

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 4476/Mum/2024  
(Assessment Year: 2017-18)**

<b>ACIT-32(1),</b> 252, 2 <sup>nd</sup> Floor, Kautilya Bhavan BKC, Bandra East, Mumbai-400051.	Vs.	<b>Shubham Dynamic Real Estate Developers LLP.</b> A-501 Gladdiola, Old Hanuman Road, Vile Parle East, Maharashtra-400057. <b>PAN : ABTFS6658L</b>
<b>Appellant)</b>	:	<b>Respondent)</b>

**C.O. No. 278/Mum/2024  
(Assessment Year: 2017-18)**

<b>Shubham Dynamic Real Estate Developers LLP.</b> A-501 Gladdiola, Old Hanuman Road, Vile Parle East, Maharashtra-400057. <b>PAN : ABTFS6658L</b>	Vs.	<b>ACIT-32(1),</b> 252, 2 <sup>nd</sup> Floor, Kautilya Bhavan BKC, Bandra East, Mumbai-400051.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Rahul Hakani, AR  
**Revenue / Respondent by** : Shri Bhangapatil Pushkaraj  
Ramesh, Sr. DR  
**Date of Hearing** : 10.12.2024  
**Date of Pronouncement** : 16.12.2024

ORDER

**Per Padmavathy S, AM:**

This appeal by the Revenue and the Cross Objections by the assessee are against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 08.07.2024 for the AY 2017-18. The Revenue raised the following grounds of appeal:

*"1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made u/s 43CA of Rs. 33038250/- by the AO despite of registration made by assessee after 01.04.2014 in respect of sold flats and where the provisions of section 43CA inserted by Finance Act, 2013 w.e.f.01.04.2014 is clearly applicable in the case?"*

*2 "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in stating that reopening of assessment is mere a change of opinion and is not justified despite of the provisions of section 43CA inserted by Finance Act, 2013 w.e.f.01.04.2014 clearly applicable in the case and reassessment was necessary?"*

*3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in ignoring the decision of the Hon'ble Supreme Court in the case of ACIT VS Rajesh Jhaveri Stock Brokers (P.) Ltd., (2007) 161 Taxman 316 (SC)/(2007) 291 ITR 500 (SC)/(2007) 210 CTR 30 (SC) where it was held that so long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings, even when intimation under section 143(1) has been issued?"*

2. The assessee is a limited liability partnership engaged in the business of real estate development. The assessee filed the return of income for AY 2017-18 on 31.10.2017 declaring a total income of Rs. 60,10,020/-. The assessment under section 143(3) of the Income Tax Act, 1961 (the Act) was completed accepting the income returned by the assessee. Subsequently, based on information that during the year under consideration the assessee has sold flats for a value which is less

than the stamp duty value, assessee's case was reopened by issue of notice under section 148A of the Act. The Assessing Officer (AO) passed the order under section 148A(d) and issued notice under section 148 of the Act. The assessee in response to the notice filed the return of income on 23.08.2024. The AO called on the assessee to furnish details pertaining to the flats sold during the year under consideration and to show-cause why the difference between the stamp duty value and the value for which the flats are sold cannot be added under section 43CA of the Act. The assessee submitted that the flats sold during the year under consideration were booked during the Financial Year (FY) 2012-13 and therefore, the proviso to section 43CA should be applied in assessee's case. The assessee further submitted that letter of allotment were issued at the time of booking the flat wherein the price / sale consideration of the flats are recorded and the assessee submitted the copy of letter of allotment in support of the claim. The AO did not accept the submissions of the assessee for the reason that the letter of allotment cannot be considered as the agreement of sale and that the possession of the property was not given to the purchasers. The AO also did not accept the submission of the assessee that the provisions of section 43CA was inserted only from 01.04.2013 and held that the sale-deed was entered after 01.04.2013 thereby the provisions of section 43CA are very much applicable in assessee's case. The AO accordingly made addition of Rs. 3,30,38,250/- as addition under section 43CA. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) deleted the addition made by AO by holding that

*“6.2 The appellant in its further ground of appeal assailed the AO in making an addition of Rs. 3,30,38,250/u/s 43CA of the Act without appreciating the fact that the flats were allotted prior to insertion of the provisions of section 43CA of the Act and invoking the provisions of section 115BBE of the Act. The appellant in its submission stated that the assessee who is engaged in the business of real-estate development, had undertaken development and*

