 2016-17	Order No: ITBA/AST/S/143(3)/2018-19/1014525494(1)	Dated: 24/12/2018
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Name of the assessee	GREEN ORCHARD FARM HOUSES
Address of the assessee	NO.10/1, NO.10/1, LAKSHMINARAYANA COMPLEX, PALACE ROAD, 560052, Karnataka, India
Status	FIRMS
Range/Circle/Ward	CENTRAL CIRCLE 2(2), BLR
Resident/Resident but not Ordinary resident/ Non-resident	Resident
Date of Hearing	24/07/2017, 29/11/2018, 10/12/2018
Section/Sub-section under which assessment is made	143(3)
Date of Order	24/12/2018

ASSESSMENT ORDER

The assessee M/s Green Orchard Farm Houses is a firm engaged in real estate business. The assessee has e-filed the return of income for A.Y. 2016-17 on 16/10/2016 declaring a income of 6,39,86,840/-. The return is processed u/s 143(1) on 08/11/2016

2. The case was selected for scrutiny. Notice u/s 143(2) dated 03/07/2017 was issued and served. Notice u/s 129 issued on 07.09.2018. Subsequently, notice u/s 142(1) on 07/12/2018 was issued and served on the assessee requiring the assessee to furnish copies of computation of income, financial statement, tax audit report, the accounts and other details.

3. In response the above notices, the assessee submitted the details called for which we are verified. After verification of the accounts and the details filed by the assessee, the assessment u/s 143(3) of the IT Act, 1961 is completed by accepting the return of income.

Issue demand notice accordingly.

P SENTHIL
CENTRAL CIRCLE 2(2), BLR

Copy to:

Assessee

P SENTHIL
CENTRAL CIRCLE 2(2), BLR

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

5.1 Later this order was subject matter of rectification u/s 154 of the Act dated 15.10.2019 as follows:



**Office of the
Deputy Commissioner of Income Tax, Central Circle - 2(2),
03rd Floor, C.R. Building, Queen's Road, Bengaluru-560 001**
Telephone: 080-22865253 Fax: 080-22865253

PAN: AAGFG4507Q /DCIT-CC-2(2)/2018-19

Date: 15.10.2019

**PROCEEDINGS OF THE DEPUTY COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2(2), BENGALURU.**

Name & address of the assessee : M/s Green Orchard Farm House.,
No.10/1, Lakshminarayana Complex,
Palace Road, Bengaluru,
Bangalore-560 052.
PAN : AAGFG4507Q
Assessment Year : 2016-17
Status : Firm

ORDER U/S.154 OF THE I.T. ACT, 1961

The assessee has filed his return on 16/10/2016 and declaring a return of income of Rs.6,39,86,840/-. The assessment order u/s 143(3) of the IT Act, 1961 was concluded on 24.12.2018 and the assessed as accepting the return of income. On a perusal of the assessment records, it is seen from the income computation statement that the income returned was arrived at after setting off losses relating to earlier assessment years aggregating to Rs.57,23,31,048/- as follows:

Loss relating to A.Y.2012-13	Rs.26,43,83,949/-
Loss relating to A.Y.2013-14	Rs.30,21,21,262/-
Loss relating to A.Y.2014-15	Rs. 58,18,909/-

2. It is however noticed that the loss related to A.Y. 2012-13 has been disallowed in scrutiny assessment in March 2014 and the disallowance upheld by CIT (Appeals) II, Bangalore in order dated 15 March 2016. As such there was no loss relating to A.Y. 2012-13 available for set off and the set off of Rs.26,43,83,949/- including the same loss may be disallowed and added to the income for the A.Y. 2016-17.

3. A notice u/s 154 of the IT Act, 1961 dated 16.06.2019 was issued to the assessee proposing the rectification of the above mistakes. Accordingly, to rectify the above mistake apparent from records, an order u/s 154 of the IT Act, 1961 was passed modifying the order u/s 143(3) dated 24.12.2018 as under:



