

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.362/Nag./2023**

**(Assessment Year : 2015-16)**

Shubhlaxmi Land Developers  
Plot no.306, Panchwati Nagar  
Binaki Layout, Nagpur 440 017  
PAN – ABLFS7462C

..... Appellant

v/s

Income Tax Officer  
Ward-4(4)R, Nagpur

..... Respondent

Assessee by : Shri Nilesh Shriram Toshniwal

Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 17/09/2024

Date of Order – 20/09/2024

**ORDER**

The assessee has filed this appeal challenging the impugned order dated 24/07/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2015-16.

2. During the course of hearing, the Registry has pointed out a delay of 52 days in filing the present appeal before the Tribunal. While going through the record available before us, I find that the assessee has filed application dated nil for condonation of delay requesting the Bench for condoning the delay in filing the present appeal. The reason for the delay, as contended by the assessee in its application, are reproduced below:–

*"Shubhlaxmi land developers is a partnership firm with mother and son as partners. Mother, Mrs. Ratnabai Mohadikar is the key business partner and takes all the major decisions related to the firm. She is having health problems and had to take rest as per Doctor's advice. She got weak due to the health issues & did not have strength to collect papers and visit counsel for filing the appeal. Appeal is a matter which is not required to be done on regular basis, the other partner could not take a proper decision, due to which the filing of appeal got delayed. This is for the first time; the key partner could not do her Income Tax Appeal work within given time.*

*She is late by 109 days including 60 days of allotted time for filing an appeal i.e., late by net 49 days due to health problems.*

*She prays to condone her delay, which was beyond her control. The delay attributes to her health problem. Medical certificate from Doctor is attached.*

*Appellant request to accept her application and condone the delay, so that she is not deprived of filing her appeal for in getting proper justice."*

3. In support of the application for condonation of delay, the assessee has also filed Affidavit duly sworn.

4. After considering the submissions of the learned Authorised Representative and averments made in the Affidavit, I am of the opinion that the assessee is prevented in filing the appeal belatedly and I am satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, I condone the delay of 52 days in filing the present appeal and admit the same for adjudication on merit.

5. In its appeal, the assessee has raised following grounds:-

*"1 On the basis of section 43CA of the Income Tax Act 1961 and the facts of the case, the Honourable Commissioner of Income Tax (Appeals), has passed the order u/s 250 by applying Section 43CA to advances received against plot allotment/agreements entered before 01.04.2014; the date of introduction and applicability of section 43CA, is bad in law.*

*2. Passing the order u/s 250 only on the basis of Remand Report submitted by the AO without considering the allotment letters with the corresponding audited financial statements and the nature of business of the appellant is not according to the principles of natural justice.*

3. The Appellant prays to allow it to add, alter, amend, modify and/or delete any or all of the above grounds of appeal at or before the time of hearings."

6. Facts in Brief:- The assessee is engaged in the business of land developer and accepts booking of plots on instalment basis primarily from lower middle class customers who make monthly deposits. The assessee, for the year under consideration, filed its return of income on 12/12/2013, showing total income of ₹ 1,94,310. Assessee's case was selected for scrutiny under CASS. The Assessing Officer noticed that following immovable properties (other than capital asset) have been sold by the assessee for lesser consideration than the market price / stamp duty valuation.

Sr. no.	Details of property	Name of purchasers	Sale Deed no.	Sale consideration received (₹)	Market value / stamp duty value (₹)	Difference (₹)
1.	Plot no.67, Khasra no.103/6, Mauza Nari	Rukma Wasudeo Gajbhiye	1070/2015	50,000	7,45,000	6,95,000
2.	Plot no.71, Khasra no.103/6, Mauza Nari	Dilip R. Rai & Sikandar S. Rai	1444/2014	50,000	7,44,000	6,94,000
3.	Plot no.71, Khasra no.125/2/1, Mauza Naari	Ku Prinkal Madhu Pasekar	3644/2014	50,000	9,95,000	9,45,000
4.	Plot no.10, Khasra no.103/6, Mauza Nari	Shri Vinod Sewakramji Tembekar and Smt. Karuna Vinod Tembekar	6324/2014	50,000	7,45,000	6,95,000
5.	Plot no.68, Khasra no.103/6, Mauza Nari	Vitendra Mansaram Patil	1069/2015	50,000	7,45,000	6,95,000
<b>Total:</b>				<b>2,50,000</b>	<b>39,74,000</b>	<b>37,24,000</b>

7. The assessee, vide its letter dated 21/12/2017, submitted explanation regarding violation of provisions of section 43CA of the Act, however, the

Assessing Officer did not accept the submissions of the assessee and held that considering the facts and circumstances of the case as discussed by the Assessing Officer in Para-4 to 6.2, it is established that the provisions of section 43CA of the Act are squarely applicable in assessee's case as the assessee's case as the assessee is in the business of selling plots / flats. Therefore, the difference of ₹ 37,24,000, between the sale consideration and stamp duty valuation in respect of the above immovable properties (other than capital asset) sold during the year under consideration is treated as income of the assessee and brought to tax accordingly adding the same to the total income of the assessee.

8. During the remand proceedings, before the Jurisdictional Assessing Officer ("JAO"), the assessee furnished copy of allotment letters, copy of allotment letters, copy of ledgers, copy of confirmation from the purchasing parties for the amount paid by them, copy of sale deeds, copy of receipts issued to the purchasers by the assessee. The assessee also furnished copy of financial statements for years ended 31/03/2009 to 31/03/2014. However, the assessee has not furnished copy of agreement to sale. The allotment letter submitted by the assessee is not a registered document and all the payments are received by the assessee firm are in cash only. The JAO observed that the sale deeds of the above mentioned properties were executed during the assessment year 2015-16 and the provisions of section 43CA of the Act came in force w.e.f. 01/04/2014 and hence the provisions of section 43CA are applicable in the case of the assessee. All the payments have been received by the assessee in cash only and thus the conditions mentioned in the sub section 3 and 4 of the section 43CA are not satisfied in

the appellant's case. Accordingly, the JAO directed the Assessing Officer to examine the issue whether the conditioned mentioned in the subsection (3) and (4) of Section 43CA are satisfied in assessee's case, and if so, whether the income has to be recomputed accordingly. In such circumstance, the Assessing Officer may furnish the revised computation of income under section 43CA of the Act. The assessee being aggrieved filed appeal before the learned first appellate authority.

9. The learned CIT(A) dismissed the appeal filed by the assessee by holding as under:—

*"After carefully reviewing the appellant's submission, the remand report, available records, and the facts and circumstances of the case, the following decisions have been reached:*

*8.1 The appellant argued that the agreements with the purchasers were made during the financial years ending on 31.03.2009 and 31.03.2010, and since Section 43CA was implemented from 2013-14 onwards, they believe that the provisions of Section 43CA should not be applicable to their case.*

*Upon reviewing the available records, the Assessing Officer noted that certain immovable properties were sold for a price lower than their market value or stamp duty valuation. As a result, the assessee was issued a show cause notice to explain why the provisions of section 43CA should not be applied to their case.*

*In response, the assessee asserted that they had already accounted for the notional profit arising from the difference between the sale consideration and the stamp duty valuation. This adjustment increased the gross profit to Rs.29.00 lacs, considering both the actual sale price and development receipts of Rs.4.03 lacs, as evidenced in the Profit & Loss (P&L) account.*

*The P&L account displayed a gross profit of Rs.28.94 lacs, which was derived by deducting the actual sale price, development receipts, development charges, and land development charges from the notional stamp duty valuation of 5 plots sold during the year, totalling Rs.39,74,000/-. After accounting for the related direct expenses, the gross profit amounted to Rs.29,84,615/-. However, the actual gross profit mentioned in the P&L account was Rs.28,94,375/-, resulting in a difference of Rs.90,240/-, which the assessee voluntarily offered for taxation.*

*However, the contention of the assessee was not acceptable as there was no dispute about the fact that the assessee transferred 5 plots which were stock in trade and not a capital asset. Additionally, the schedule of opening and*

*closing stock filed by the assessee indicated that the rate of closing stock of most layouts increased due to development charges incurred by the assessee.*

*The value of the closing stock had increased due to development activity carried out on the land. The value of the closing stock has to be based on the market value or cost, whichever is lower. Therefore, the assessee's contention that the closing stock value includes notional profit was not acceptable, as a higher closing stock would result in a higher opening stock in the following year.*

*Consequently, the plea of the assessee, that the gross profit of Rs.28.94 lacs shown in the P&L account was derived by deducting the actual sale price, development receipts, and other development charges and land development charges from the notional value of stamp duty valuation of 5 plots sold during the year amounting to Rs.39,74,000/-, was also not accepted.*

*A remand report was called for from the AO's office concerning the appellant's claims. After reviewing the Remand Report, it becomes evident that the sale deeds of the properties were executed during the financial year 2014-15, corresponding to the assessment year 2015-16. Consequently, the provisions of Section 43CA, which came into effect from 01/04/2014, are applicable to the assessee's case. Furthermore, it should be noted that all the payments received by the assessee were made in cash only, which leads to the non-fulfilment of the conditions mentioned in subsections 3 and 4 of Section 43CA in the appellant's case."*

The assessee being unsuccessful, filed appeal before the Tribunal.

10. The learned A.R. appearing for the assessee submitted before us that there were sale deed registrations of 5 purchasers during the AY 2015-16. All the 5 purchasers had already paid the entire amount of the agreed purchase price between 24/12/2008 to 28/12/2012. He submitted that the allotments and agreements with the purchasers were entered in the years ended 31/03/2009 & 31/03/2010. The amount paid by each one of these 5 purchasers is reflected in the audited financial statements for 31/03/2009, 2010, 2011, 2012 and 2013; i.e. till the registration of sale deed in A.Y. 2015-16. He submitted that these audited financial statements were submitted along with the return of income filed for the respective years by the assessee. The learned A.R. further submitted that the provisions of

section 43CA of the Act came into effect from 01/04/2014. The assessee has submitted the booking or allotment cum agreement advice, related ledgers, confirmations, sake deeds, audited financial statements for few years, which shows that the payment from these purchasers were received before applicability of section 43CA. No payment was received after the applicability of section 43CA. Only the registrations of the sale deeds were made in the assessment year 2015-16. As per the audited financial statements for 31/03/2009, 31/03/2010, 31/03/2011, 31/03/2012, 31/03/2013 & 31/03/2014, it shows that the amount is already collected from these purchasers before the applicability of section 43CA w.e.f 01/04/2014. The amount received from these purchasers is even before the introduction of section 43CA in Budget Speech for 2013, which was presented in Parliament on 28/02/2013. The learned A.R., in support of his arguments, relied upon the following case laws:-

*i) Reegal Construction v/s ITO, [2023] 154 taxman.com 350 (Kol. Trib.);*

*ii) PCIT v/s Swananda Properties (P.) Ltd. [2019] 267 Taxman 429 (Bom.)(HC);*

*iii) Indexone Radecone (P.) Ltd. v/s DCIT, [2018] 97 taxman.com 174 (Jaipur Trib.); and*

*iv) ACIT v/s Rajul Constructions, [2018] 159 taxman.com 1261 (Jabalpur Trib.).*

11. The learned Departmental Representative vehemently supported the order passed by the authorities below.

12. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. We find that the assessee has furnished copies of allotment-cum-agreement

letter, confirmation from all the five purchases and related sale deed of these five purchases along with income tax returns, audited financial statements for preceding years. We also find that provisions of section 43CA of the Act came into force from the assessment year 2014-15 by introducing Finance Act 2013, however, all the transactions had completed before December 2012 i.e., much before the introduction of provisions of section 43CA of the Act by the Parliament. In other words, when the transactions took place, provisions of section 43CA of the Act were never in horizon. So, the very application of considering the demand (x) value assessable for payment of stamp duty can never be contemplated because the provisions were never conceived at the time of entering into agreement or taking payment. Hence, we hold that the entire addition is unsustainable and the addition of ₹ 37,24,000, made by the Assessing Officer and confirmed by the learned CIT(A) is hereby quashed by setting aside the impugned order passed by the learned CIT(A). Accordingly, grounds raised by the assessee are allowed.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/09/2024

**NAGPUR, DATED: 20/09/2024**

**Sd/-  
V. DURGA RAO  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur