

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 295/Ind/2023
Assessment Year: 2015-16

ACIT (Central)-2, Bhopal	<u>बनाम/</u> Vs.	Hariom Properties, 501, Fifth Floor, Ashima Mall, Hoshangabad Road, Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAEFH7164G		
Assessee by	CA Shri S.S. Deshpande, AR	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	26.09.2024	
Date of Pronouncement	25.10.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 01.06.2023 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["CIT(A)"] which in turn arises out of assessment-order dated 30.12.2017 passed by learned ITO-2(2), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the revenue has filed this appeal.

2. The background facts leading to present appeal are such that the assessee is a partnership firm engaged in real estate business. For AY 2015-

16, the assessee filed return declaring a total income of Rs. 84,47,760/- which was subjected to scrutiny-assessment through notices u/s 143(2)/142(1). Finally, the AO passed assessment-order u/s 143(3) after making certain additions and thereby determining total income at Rs. 7,40,78,891/-. Aggrieved, the assessee filed first appeal before CIT(A) and succeeded partly to a large extent. Now, the revenue has come in next appeal assailing the order of first-appeal passed by CIT(A).

3. The grounds raised by revenue are as follows:

1. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,49,00,000/- made by the AO treating unsecured loan as unexplained cash credit u/s 68 of the Act without deciding the issue on merits and without appreciating.*
 - a) *the facts of the case available on record?*
 - b) *the assessee has failed to discharge its onus of establishing the creditworthiness of the lenders?*
2. *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,49,00,000/- on the ground that no adverse inference has been drawn on this issue by the AO in subsequent order passed u/s 153A without appreciating the fact / aspect that:*
 - a) *no addition on this issue could be made by the AO in subsequent order u/s 153A in view of the ratio laid down in the judgement of Hon'ble High Court of Delhi in **Kabul Chawla [2015] 61 taxmann.com 412 (Delhi)** wherein it has been held that completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search?*
 - b) *no addition on this issue could be made by the AO in subsequent order u/s 153A in view of the ratio laid down in the judgment in the case of **Abhisar Buildwell [2023] 150 taxmann.com 257 (SC)**, wherein it has been held by the Apex Court, that in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments?*
- 3) *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 20,93,106/- made by the AO on account of disallowance of interest expenses without appreciating:*
 - a) *the facts of the case available on record?*
 - b) *that the assessee had borrowed funds and paid interest thereon which is debited to P&L account and at the same time it has advanced interest free loans to partners?*

- 4) *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 16,04,600/- made by the AO on account of undisclosed income without appreciating:*
 - a) *the facts of the case available on record?*
 - b) *the wrong 'construction' / interpretation of transaction by him that this amount has been offered as sale by the sister concern of assessee firm and overlooking the fact the plot sold did not belong to such sister concern but to the assessee?*
- 5) *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 35,68,000/- made by the Assessing Officer u/s 43CA without appreciating:*
 - a) *the facts of the case available on record?*
 - b) *that as per sub section (3) of section 43CA of the Act, there should be a agreement fixing the value of consideration but no document is on record to show that value of consideration was fixed at the time of allotment?*
 - c) *his erroneous inference that allotment letter issued is sufficient to prove that there was agreement to sale while overlooking the fact that the consideration was not fixed in the allotment letter?*
- 6) *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 19,52,050/- made by the AO treating payments to alleged creditors as unexplained expenditure u/s 69C of the Act without appreciating:*
 - a) *the facts of the case available on record?*
 - b) *that no details evidences have been furnished by the assessee regarding existence of liability to the payees?*
- 7) *Whether on the facts and on the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 49,02,000/-, made by the AO on account of cessation of liability u/s 41(1) of the Act, by holding that the liability of Rs. 49,02,000/- existed during the year and the genuineness of the transaction is proved:*
 - a) *without appreciating that no details / evidences have been furnished by the assessee before the AO regarding existence of liability of Rs. 49,02,000/-?*
 - b) *Whereby whether Ld CIT(A) erred in admitting additional evidence in violation of Rule 46A and deleting the addition of Rs. 49,02,000/- without allowing opportunity to the Assessing Officer under Rule 46(3) and without recording reasons under Rule 46(2)?*

Ground No. 1 & 2:

4. In these grounds, the revenue claims that the CIT(A) has erred in deleting an addition of Rs. 3,49,00,000/- made by AO on account of unexplained cash credit u/s 68.

5. The AO has dealt this issue in Para 8 of assessment-order. During assessment-proceeding, the AO observed that the assessee had taken unsecured loans from different persons aggregating to Rs. 3,49,00,000/-. The AO further observed that when the assessee was asked to establish identity and creditworthiness of lenders and genuineness of transactions, the assessee only filed (i) Bank Statement showing entries of loans coming through cheques, (ii) Ledger A/cs of lenders, and (iii) A/c Confirmations of lenders. The AO observed that the A/c Confirmations were in same format and do not contain addresses of lenders. The AO also observed that the ITRs and Bank Statements of lenders were not filed. Finally, the AO concluded that the assessee had failed to satisfy the ingredients of section 69 and made addition.