Total Income Assessed as per Order u/s 143(3) dated 24.12.2018	6,39,86,838
Revised Income u/s 154:	32,83,70,789
TAX THEREON :	9,85,11,237
ADD : Surcharge :	1,18,21,348
ADD : Education Cess :	33,09,978
TAX ON TOTAL INCOME ASSESSED:	11,36,42,563
LESS : TDS/TCS :	1,65,56,626
BALANCE TAX AFTER ADV.TAX/TDS/Relief :	9,70,85,937
ADD : Interest u/s. 234A :	9,70,859
ADD : Interest u/s. 234B :	3,20,38,360
ADD : Interest u/s. 234C:	2,06,749
TOTAL TAX AND INTEREST PAYABLE :	13,03,01,905
LESS : Self Asst. Tax Paid :	62,82,794
BALANCE TAX PAYABLE:	12,40,19,111
ADD : Refund Issued Earlier :	96,950
BALANCE TAX PAYABLE:	12,41,16,061
ADD : Interest u/s.234D on Excess Refund Issued :	12,119
TOTAL TAX PAYABLE:	12,41,28,180

Demand Notice u/s.156 of the IT Act, 1961 is issued accordingly.


[P SENTHIL]
Deputy Commissioner of Income-tax,
Central Circle 2(2), Bengaluru.

5.2 Later, there was an enquiry conducted in the case of Manipal Academy of Higher Education and notice u/s 133(6) of the Act has been issued and it was found that M/s. Manipal Academy of Higher Education has purchased lands from M/s. Green Orchard Farm Houses ("GOFH") at Rs.150 Crores. M/s. GOFH entered into an agreement with present assessee to sell 190 acres of land with M/s. Manipal University in 2009 for sale consideration of Rs.2 crores per acre. M/s. GOFH has received an amount of Rs.150 crores as advance till January, 2010. Sale deeds for 50 acres were also executed in June, 2007. Subsequently, there was a dispute and the

matter went to Arbitration. The Arbitration Award ordered to execute the sale deeds pertaining to approximately 79 acres in favour of M/s. Manipal University in lieu of advance of Rs.150 crores received by M/s. GOFH till January, 2010. The stamp duty has been paid as per the stamp valuation on the date of execution of these three sale deeds. The sale consideration was Rs.150 crores as determined by the arbitration award on the basis of advance received till 2010. However, actual valuation for stamp duty purpose was Rs.183,29,08,000/-. Thus, there was a difference between value determined for registration and value mentioned in the sale deed at Rs.33,29,08,000/-. According to the ld. AO, there was an escapement of income in the assessment year under consideration to the tune of this amount, so that the ld. AO issued a notice u/s 148 of the Act by invoking the provisions of section 43C of the Act. The ld. A.R. made a submission that all the details of sale consideration of Rs.183,29,08,000/- was very much available at the time of passing the original assessment order on 24.12.2018. The ld. AO very well could have invoked the provisions of section 43CA of the Act while framing the assessment order itself. According to the ld. A.R., there was no fresh tangible material to invoke the provisions of section 147 r.w.s. 148 of the Act and there was no enquiry of whatsoever required to come to the conclusion that there was under reporting of the sale consideration in the sale deed as against the value adopted for stamp duty purposes and bring an amount of Rs.33,29,08,000/- as escaped income by issuing notice u/s 148 of the Act on 31.3.2021. According to the ld. A.R., notice u/s 148 of the Act was issued only on account of change of opinion.

5.3 In this case notice u/s 148 of the Act has been issued on 31.3.2021 i.e. within 4 years from the end of the relevant assessment years. So on this issue, we observed that notice has been given within the statutory time allowed. The grievance of the assessee is that there was no fresh material to reopen the assessment and it is

only on account of change of opinion. However, we find that assessment order passed u/s 143(3) of the Act reproduced in earlier para of this order is very cryptic and there was no discussion of what was the enquiry made by ld. AO at the time of passing assessment order. As per provisions of section 147 of the Act, where an assessment u/s 143(3) of the Act was completed this section has been made for the relevant assessment year, no action shall be taken under this section after expiry of 4 years from the end of relevant assessment year, unless any income chargeable to tax as escaped assessment for such assessment year by reason of the failure on the part of assessee to make a return u/s 139 of the Act or in response to a notice under sub-section (1) of section 142 or 148 of the Act or to disclose fully and truly all material facts necessary for this assessment for that assessment year. As per explanation (1), production before the ld. AO all books of accounts or other evidences from which material evidence with due diligence have been discovered by the ld. AO will not necessarily amount to disclosure within the meaning of above proviso. In the present case, the assessment order passed u/s 143(3) of the Act very cryptic and no discussion by ld. AO in the order passed u/s 143(3) of the Act. Only production of the documents is not considered as a due compliance of the provisions of the Act and it requires due diligence of ld. AO to found out the discrepancies. Due to subsequent enquiry made with M/s. Manipal Academy of Higher Education, the ld. AO came to know that there was a difference between consideration disclosed in the sale deed as compared to the value determined for stamp duty purpose, which is at Rs.33,29,08,000/-. To bring this amount the ld. AO reopened the assessment u/s 147 of the Act.

5.4 The assessee relied on the judgement of Chaitanya Properties Pvt. Ltd. cited (supra). In that case, assessment has been opened after 4 years from the end of relevant assessment years where the original assessment was completed u/s 143(3) of the Act. It was not

the case of assessee that the assessment was opened after 4 years from the end of relevant assessment year. Being so, the judgement of Hon'ble Karnataka High Court in the case of M/s. Chaitanya Properties Pvt. Ltd. cited (supra)_ is not applicable to the case.

5.5 The ld. A.R. placed reliance on the judgement in the case of Kelvinator of India Ltd. cited (supra) stating that there was change of opinion and there was no fresh material to reopen the concluded assessment. In our opinion, in the present case, the ld. AO has not expressed any opinion on the impugned issue in the original assessment order passed u/s 143(3) of the Act dated 24.12.2018. Being so, we cannot say that there was change of opinion. Hence, this judgement cannot be applied.

5.6 Similarly, the judgement in the case of M/s. Kalappa Forest Contractor cited (supra) is also not applicable to the case of assessee as the difference in the value mentioned in the sale deed and value adopted for stamp duty purpose could only be discovered with due diligence of the ld. AO and it cannot be found out with due diligence and not by naked eyes. These judgements cannot be of any assistance to the assessee. Hence, the ground raised by assessee with regard to reopening of assessment in ground Nos.1 & 2 are dismissed.

6. Next ground in this appeal is ground No.3 with regard to merit of addition of Rs.33,29,08,000/- u/s 43CA of the Act.

6.1 With regard to applicability of Section 43CA the ld. A.R. for the assessee submitted that the learned Assessing Officer in his order held that the provisions of section 43CA are applicable and, based on the Stamp duty Valuation of the land at Rs. 183,29,08,000/-, made an addition of Rs.33,29,08,000/-. The reasons given by the learned Assessing Officer for making the addition are that the Survey numbers mentioned in the Agreement of Sale dated 01-06-2009 and

the three sale deeds executed in Fin. Year 2015-16 are not the same, nor has the sale price of Rs.2 crores per acre been adopted. However, it must be noted that the learned Assessing Officer erred in appreciating the exception of Section 43CA mentioned under sub-sections (3) and (4) which reads as below:

(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.

6.2 She submitted that while coming to the aforementioned conclusions in the order, the Learned Assessing Officer has completely ignored the orders of the Hon. Arbitrator, Justice M. Ramakrishna, in the Compromise Petition. The assessment order of the Learned Assessing Officer making the addition of Rs.33,29,08,000/- is not acceptable because as it can be seen from the Arbitration Award dated 02-09-2015, the sale price of the land was fixed at Rs. 150 crores based on the advance money received by the Assessee by crossed cheques from Manipal University during the year 2009 and the same was not refunded to the claimant but instead the same advance amount was adjusted towards the land only in view of giving effect to the arbitration award and the transactions entered into during that year. The Agreement for Sale dated 01-06-2009 and the four Sale Deeds for the transfer of 50 acres of land for Rs.100 crores were subsequently modified by the Hon. Arbitrator in his award dated 02-09-2015 wherein the Sale deed with regard to 50 acres was cancelled only because the

assessee had to exchange those lands with litigation free lands in the same vicinity in view of arbitration award. It was in lieu of these four cancelled Sale Deeds executed on 03.06.2009, which were the subject matter of Arbitration, the Hon. Arbitrator passed the orders for the transfer of 79 Acres 21.89 guntas for a same price of Rs.150 crores as mention in sale agreement dated 01.06.2009. Hence, the base for fixing the value of consideration for the transfer of the asset was the year 2009 only, at which time stamp duty value per acre ranged from Rs.30 Lakhs to Rs.65 Lakhs, depending upon the survey numbers and the total value of the land transferred was 79 acres and 21-98 guntas as per the Stamp Duty Valuation.