*construction of residential project namely "Lilywhite". The appellant submitted that the all the transactions have taken place on the date of allotment in financial year's 2010-11, 2011-12, 2012-13. The appellant submitted the copies of the letter of allotment along with the bank statement and the copy of the ledger account submitted before the AO. The appellant therefore submitted that provisions of 43CA of the Income Tax Act 1961, cannot be invoked against the transactions taken place in AY 2013-14 and earlier years in AY 2012-13, AY 2011-12 etc. The appellant further stressed that These provisions do not apply to transfer of immovable property, held by the transferor as stock-in-trade. Further the law is very clear on the applicability of the provisions of section 43CA i.e. w.e.f. AY 2014-15 onwards, Since in the instant case all the flats under contention have been sold prior to 1 April 2013. none of the provisions of section 43CA of the Act shall apply. The appellant further submitted that since the agreement to sell through letter of allotment was done prior to the inception of the section the provision of section 43CA will not apply. The appellant relied on a number of judicial decisions in support of its ground of appeal.*

*6.2.1 The submission of the appellant is examined. The Hon'ble ITAT-Delhi in 152 taxmann.com 567 in case of Bal Kishan Guptav ACIT held that where assessee, engaged in real estate business, sold various plots and received majority payment through banking channel, circle rate on date of agreement could not be substituted for agreed and actual sale consideration determined in terms of allotment letter where contractual obligations to transfer plots had already been fastened on assessee much prior to insertion of section 43CA. The relevant part of the order is reproduced below:*

*"15. The application of section 43CA in the facts of the case of AY 2015-16 is in question. Section 43CA has been inserted by Finance Act, 2013 and is applicable from Assessment Year 2014-15 onwards corresponding to previous year 2013-14. On a broader reckoning, section 43CA (w.e.f 1-4-2014) of the Income-tax Act create deeming fiction as regards full value of consideration received on transfer of asset, being immovable property. Consequently, where the consideration for the transfer of an asset (other than a capital asset), being land or building or both, is less than the value adopted for stamp duty purposes, the value so adopted or assessed shall be deemed to be the full value of consideration for the purposes of computing income under the head profits and gains of business or profession.*

*15.1 In the case under consideration, the applicability of s. 43CA has been subject matter of controversy. In the present case, the undisputed facts are that the assessee, engaged in real estate business, has received a part*

*consideration of certain mutually agreed sale price and issued allotment letters in lieu thereof towards sale of plots to various allottees. The Assessee has received majority payment through banking channel in the earlier years much prior to the insertion of section 43CA of the Act w.e.f 1-4-2014 i.e. AY 2014-15. The AO however, applied the provisions of section 43CA and substituted the sale consideration determined at the time of allotment of plots to various customers with the corresponding stamp duty valuation applicable for this year where agreement for sale of plot was executed for the purposes of transfer of plots. The CIT(A) took cognizance of the allotment letter and noticed that it is actually an agreement where the sale consideration is already fixed at the time of allotment in the light of judgment of the Hon'ble Supreme Court in the case of DLF Universal Ltd. v. Appropriate Authority [2000] 110 Taxman 315/243 ITR 730, R.N. Soin & Sons (P.) Ltd. v. Appropriate Authority [2011] 11 taxmann.com 255/330 ITR 455 (Delhi). The CIT(A) thus observed that the date of agreement of transfer (by way of allotment of plots) is different than the date of transfer during the AY 2015-16 in question and hence the stamp duty value as on the date of agreement by way of allotment letter is to be considered as full value of consideration and not the stamp duty value as on the date of transfer. Several decisions of co-ordinate bench of tribunal were referred to and relied upon.*

*15.2 The assessee points out that the CIT(A) has analyzed the provisions of section 43CA of the Act in conjunction with the judicial precedents with reference to the purport of allotment letter/agreement with various allottees and found merit in the plea of the assessee towards non-applicability of section 43CA in the facts of the case where the obligation to handover the plots to various allottees at a predetermined consideration already arose to the assessee prior to the insertion of s. 43CA in the statute. The CIT(A) thus agreed with the contention of the assessee for adoption of predetermined value for sale as the full value of consideration. The CIT(A) found that where the assessee committed for proposed sale and offer were accepted by the allottees of the plots at certain price much prior to the insertion of s. 43CA, the circle rate notified in the year of transfer cannot be adopted for the purposes of s. 43CA.*

*15.3 The Assessee contends that where allotment was issued much prior to the financial year relevant to assessment year 2014-15 when the provisions of section 43CA have become effective, there is no way an assessee could have foreseen these provisions at the time of allotment. Besides, at the relevant point in time when the allotment letter was issued there was no such requirement of receiving the whole of the consideration*

*in the mode other than cash. In fact, as stated, the assessee has received majority payment by cheque in the earlier years from various allottees, except in the case of an allottee namely 'Hemlata' where a part of the consideration of Rs. 37500/- was received in cash on 08/12/2006.*

*15.4 The issue is squarely covered in favour of the assessee by hosts of the judgments including Indexone Tradecone (P.) Ltd. (supra).*

*16. On appraisal of the factual analysis carried out by the CIT(A) and applicable legal position thereon, we see no perceptible error in the findings rendered by the CIT(A) on first principles that the circle rate on the date of agreement cannot be substituted for agreed and actual sale consideration determined in terms of allotment letter whereby the contractual obligations to transfer the plots had already been fastened on the assessee in the earlier years, much prior to insertion of s. 43CA. The relief thus granted by the CIT(A) is in tune with the schematic interpretation of s. 43CA and thus deserves to hold the field. Hence, we decline to interfere. The appeal of the revenue thus fails.*

*17. We now turn to the appeal of the Assessee seeking to change the deal of relief granted in the case of one allottee namely, Hemlata on the ground that allotment letter for transfer of plot has been issued for consideration received in cash albeit in FY 2006-07*

*17.1 The CIT(A) denied relief and sustained application of s. 43A transaction carried out in cash in the earlier year taking shelter of sub-section (4) of section 43CA of the Act. The action of the CIT(A) is squarely opposed to the decision of the co-ordinate bench in Indexone (supra) We see no justifiable reason to deny the benefit of agreement value instead of circle rate in the case of Hemlata where the condition of receipt in cheque has been unjustly read into the provisions in contradiction to the judgment of the Co- ordinate Bench in Indexone Tradecone (P) Ltd (supra) The transaction in cash occurred in AY 2007-08 when the provisions of section 43CA was not at all existing in statute book.*

*17.2 Significantly, the assessee is in the business of real estate and has issued allotment letters for sale of plot to large number of parties and sold about 70 plots. Thus, the assessee has not entered into an isolated instance of allotment of plot with Hemlata alone. Large number of allottees shows the bona fide of the modus operandi of the assessee. When tested against the touchstone of preponderance of probabilities, the bona fide transaction and contractual commitment with Hemlata way back in FY 2006-07 cannot be doubted merely to invoke and apply a prospective law*

*of s. 43CA. It was only initial payment of Rs. 37,500/- which was received in cash from Hemlata. The brooking amount in cash was received way back on 8-12-2006 for a plot in Rama Krishna Farm Vrindavan The formal booking of plot was carried out on 22-7-2007 and allotment letter was accordingly issued to her on 25-9-2007 The sale agreement was executed by and between the assessee and Hemlata for the sale of plot in FY 2014-15 on 24-7-2014 and registered in favour of Hemlata on 28-7-2014. Since the plot was already allotted by the assessee against the sale consideration of Rs. 2,50,000, the assessee had no choice but to execute the sale deed in respect of plot no. C-41A admeasuring 500 sq yard in Rama Krishna Farm in favour of Hemlata and in the wake of contractual obligations to abide by the terms of agreement entered in the year 2007, there was no reason to draw adverse inference against the assessee under section 43CA (4) of the Act inserted w.e.f Assessment Year 2014-15 The addition of Rs 16,31,225 attributable to allotment carried in the name of Hemlata is thus wholly unjustified.*

*17.3 Hence, in respect to appeal of the assessee, we find justifiable reason to reverse the action of the CIT(A) to the extent of additions confirmed for transaction with Hemlata amounting to Rs. 16,31,225/- The action of the CIT(A) to this extent is thus set aside and reversed.*

*17.4 Other issues raised in the grounds of appeal by the assessee remains uncontested in the course of hearing and are thus dismissed as not pressed.*

*18. In the result, the appeal of the Revenue is dismissed while the appeal of the assessee is partly allowed."*

*6.2.2 The submission of the appellant is examined, the judicial decisions are perused and respectfully following the decisions of the higher judicial authorities the application of the provisions of section 43CA are not applicable in appellant's case. **Therefore, the addition is deleted and the ground of appeals are allowed.**"*

3. Aggrieved the Revenue is in appeal before us. The main contention of the Id. DR is that the assessee did not furnish any agreement to sale to substantiate the fact that the sale price is agreed on the date of allotment. The Id. DR further argued that in order to apply the provisions of sub-section 3 of section 43CA there has to be an agreement to sale and that the allotment letter cannot be considered as an

agreement. Accordingly, the Id. DR argued that the AO has correctly applied the provisions of section 43CA to make the addition.

4. The Id. AR on the other hand submitted that though the assessee has not entered into an agreement to sale, the allotment letters were issued to the purchaser specifying the agreed sale value and the purchasers have paid amount towards sale consideration as per the terms of allotment letter. The Id. AR further submitted that in the final document of sale-deed references made to the allotment letter and the money received as per the terms of the allotment letter. Therefore, the Id. AR submitted that the AO should have considered the provisions of sub-section 3 of section 43CA before making the addition. The Id. AR also presented a legal argument to submit that the applicability of the provisions of section 43CA has been examined by the AO during the original assessment proceedings under section 143(3) of the Act and the initiation of re-assessment proceeding on the same issue is nothing but change of opinion on the part of the AO. The Id. AR accordingly argued that even on that count the initiation of re-assessment proceedings in assessee's case is not sustainable.

5. We heard the parties and perused the material on records. The assessee during the year under consideration has registered sale of 8 flats and the AO has noticed that the sale consideration is less than the stamp duty value on the date of registration and accordingly invoked the provisions of section 43CA to make an addition of Rs. 3,30,38,250/-. The CIT(A) gave relief to the assessee by placing reliance on the decision of the Delhi Bench of the Tribunal in the case of *Balkishan Gupta vs. ACIT 152 taxmann.com 567*. Before proceeding further let us look at the provisions of section 43CA of the Act.

*“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:*

*Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:*

*Provided further that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent", the words "one hundred and twenty per cent" had been substituted, if the following conditions are satisfied, namely:—*

- (i) the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;*
- (ii) such transfer is by way of first time allotment of the residential unit to any person; and*
- (iii) the consideration received or accruing as a result of such transfer does not exceed two crore rupees.*

*(2) \*\*\*\**

*(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) \*\*\*\*\*”*

6. The contention of the assessee on the applicability of section 43CA to the impugned transactions on the ground that letters of allotment were issued prior to insertion of the said section cannot be accepted since the registration for sale of 8 flats happened during the year under consideration i.e. AY 2017-18 when section 43CA is very much in applicable and the impugned transaction needs to be

examined on the applicability of section 43CA. From the plain reading of the above section, it is clear that when the stamp duty value is higher than the actual consideration then the stamp duty value should be considered for the purpose of computing the Profits & Gains arising from the transfer of the capital assets. Sub-section 3 of section 43CA 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, then in order to make addition if any under subsection (1) the value assessable for stamp duty purposes in respect of such transfer as on the date of the agreement shall be considered. In assessee's case the CIT(A) has given relief to the assessee after considering the fact that allotments letters fixing the sale consideration were issued during FY 2012-13 and that substantial payments have been received as per the terms of the allotment letter. The only argument of the revenue is that the letter of allotment cannot be considered as agreement and that the revenue is not disputing the other facts based on which CIT(A) has given relief. During the course of hearing before us also, no contrary material has been brought on record. In our considered view when the price is decided and payments are received as per letter of allotment, then the applicability of subsection (3) of section 43CA cannot be denied merely on the ground that there is no agreement. The ld AR during the course of hearing also brought to our attention that the terms of allotment letter are included in the final sale deed which also supports the claim on the applicability of subsection (3) to section 43CA in assessee's case. In view of these discussion and judicial precedence in this regard, we are of the considered view that there is no infirmity in the findings of the CIT(A) deleting the addition made by the AO under section 43CA of the Act. Accordingly the grounds raised by the revenue are dismissed.

7. Since we have held that CIT(A) has correctly deleted the addition made under section 43CA on merits of the case the legal contentions raised by the ld. AR on the validity of initiating the re-assessment proceedings in assessee's case have become academic not warranting any specific adjudication.

8. In the C.O. the assessee has raised the contention that the approval of the appropriate authority has not been obtained as prescribed under section 151 of the Act for initiation of re-assessment proceedings. There is a delay of 33 days in filing the C.O. before the Tribunal. The assessee filed an affidavit requesting condonation of delay in filing C.O. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 33 days in filing the appeal and admit the appeal for adjudication. However during the course of hearing the ld. AR did not press for the contentions raised in the C.O. and therefore the same is dismissed accordingly.

9. In result the appeal of the Revenue and C.O. of the assessee are dismissed.

*Order pronounced in the open court on 16-12-2024.*

*Sd/-*

**(AMIT SHUKLA)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*

**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**