6. During first-appeal, the CIT(A) reversed AO's action and deleted addition precisely accepting these reasons submitted by assessee:

- (i) All loans were taken through banking channel and the entries in Bank Statement were corroborated by Ledger A/cs of lenders. The assessee filed A/c Confirmations of 11 lenders from whom impugned loans were taken. The A/c Confirmations contained addresses as well as PANs of lenders.
- (ii) The AO observed that the assessee did not file ITRs and Bank Statements of lenders but this happened due to short span of time allowed by AO. However, the requisite details were filed to the

AO/ACIT [“ACIT (Central)-II, Bhopal”] during assessment-proceeding u/s 153A r.w.s. 143(3) for AYs 2013-14 to 2018-19 and u/s 143(3) for AY 2019-20 subsequently made upon assessee vide order dated 25.09.2021, which included AY 2015-16 under consideration as well, and the details filed by assessee were verified by AO/ACIT and no adverse inference was taken by AO/ACIT.

7. Before us, Ld. DR for revenue relied upon order of AO. He submitted that the AO has noted that the assessee filed A/c Confirmations but those A/c Confirmations were in same format and did not contain addresses of lenders. He further contended that one of reasoning adopted by CIT(A) in granting relief to assessee is such that the AO/ACIT did not make any addition qua those very loans in the assessment-order subsequently passed u/s 153A for AY 2015-16, which is a bad reasoning since the CIT(A) failed to recognize that the AO/ACIT was prevented from making addition due to ratio laid down in ***Kabul Chawla (2015) 61 taxmann.com 412 (Delhi)*** and ***Abhisar Buildwell (2023) 150 taxmann.com 257 (SC)*** according to which no addition could be made in absence of any incriminating documents qua impugned loans. He submitted that the AO has also noted that the assessee did not file ITRs of lenders. Therefore, Ld. DR prayed to set aside the order of CIT(A) on this issue and restore the addition made by AO or at best remand this issue at the level of AO for re-examination.

8. Per contra, Ld. AR for assessee submitted that the assessee filed following documents to AO during assessment-proceeding:

- (i) A detailed chart titled "List of Unsecured Accepted Loans during the AY 2015-16" containing full details of loans taken from 11 lenders aggregating to Rs. 3,49,00,000/- in the columns such as S.No., Name, PAN, Address, Amount taken (Page 39 of Paper-Book).

 - (ii) A/c Confirmations duly signed and verified by all 11 lenders (Page 39-77 of Paper-Book). The A/c Confirmations were generated directly from Tally Software in which the accounts were maintained by assessee and got confirmed by respective lenders and these A/c Confirmations also include their PANs. Since the A/c Confirmations were generated directly from tally software, they were in the same format as designed by tally developers. Further, the assessee has supplied address of respective lenders in the aforesaid Chart titled "List of Unsecured Accepted Loans during the AY 2015-16". Therefore, the AO is grossly wrong in making baseless wrong allegations that (a) the A/c Confirmations were in same format, and (b) the A/c Confirmations did not contain addresses of lenders.

 - (iii) The assessee' Bank Statement showing entries of all loans taken was filed to AO and the same is also placed in Paper-Book. The entries in bank statements corroborate the entries of loans taken by assessee in Ledger A/cs of lenders.
9. Having submitted thus, Ld. AR contended that once PAN data of all lenders had been filed and the addresses of lenders also show that they were

local persons belonging mainly to “Sachdeva Group” of Bhopal which has an established office at Industrial Estate, Bhopal, the AO could himself make any enquiry from departmental database or by other means of enquiry. However, no such exercise was done by AO, instead the AO resorted to make addition. Ld. AR went on submitting that the assessee has already repaid loans to lenders and once loans are repaid, the lenders rarely co-operate the debtors like assessee for providing their ITRs.

10. Ld. AR next submitted that the assessee was subsequently subjected to search-proceedings u/s 132 and the assessments were framed u/s 153A/143(3) for seven years including AY 2015-16 under consideration wherein the AO/ACIT made enquiries qua assessee's case and accepted loans as genuine. Ld. AR submitted that the CIT(A) has rightly observed in Para 3.6.6 of his order *“I have gone through the assessment-order u/s 153A and submission made on this issue involved here and found that the ACIT, Central Circle-2, Bhopal did not find any infirmity in the submission of the appellant and accepted unsecured loans for all years including the year under consideration as genuine.”*

11. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. The dispute involved in this issue is regarding an addition of Rs. 3,49,00,000/- made by AO on account of unexplained cash credits u/s 68 which was subsequently deleted by CIT(A) in first-appeal. On a careful consideration, we find that the assessee filed

documents in the shape of (i) a Chart showing complete details of all loans transactions taken from 11 lenders and (ii) A/c Confirmations duly verified by respective lenders. On perusal of these documents, one can easily find addresses and PAN data of respective lenders. Further, the assessee has also filed his own Bank Statement wherein credit entries of loans taken are reflected which are in synchronization with the A/c Confirmations of lenders filed. All loans have been taken through banking channel and there is no cash loan taken by assessee. So far as the first deficiency observed by AO that all A/c Confirmations were in same format is concerned, Ld. AR has dislodged the same by showing that the A/c Confirmations were output of assessee's books of account maintained in tally Software and hence they would be in same format as made by tally developers. Another deficiency noted by AO is such that the addresses of lenders were not mentioned in A/c Confirmations but this deficiency is also resolved by the fact that full addresses of respective lenders were already intimated by assessee to AO in the aforesaid chart of loan transactions. One more deficiency noted by AO that the ITRs of lenders were not filed is also addressed by assessee by filing PAN data of respective lenders. Once the assessee has filed PAN data, the AO could easily verify the status of lenders from departmental database itself, however no such effort is done. This apart, it is also a point noted by CIT(A) that he had perused the assessment-order passed subsequently by AO/ACIT u/s 153A in assessee's own case consequent upon a search u/s 132 and the submissions made by assessee on this very issue during

assessment-proceedings of search. The CIT(A) has noted that the AO/ACIT did not find any infirmity in the submissions made by assessee and accepted all loans as genuine. Admittedly, the AO/ACIT has not made any addition in assessment-order passed u/s 153A. Although the revenue/appellant has submitted in ground No. 2(a)/(b) that the AO/ACIT could not have made any addition due to ratio laid down in ***Kabul Chawla (2015) 61 taxmann.com 412 (Delhi HC)*** and ***Abhisar Buildwell (2023) 150 taxmann.com 257 (SC)*** but the practical experience is such that if the AOs find any discrepancy in loans, they use to make additions despite ***Kabul Chawla (Delhi HC)***. The decision of ***Abhisar Buildwell (SC)*** was not available at the time when the AO/ACIT passed assessment-order u/s 153A on 25.09.2021. Therefore, the point raised by department in Ground No. 2(a)/(b) cannot impress us, more particularly in the light of the fact that the CIT(A) has made a clear finding that the AO/ACIT, after considering submissions of assessee, *accepted all loans as genuine*. Thus, considering entire conspectus, we are inclined to conclude that CIT(A) has rightly deleted the addition taking into account all aspects. Therefore, the order passed by CIT(A) deserves to be upheld. We accordingly uphold the same and the grounds raised by revenue are dismissed.

Ground No. 3:

12. In this ground, the revenue claims that the CIT(A) has erred in deleting an addition of Rs. 20,93,106/- made by AO on account of disallowance of interest expenditure claimed by assessee.

13. The AO has dealt this issue in Para 3 of assessment-order. The AO observed that there were negative balances in capital accounts of assessee's partners' a/cs and the partners have made withdrawals from assessee-firm but still the assessee has not charged any interest from partners although the assessee is paying interest on borrowings. The AO thus observed that borrowed funds have been utilized for non-business purposes. Ultimately, the AO estimated interest @ 15% p.a. on average debit balance of partners at Rs. 23,36,403/- but since the assessee's claim of interest expenditure was Rs. 20,93,106/- only, the AO made disallowance of Rs. 20,93,106/-. During first-appeal, the CIT(A) deleted disallowance made by AO after considering submissions of assessee.

14. Before us, Ld. DR for revenue relied upon the order of AO while making a limited submission that the assessee has not filed any fund flow to AO.

15. Per contra, Ld. AR for assessee reiterated the submissions made by assessee before CIT(A). He submitted that the assessee-firm has not paid/received interest from/to its partners. He drew us to a chart filed by assessee to AO during assessment-proceeding to show the utilization of borrowed funds (Page 72 / 79 of Paper-Book). Referring to this chart, he submitted that maximum portion of borrowed funds had been utilized for making payments to 'M/s Govind Reality Pvt. Ltd.' towards business transactions of real estate carried on by assessee and a part of the borrowed funds was utilized for repayment of old loans or making investment in

business firms. By means of this chart, he submitted that the borrowed funds have been utilized only for business purpose and not for withdrawals by partners. He submitted that the AO could easily deduce the position of assessee's fund flow from Balance-Sheet filed with return of income which reflects that the assessee-firm had ample funds of interest-free nature from bookings of customers. He submitted that the AO has mechanically computed average interest on average debit balance of partners' capital and since the figure so computed by AO came as high as Rs. 23,36,403/-, the AO had no option except to restrict his disallowance to Rs. 20,93,106/- to the extent of expenditure claimed by assessee in P&L A/c. He submitted that the manner in which the AO has resorted to disallowance is baseless and mechanical which cannot be sustained. He submitted that the CIT(A) has rightly deleted the disallowance made by AO, the order of CIT(A) must be upheld.

16. We have considered rival submissions of both sides and perused the documents held on record including the orders of lower-authorities. Admittedly, the AO has made impugned disallowance by finding that there was a debit balance in partners' capital at the beginning of the year as well as end of the year. The AO computed average debit balance for the year and computed notional interest @ 15% per annum which resulted in a figure of Rs. 23,36,403/-, therefore the AO ultimately made disallowance to the extent of interest expenditure of Rs. 20,93,106/- claimed by assessee in P&L A/c. On a careful consideration, we firstly find that the AO has disallowed

full amount of interest expenditure of Rs. 20,93,106/- as if the entire amount of borrowed funds was used for withdrawals by partners and no part of same was utilized for business purpose. Secondly, we find that during scrutiny-assessment, the assessee has filed a chart showing funds borrowed and utilization made as is referred by Ld. AR at Page 72 / 79 of Paper-Book. On perusal of same with the assistance of Ld. AR in open court, we find that the chart shows that the utilization has been made for business purposes i.e. for making payments to M/s Govind Reality Pvt. Ltd.; for repayment of loans earlier taken and for investment in business firms. Ld. DR for revenue is not able to rebut this chart filed by assessee to AO. Therefore, in absence of any rebuttal, we find that the utilization shown by assessee of borrowed funds shown by assessee in the chart is acceptable to revenue. Admittedly, there are debit balances in partners' capital a/cs but at the same time the assessee-firm is also having ample funds from booking of plots/lands which are interest-free in nature. Besides, the CIT(A) has also made a categorical finding on one more factual aspect that no interest was paid to partners in past even when there were credit balances in partners' capital a/cs due to mutual understanding of partners and in the interest of assessee-firm. Therefore, in view of these facts, we agree that no disallowance was warranted by AO. Consequently, we uphold the order of CIT(A) with the result that the ground of revenue is dismissed.

Ground No. 4:

17. In this ground, the revenue claims that the CIT(A) has erred in deleting an addition of Rs. 16,04,600/- made by AO on account of undisclosed income.

18. The AO has made this addition vide Para 5 of assessment-order. Basically, during scrutiny-proceeding, the AO asked assessee to explain credit entries in the Group A/c "Advance for Land". On verification, the AO found that there were both credit and debit entries of equal amount of Rs. 16,04,600/- in one "Dropadi Sujnani A/c". For this A/c, the assessee submitted to AO that Smt. Dropadi Sujnani was a debtor of "M/s Shree Govind Realty Pvt. Ltd. [“M/s Govind”] for Rs. 16,04,600/- included in sale of Rs. 6,68,58,350/- which was first credited to a Ledger A/c "Advances for Land" and thereafter transferred to M/s Govind. However, the AO rejected assessee's submission by observing that the plot sold to Dropadi Sujnani was No. G-123 whereas the details furnished regarding allocation of plots to M/s Govind showed that the said Plot No. G-123 did not belong to M/s Govind. Therefore, the AO inferred the impugned Plot No. G-123 as belonging to assessee and went on concluding that the assessee had not shown sale of plot for taxation purpose. Accordingly, the AO made addition of undisclosed income. During first-appeal, the CIT(A) deleted addition.

19. Before us, Ld. DR for revenue and Ld. AR for assessee relied upon respective observations made by lower-authorities and accordingly, Ld. DR prayed to uphold AO's order as against which Ld. AR requested to uphold CIT(A)'s order. During arguments, Ld. AR explained the facts of issue in

some more detail which we would like to mention for better clarity: Earlier the assessee sold a land to M/s Govind but the land was thereafter acquired by Bhopal Development Authority (BDA). The BDA allocated certain plots to assessee and not to M/s Govind since the land was standing in the name of assessee. Subsequently, when the allocated plot was sold by assessee, which had to be done, the sale consideration in fact belonged to M/s Govind and therefore the assessee transferred amount to M/s Govind by means of journal entry. Hence, there were dual entries of credit and debit of same amount. Ld. AR submitted that M/s Govind has already declared sale of impugned plot in its income and offered for taxation which is a correct fact accepted by CIT(A).

20. We have considered rival submissions of both sides and perused the orders of lower-authorities. We find that the CIT(A) has passed following order while deleting the addition made by AO:

“3.3.3 I have considered the submission of the appellant as well as the observation of the Ld. AO. I find force in the submission of the appellant. During the course of proceedings, the appellant had submitted that the said land has already been offered as sale by M/s Shree Govind Realty in its books of account. A copy of the Ledger account of M/s Shri Govind Realty has also been furnished in support of its contention during assessment proceedings. The appellant had also produced the audited books of account of M/s Shri Govind Realty during the course of proceedings. Therefore, there is merit on the contention of the appellant that the said addition has led to double taxation for the same sale.