6.3 Hence she submitted that it is very clear that the Stamp duty valuation is much less than the actual sale consideration, on account of which the provisions of section 43CA would not be applicable. She submitted that it is to be brought on record at this stage that evidences for having received the advance of Rs. 150crore by crossed cheques in 2009, guidance value of the year 2009 and the Arbitration Award were placed before the Learned Assessing Officer during the course of assessment proceedings u/s 147.

6.4 She further submitted that the Learned Assessing Officer has not appreciated that it was because of the legal disputes in the land to be transferred that the matter went for Arbitration. The Hon. Arbitrator cancelled the Sale of Agreement dated 01-06-2009 and the Sale Deeds executed in June 2009, but it was on the basis of the cancelled transactions of the year 2009 that the Hon. Arbitrator ordered that 79 acres of 21.89 guntas of litigation-free land should be transferred for the amount of Rs. 150 crores which was again the advance taken in 2009, and no further additional payments would be made by Manipal University to the Assessee. Hence, effectively, the sale transaction entered during FY 2015-16 goes back to the

arrangement entered into during the year 2009. As such the guidance value to be adopted would be as applicable for the year 2009, which is much less than the sale transaction. In support of this contention, reliance is placed on the decision of the Hon Ahmedabad Bench of the ITAT in the case of Ramesh Govindbhai Patel Vs. ITO reported in 118 taxmann. Com 201.

6.5 Further, she submitted that details of the lands transferred by the Assessee to Manipal University are here in below mentioned in the table. Lands which are common in various sale deeds executed in FY 2009-2010 and in FY 2015-16 are tabulated below for the sake of our convenience:

Sl. No.	Sale Deed Reg. Date	Village	Sy. No.	Area in Acres	Area in Guntas	Pg. No. / Paper
1	03.06.2009	Govindpura	7	3	02.00	58
2			8	3	06.00	
3			10	3	26.00	
4	03.06.2009	Govindpura	8	3	05.00	82
5			8	2	32.00	
6	03.06.2009	Vasudevapura	5	.5	17.00	101
7			6	5	21.00	
8					0	
9				1	09'	
10			9	5"	.0200'	
11	03.06.2009	Govindpura	1	5	09.00	120
12			31	4	07.00	
13	21.09.2015	Vasudevapura	2	0	28.84	150
14			3	4	29.81	
15			4	5	0	
16			5	5	17.00	

17			6	, 4.	18.00	
18			7	3.	.24.00	
19			8	.5	.09.00	
20			9	.5	02.00	
21		Kanchenahalli	12	7	11.00	
22			11/2	7	13.00	
23	16.01.2016	Vasudevapura	10	0	24.69	170
24			12	0	32.05	
25			13	0	25.41	
26			14	0	21.85	
27			15/3	0	17.75	
28			16/3	0	15.01	
29			17/3	0	08.07	
30			18	0	01.27	
31			19	0	02.01	
32	31.03.2016	Govindpura	4	3	25.50	188
33			5	6	06.00	
34			14	6	04.00	
35			16	6	18.00	
36			17	y\$	27.00	

6.6 Hence she submitted that from the above table it can be clearly seen that the Assessee had transferred 23 Acres 30 Guntas in the same survey no and lands in other survey numbers in same vicinity only to adhere to the arbitration award and it is to be noted that no further additional payment was made by Manipal University to the Assessee. The payment made in 2009 was only adjusted. hence, effectively, the sale transaction entered during FY 2015-16 goes back to the arrangement entered into during the year 2009 and the guidance value to be adopted would be as applicable for the year 2009.

6.7 In addition she placed reliance on the decision of Jaipur Bench of the Hon. ITAT in the case of **Indexone Tradecone Pvt. Ltd. Vs. DCIT**, Central Circle 2, Jaipur, reported in 97 taxmann 174 wherein it has been held as under in para 12 of the order:

12. 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.

6.8 She submitted that as per this decision also, since the original Agreement of Sale was entered into on 01-06-2009 which was modified by the Hon. Arbitrator and the transfer of lands took place subsequently on the basis of the Arbitration Award, the guidance value to be adopted for the purpose of section 43CA would be the guidance value as on 01-06-2009, which is much less than the transaction value.

Binding Nature of Arbitration Award:

6.9 Without prejudice to the above contentions, the ld. A.R. submitted that Section 35 of the Arbitration and Conciliation Act, 1996, provides that the award after an arbitration proceeding shall be binding on the parties to the proceedings. When an arbitral award is made it is in totality concerning all the dimensions and implies that no more steps can be further taken by the arbitral tribunal. The award has a binding effect on the parties. Hence, once the consideration for the transfer of the land is fixed by the Hon. Arbitrator, it is final and cannot be varied under any circumstances, let alone the valuation for the purpose of stamp duty. She submitted that on this ground also, the addition made by the Learned Assessing Officer u/s 43CA is required to be deleted.

7. The ld. D.R. submitted that it was because of the fact that assessee did not fulfill the conditions as per sale agreement dated 01.06.2009 the arbitration award cancelled the sale deeds—executed and ordered fresh sale deeds to be registered during the relevant Assessment year. Once the sale deeds executed in 2009 have been cancelled, consequently the sale agreement also stands cancelled. Therefore, he submitted that the assessee cannot claim that the current sale in FY 2015-16 emanates from the agreement to sale dated 01.06.2009. Since this 2009 agreement to sale did not exist as on date of registration of property in FY 2015-16 it is held that the ld. AO has correctly made addition u/s 43CA of the Act.

7.1 The ld. D.R. submitted that considering the facts and submissions made by the assessee, it is held that the arbitral award is a direction to the assessee to settle the dispute with the other party. This arbitral award had mandated the assessee to register certain parcels of land in favour of the disputing party at a certain rate. The binding nature of the arbitral award is limited to this. There is no dispute with respect to the fact that the 79 acres have been registered by the assessee for a consideration of Rs. 150 crores. Certain sums were received by the assessee in AY 2010-11. It is in lieu of this receipt that the arbitration award directed the assessee to register the said. Now, section 43CA is a special provision for full value of consideration for transfer of assets other than capital assets in certain cases. This provision was brought in for the purposes of computing profit and gains from transfer of such assets in as far as Income-tax is concerned. Therefore, these two (arbitral award and Income-tax assessment) are independent of each other. Therefore, he submitted that the action of the AO is to be confirmed.

8. We have heard the rival submissions and perused the materials available on record. In this case, M/s. Green Orchard Farm Houses (GOFH) had entered into an agreement to sell for 190 acres of land with Manipal University in 2009 for a sale consideration

of Rs.2 crores per acre. GOFH had received the amount of Rs.150 crores as advance till January, 2010. Sale deeds for 50 acres were also executed in June 2007. Subsequently, there was a dispute and the matter went into arbitration.

8.1 The arbitration Award ordered to execute the sale deeds pertaining to approx 79 acres in favour of Manipal University in lieu of the advance of Rs.150 crores received by GOFH till January 2010. The stamp duty has been correctly paid as per the stamp value on the dates of execution of the 3 sale deeds. The sale consideration of Rs. 150 crores although determined by the Arbitration Award on the basis of the advances received till 2010, actual full value of consideration should have been Rs.183,29,08,000/-.

S No.	Date	Document No.	Stamp Duty Agreement		Difference
			Valuation	Value	
1.	16/01/2016	4526	73622000	69882710	3739290
2.	21/09/2015	2447	1240646000	921226415	319419585
3.	31/03/2016	6081	518640000	508B90875	9749125
			1832908000	1500000000	332908000

8.2 Thus, assessee was compelled to execute the sale deed for sale consideration of Rs.2 crores per acre and the assessee executed above 3 sale deeds wherein total consideration was Rs.183,29,08,000/- against the arbitration award dated 2.9.2015 fixing the consideration at Rs.150 crores. As such, as rightly pointed out by the ld. A.R., the assessee has no discretion or right to demand to more than the consideration fixed by the arbitration vide said arbitration award. It is a judicial order. The assessee is bound by the terms & conditions laid down in the arbitration award as section

35 of the Arbitration & Conciliation Act 1996 accepts challenging the arbitration award before higher forum. Once the assessee accepts the arbitration award, it should be complied in letter and spirit. As such, the assessee has executed the sale deed in respect of properties at Rs.2 crores per acre. Thus, section 43CA of the Act is applicable to the assessee which reads as follows:

“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.”

8.3 Once we apply the provisions of section 43CA(3) of the Act, the consideration received by the assessee at Rs.150 crores as per arbitration award dated 2.9.2015 to be accepted as a true consideration and provisions of section 43CA of the Act cannot be applied. Accordingly, we allow ground No.3 of the assessee.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 22nd July, 2024

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 22nd July, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.