3.3.4 Under the above circumstances, I am of the considered opinion that the Ld. AO has not gone through the facts of the case and not verified the documents available with him during assessment proceedings and erred in concluding that it is undisclosed sale and added to the total income of the appellant. Accordingly, addition of Rs. 16,04,600/- made by the Ld. AO on account of undisclosed income is deleted. The appeal on this ground is allowed.”

21. Thus, the CIT(A) has taken into account the documents filed by assessee including the audited books of M/s Govind and made a categorical finding that the sale of concerned plot stands already recorded in the books of M/s Govind. In fact, the CIT(A) has also made an observation that the AO has not gone through the facts of case and not verified the documents available with him during assessment proceeding and this observation by CIT(A) stands unrebutted by revenue. Therefore, in the situation, we are inclined to uphold the order passed by CIT(A) on this issue. The ground raised by revenue is dismissed.

Ground No. 5:

22. In this ground, the revenue claims that the CIT(A) has erred in deleting an addition of Rs. 35,68,000/- made by AO u/s 43CA.

23. The AO has made this addition in Para 6 of assessment-order. The crux of the issue is such that the AO observed that the assessee sold five properties for a consideration less than the value determined by Stamps Authority at the time of executing sale-deeds. The AO has enumerated details of those five properties in Para 6.1 of assessment-order. Therefore, the amount of shortage in sale consideration attracted taxability u/s 43CA. When the AO show-caused assessee in the matter, the assessee filed an explanation relying upon sub-section (3) & (4) of Section 43CA according to which if there is a time gap in 'date of agreement' and 'date of registration', the valuation of Stamps Authority as on the 'date of agreement' shall be

taken for taxability u/s 43CA. The assessee also submitted evidences in the form of agreement (allotment letters) issued to the buyers, cheque payments received from buyers at the time of making agreements, copies of Ledger A/cs, etc. to establish the applicability of sub-section (3) & (4) to section 43CA. However, the AO rejected assessee's submission and made addition on the basis of difference of Stamps Valuation as on the date of registration of sale-deeds.

24. After hearing learned Representatives of both sides and after perusing the orders of lower-authorities, we find that the CIT(A)'s order is very much correct on this issue. Therefore, we re-produce the order passed by CIT(A) in this regard:

"3.4.3 I have considered the submission of the appellant as well as the detailed observation of the Ld AO. I find force in the argument of the appellant. Section 43CA sub-section (3) provides that –

"Section 43CA sub-section (3) provides that "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."

Section 43CA(4): "The provisions of sub-section (3) shall apply only in a case where the amount of consideration of a part thereof has been received 4[by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account]1 [or through such other electronic mode as may be prescribed 2) on or before the date of agreement for transfer of the asset]"

3.4.4. The Ld AO has opined that the appellant firm had not made any agreement to sale with the buyers and the agreement which is legally enforceable entered between the parties fixing the value of consideration for transfer of the property and agreed by both the parties is relevant for the purpose of applicability of the provisions of section 43CA of the Act. However, the appellant submitted that the appellant had entered the sale at the Government guideline prevailing at the time of entering into agreement with the customers and at the value prevailing at that particular financial year. All the copies of agreement to sale, ledger accounts of such customers along with copies of bank statements along with the value calculated at the time of agreement and table of

Collector Guideline rate have been submitted. On perusal of the submission of the appellant as well as the inference drawn by the Ld AO, it has been observed from the chart indicating the value calculated at the time of allotment and table of Collector guideline value that there was no difference in sale consideration and stamp duty value as per the then prevailing Collector Guidelines of respective financial years in which first payment receipt was received whereas the sale booked was more than the value as per then guidelines.

3.4.5. Sub-section (3) and sub-section (4) of Section 43CA have further provided to adopt stamp duty value of the property assessable as on the date of entering into sale agreement instead of the value assessed as on the date of transfer of the property. Sub-section (3) and sub section (4) of section 43CA read as under:

"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."

"The provisions of sub-section (3) shall apply only in a case where the amount of consideration of a part thereof has been received 4 by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account]1 [or through such other electronic mode as may be prescribed 2] on or before the date of agreement for transfer of the asset"

Sale consideration between the seller and the buyer is negotiated at the time of entering into sale agreement and not at the time of transfer of the property. Therefore, sub-section (3) has provided that stamp duty valuation of the property applicable as on the date when sale consideration is fixed between the parties by entering into the agreement is to be considered for comparing with the actual sale consideration agreed. Thus, any agreement which is legally enforceable entered between the parties fixing the value of consideration for transfer of the property will be relevant for the purpose of applicability of the provision of Section 43CA. It may be an allotment letter issued by the developer or a buyer's agreement executed, fixing the value of the consideration and agreed to by both the parties. Further, sub-section (4) takes care of the situation so as to put check on in genuine anti-dated agreements. The Ld. AO has ignored the allotment letters submitted by the appellant and in absence of any agreement, he invoked the provision of section 43CA. The allotment letter issued to the buyers show the payments received in earlier years and all such advances have been accounted for in the books of account in the year of receipt. The allotment letter issued is sufficient to prove that there was agreement to sale. Even, oral agreements are also acceptable in the eyes of law if, it is evidenced by the secondary evidence. In the case of the appellant, the agreement between the appellant and the buyer made in the earlier year is evidenced by following documents/facts:-

- (i) Cheque payment accepted as part payment.
- (ii) Allotment letter.
- (iii) Copy of account appearing in the books of account.
- (iv) Copy of audited Balance Sheet already filed on record showing the booking of plots.

- (v) Copy of sale deeds reflecting the cheque payments received in earlier years.

The above are the sufficient evidences to establish that the plots were booked in earlier years and not in the year under consideration and the agreements were existed. The word agreement used in 43CA does not mean written agreement only. Consent for a deal either in written form or verbal also falls under the definition of agreement. Reliance is placed upon the decision of Hon'ble Delhi High Court In the case **Nanak Builders and Investors Pvt Ltd Vs Vinod Kumar Alag, AIR Delhi 315** wherein, it has been held that even an oral agreement can be a valid and enforceable contract. Therefore, in the strict sense, it is not essential that a contract must be in writing, unless specified by law or the parties themselves contemplate the reduction of terms of agreement to writing. Similar views have been expressed by Hon'ble Supreme Court in the case of **Alka Bose Vs Parmatma Devi & others, Civil appeal no. 6197/2000**. Hon'ble ITAT, Jaipur in the case of **Radhakishan Kungwani, ITA No.1106/JP/2018 order dated 19.08.2020**, in such circumstances, has directed the lower authority to adopt stamp duty valuation of the property as on the date of booking and payment made by the assessee towards booking of the flat for the purpose of making addition u/s 56(2)(vii) of the Act. It has been held as under:-

"7..... Thus, even if there is no separate agreement between the parties in writing but the agreement which is registered itself shows that the terms and conditions as contained in the said agreement were agreed between the parties at the time of booking of the flat. Hence, in our considered opinion that there was an agreement between the parties regarding purchase and sale of flat in question at the time of booking of the said flat and part payment made by the assessee on 10/10/2010 through cheque and there is subsequent payment on 14/10/2010 through cheque. Thus, the booking of the flat and part payment by the assessee constitute agreement between the parties as the terms and conditions which are reduced in writing in the agreement registered on 16/09/2014 relates to the performance of both the parties right from the beginning i.e. date of booking of the flat..... In the case in hand, all these facts are duly acknowledged by the parties in the registered agreement that earlier there was a booking of flat and the assessee paid part payment of consideration. Hence, the proviso first and second to Section 56(2)(vii) of the Act would be applicable in the case and the stamp duty valuation or the fair market value of the immovable property shall be considered as on the date of booking and payment made by the assessee towards booking of the flat Accordingly, the orders of the authorities below are set aside and the matter is remanded to the record of the A.O. to apply the stamp duty valuation as on 10/10/2010 when the assessee booked the flat and made the part payment of consideration and consequently, if any difference being the stamp duty valuation is higher than the purchase consideration paid by the assessee, the same would be added to the income of the assessee under the provisions of Section 56(2)(vii)(b) of the Act."

3.4.6. Under the above circumstances and in view of the discussion made herein above, I am of the considered opinion that the provisions of section 43CA of the Act cannot be invoked particularly when the advances through cheques were received in earlier year and sale deeds were executed in subsequent year. Further, as per the details submitted by the appellant, there was no difference in sale consideration and stamp duty value as per the then prevailing Collector Guidelines of respective financial years in which first payment was received and the sale booked was more than the value as per the then guidelines. Thus, the Ld AO was not justified in invoking the

applicability of section 43CA and therefore, the addition of Rs. 35,68,000/- made u/s 43CA is deleted. The appeal on this ground is allowed."

25. The order passed by CIT(A) is self-speaking and any elaboration by us would only be duplication. The CIT(A) has examined the assessee's claim in terms of sub-section (3) & (4) of section 43CA with reference to the documentary evidences filed by assessee and thereafter given relief to assessee. Therefore, we have no reason to interfere with the order of CIT(A). Consequently, the same is hereby upheld and the revenue's ground is dismissed being devoid of merit.

Ground No. 6 & 7:

26. In Ground No. 6, the revenue claims that the CIT(A) has erred in deleting addition of Rs. 19,52,050/- made by AO u/s 69C. In Ground No. 7, the revenue claims that the CIT(A) has erred in deleting addition of Rs. 49,02,000/- made by AO on account of cessation of liability u/s 41(1).

27. The AO has made these additions vide Para 9 (sub-paras 9.6 & 9.7) of assessment-order. The AO has re-produced Ledger A/c of Shri Ajab Singh/Shri Daulat Singh ["A/D"] in assessment-order showing opening credit balance (liability) of Rs. 68,54,050/- as on 01.04.2014, total payments of Rs. 19,52,050/- made during the year and a closing credit balance (liability) of Rs. 49,02,000/- as on 31.03.2015 carried forward to next year. The assessee purchased land from A/D through a registered-deed executed in earlier year. From such registered-deed, the AO observed that entire

payment was made through cheques in earlier year before date of registry, hence there should not be any liability payable to A/D. Accordingly, the AO was prompted to ask the assessee to explain source of payment of Rs. 19,52,050/- shown to have been made during current year to A/D. In response, the assessee filed a submission claiming precisely that the payments of certain cheques mentioned in registered-deed could not have been made since the assessee was not in a comfortable position. Therefore, when A/D insisted for payment, a new settlement was arrived whereby a sum of Rs. 19,52,050/- receivable by assessee from another person "Smt. Brijis Jahan" against a land sold by assessee to her was settled/adjusted against the liability payable to A/D. The assessee also filed registered-deed of land sold to Smt. Brijis Jahan. The AO did not accept submission of assessee and treated the source of payment of Rs. 19,52,050/- as unexplained and thereby made addition u/s 69C. Further, the AO also made separate addition of Rs. 49,02,000/- u/s 41(1) treating the closing liability as ceased to have exist. The CIT(A), however, deleted both additions in first-appeal.

28. Learned Representatives of both sides carried us to respective orders of lower-authorities with reference to the documents filed in Paper-Book. At first, we reproduce the order passed by CIT(A) in this regard:

Regarding deletion of Rs. 19,52,050/- added u/s 69C:

"3.7.3. I have considered the observation of the Ld. AO and submission of the appellant. It can be seen from the above that the core issue involved is that the Ld AO concluded that the payment made to Shri Ajab Singh and Shri Daulat Singh are not

found genuine as the appellant firm failed to establish the nexus of amount received from the buyer Smt. Brijis Jahan with the payments to Shri Ajab Singh by producing reliable documents. Thus, Rs. 19,52,050/- being the amounts paid to Shri Ajab Singh and Shri Daulat Singh was considered as unexplained expenses u/s 69C and added to the total income of the appellant firm.

3.7.4. I have also considered the copy of sale deed establishing the sale of plot to Smt. Brijis Jahan and copy of relevant ledger accounts of Smt. Brijis Jahan and Shri Ajab Singh furnished by the appellant firm. The appellant has also submitted ledger account of 'Creditors for Land'. From the various ledger accounts, it is found that amount of Rs.68,54,050/- has been shown as opening balance as on 01.04.2014. During the hearing proceedings, the appellant was asked to submit the reasons of above balances when registered deed reveals the payments made by the appellant to the land seller Shri Ajab Singh and Shri Daulat Singh. As desired, the appellant submitted such details. On perusal of the details and registered deed, I find that the land from Shri Ajab Singh was purchased by the appellant for Rs.94,55,000/- in earlier year for which payments were made in following manner:

Amount (in Rs.)	Cheque date
2,50,000/-	05.03.2009
10,00,000/-	10.03.2010
15,00,000/-	25.03.2010
15,00,000/-	30.03.2010
15,00,000/-	05.04.2010
15,00,000/-	10.04.2010
22,05,000/-	20.04.2010

Out of above payments, Cheques amounting to Rs.40,00,000/- were not cleared which has been shown as part of land creditors. The details of such uncleared cheques are as under:

Amount (in Rs.)	Cheque date
10,00,000/-	10.03.2010
15,00,000/-	25.03.2010
15,00,000/-	30.03.2010

As required during the proceedings, copy of bank statements have been submitted by the appellant from which the details of uncleared cheques have been verified. Thus, the amount of Rs.40,00,000/- is found to be part of total creditors. The appellant sold a plot to Smt. Birjish Jahan for Rs.42,28,000/-. Rs. 42,28,000/- has shown to be received by the appellant in the following manner:

Rs. 20,00,000/- Vide cheque No. 206274 dated 22.12.2014
Rs. 22,28,000/- Payment made prior to registry.

Out of Rs.22,28,000/-, amount of Rs.19,52,050/- has been directly paid to Shri Ajab Singh and Shri Daulat Singh and amount of Rs.2,75,950/- has been received by the appellant in cash. Ledger account of Smt Birjish Jahan substantiate the above facts. After clearing the above liability, amount of Rs.49,02,000/- carried forward to next year. This liability has been transferred to Raj Builder's Account who paid the amount of Rs.49,02,000/- to Shri Ajab Singh and other creditors in F.Y.2015-16. Out of this amount, amount of Rs.20,47,950/- has been paid to Shri Ajab Singh and Rs.28,54,050/- to other creditors. All the transactions have been recorded in the books of account of the appellant. The Ld. AO has not gone into the details of transactions

recorded in the books of account and arrived at incorrect conclusion. Considering these discussion, I find that the liability towards land owners was existed in the year under consideration which has been discharged during the year and in subsequent year. Thus, the genuineness of the transaction and source of payment is proved. Therefore, the addition made by the Ld AO is found to be unjustified. Having regard to above, the addition of Rs. 19,52,000/- made by the AO u/s 69C on account of unexplained expense is deleted. The appeal on this ground is allowed.”

Regarding deletion of Rs. 49,02,000/- added u/s 41(1):

“3.8.4. On perusal of the findings given by the Ld AO as well as the submission of the appellant, it is seen that the appellant has purchased land from Shri Ajab Singh and others and shown them as creditor. Issue involved here is interrelated with ground of appeal No. 7. In para 3.7.4 of this order, I have given detailed factual findings in this regard. During the assessment and appellate proceedings, the appellant submitted ledger account of ‘Creditors for Land’. From the various ledger accounts, it is found that amount of Rs.68,54,050/- has been shown as opening balance as on 01.04.2014. During the hearing proceedings, the appellant was asked to submit the reasons of above balances when registered deed reveals the payments made by the appellant to the land seller Shri Ajab Singh and Shri Daulat Singh. As desired, the appellant submitted such details. On perusal of the details and registered deed, I find that the land from Shri Ajab Singh was purchased by the appellant for Rs.94,55,000/- in earlier year for which payments were made in following manner:

Amount (in Rs.)	Cheque date
2,50,000/-	05.03.2009
10,00,000/-	10.03.2010
15,00,000/-	25.03.2010
15,00,000/-	30.03.2010
15,00,000/-	05.04.2010
15,00,000/-	10.04.2010
22,05,000/-	20.04.2010

Out of above payments, Cheques amounting to Rs.40,00,000/- were not cleared which has been shown as part of land creditors. The details of such uncleared cheques are as under:

Amount (in Rs.)	Cheque date
10,00,000/-	10.03.2010
15,00,000/-	25.03.2010
15,00,000/-	30.03.2010

As required during the proceedings, copy of bank statements have been submitted by the appellant from which the details of uncleared cheques have been verified. Thus, the amount of Rs.40,00,000/- is found to be part of total creditors. The appellant sold a plot to Smt. Birjish Jahan for Rs.42,28,000/- Rs. 42,28,000/- has shown to be received by the appellant in the following manner:

Rs. 20,00,0000/- Vide cheque No. 206274 dated 22.12.2014
Rs. 22,28,000/- Payment made prior to registry.

Out of Rs.22,28,000/-, amount of Rs.19,52,050/- has been directly paid to Shri Ajab Singh and Shri Daulat Singh and amount of Rs.2,75,950/- has been received by the appellant in cash. Ledger account of Smt Birjish Jahan substantiate the above facts. After clearing the above liability, amount of Rs.49,02,000/- carried forward to next year. This liability has been transferred to Raj Builder's Account who paid the amount

of Rs.49,02,000/- to Shri Ajab Singh and other creditors in F.Y.2015-16. Out of this amount, amount of Rs.20,47,950/- has been paid to Shri Ajab Singh and Rs.28,54,050/- to other creditors. All the transactions have been recorded in the books of account of the appellant. The Ld. AO has not gone into the details of transactions recorded in the books of account and arrived at incorrect conclusion. Considering these discussion, I find that the liability towards land owners was existed in the year under consideration which has been discharged during the year and in subsequent year. Thus, the genuineness of the transaction is proved. Accordingly, the Ld. AO was not justified in invoking provisions of section 41(1) of the Act. Considering these discussion, addition of Rs. 49,02,000/- is deleted. The appeal on this ground is allowed."

29. Thus, the CIT(A) has vehemently dealt the facts of issues as well as the supporting documents relating thereto filed by assessee and thereafter deleted both additions. The order passed by CIT(A) is adequately detailed and there is nothing from revenue's side to show any error in CIT(A)'s order. Therefore, without repeating contents thereof, we uphold the same and consequently, the ground raised by revenue is dismissed.

30. Resultantly, this appeal is dismissed.

*Order pronounced in open court /by putting up on notice board as per Rule 34 of I. T.A. T.
Rules, 1963 on 25/10/2024*

Sd/-

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25/10/2024

Dev/Sr. PS

Copies to:

(1)	The appellant
(2)	The respondent
(3)	CIT
(4)	CIT(A)
(5)	Departmental Representative
(6)	Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore