

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

**BEFORE SHRI.ANIKESH BANERJEE,JUDICIAL MEMBER AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**I.T.A No.4368/Mum/2024
(Assessment Year:2018-19)**

Shri Arjunsingh Bhoorsingh Rathore, Office No.102, 1 st Floor, Rajveer Royals, Next to Jyoti Dwelling Building, Andheri Ghatkopar Link Road, Andheri (East), Mumbai-400 093 PAN: AEDPR1163A	vs	Additional Joint, Deputy, Assistant Commissioner of Income-tax, Income-tax Officer, NFAC, Delhi
APPLICANT		RESPONDENT

Assessee by : Shri Rakesh Joshi
Respondent by : Shri Ram Krishn Kedia (SR.DR)

Date of hearing : 11/12/2024
Date of pronouncement : 17/12/2024

ORDER

PER: ANIKESH BANERJEE, JM:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) [in brevity, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in brevity the 'Act') for A.Y. 2018-19, date of

order 24/07/2024. The impugned order was emanated from the order of the National Faceless Assessment Centre, Delhi (NFAC) passed under section 143(3) read with section 144B of the Act, date of order 22/09/2021.

2. The assessee has taken the following ground of appeal:-

“(1) On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the actions of the Learned Assessing Officer in making an addition of Rs.13,93,680/- u/s 43CA of the Income Tax Act, 1961, without considering the facts and circumstances of the case.”

3. After hearing the submissions of both parties and reviewing the documents on record, we proceed to dispose the appeal filed by the assessee. The assessee is running business as developer and builder under trade name of M/s Rasal Builders & Developers. The assessee had entered into an agreement for ‘permanent alternate accommodation’ on 30/06/2017 with Mrs. Mohini R Adiecha and Priya Co-operative Housing Society Limited. Mrs. Mohini R Adiecha is a resident and owner of Flat No.202, admeasuring area of 515 sq.ft. The assessee has entered a re-development project with ‘Priya Co-operative Housing Society Ltd’ for the redevelopment of the dilapidated building called ‘Priya’. On the request of Mrs. Mohini R Adiecha, the assessee allotted more area in Flat No.304 admeasuring 715 sq.ft. Accordingly, the transaction is settled for excess 200 sq.ft. (carpet area) with consideration of Rs.47 lakh for alternate accommodation. The said “permanent alteration accommodation agreement” was subsequently registered on 30/06/2017 and the valuation of the property was determined in stamp duty valuation amount to Rs.60,93,680/-. Hence, the transaction value was lower than the stamp duty valuation. Therefore, since the property was allotted at a value lesser than the stamp duty valuation, for contravening provisions of

section 43CA (3) of the Act, the Ld.AO added back the difference amount to Rs.13,93,680/- with the total income of the assessee. Aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld. AR submitted a paper book, which has been placed on record. The agreement between the developer and Smt. Mohini R. Adiecha, executed on 30/06/2017, is duly annexed to the Assessee's Paper Book (APB) on pages 1–23. Additionally, the allotment letter dated 10/10/2013, is annexed on APB pages 24–26. During the arguments, the Ld. AR contended that the assessee is not the owner of the property but merely a contractor engaged in a redevelopment project with 'Priya Co-operative Housing Society Ltd.' as per the agreement dated 27/09/2013. The project involved reconstructing the Society's property.

The additional area was duly allocated to Smt. Mohini R. Adiecha, an owner and member of the Society, who previously resided in flat no. 202, measuring 515 sq. ft. She was allotted flat no. 304, measuring 715 sq. ft. Consequently, for the extra area of 200 sq. ft., the party paid an amount under an alternative accommodation agreement.

5. We note that the assessee has only allotted the said extra area to the party and there is no question of any transfer of land or building or both as per provision of Section 43CA of the Act. The assessee is not even holding the property as stock-in-trade where the section 43CA of the Act would be applicable. So, there is no contravention of provisions of section 43CA of the Act.

6. The Ld.AR respectfully relied on the order of the co-ordinate bench of **ITAT, Mumbai** in the case of **ACIT– 8(3)(1), Mumbai vs Tripple Securities Pvt Ltd** **ITA No.2270/Mum/2021**, date of pronouncement **20/12/2022**. The relevant paragraphs 22 & 23 are reproduced as below:-

22. Since we have concluded that the provisions of Section 43CA would be attracted in case of transfer of land or building or both, the issue that arises for consideration is whether there is transfer land or building by the Assessee to the tenant. In our view whether allotment of area to a tenant/occupant on under a redevelopment project would result in transfer of land or building held as stock-in-trade would depend upon the facts and circumstances of each case that would require examination of the contractual arrangement between the owner, landlord, tenant, co-operative housing society and the developers.

23. Coming to the facts of the present case, it is admitted position that the Assessee had undertaken redevelopment of the Old Building. The Assessee was not the owner or either the land or the Old Building. On carrying out the redevelopment work the Assessee would have received some area in the new building in his capacity as the Developer. In order to resolve the deadlock the Assessee agreed to settle for a lesser area in the meeting held on 07.08.2006 which was attended by Deputy Chief Engineer, MBR&RB who also signed the minutes of the meeting in this official capacity. In absence of any violation of specific provision of Maharashtra Housing & Area Development Act, 1976 having been brought to our notice, we are not inclined to accept the contention of Revenue that the allotment of additional area to the tenants was contrary to law. The amount of area to be given to the tenants was agreed upon and finalized when the minutes of the meeting held on 07.08.2006 were recorded since Annexure 'A' to the minutes of the meeting clearly provided for the details of the unit in the new building and the carpet area to be allotted to each tenant. Thus,

the additional area that was allotted to tenants could not be considered as stock-in-trade for the Assessee as the Assessee was never entitled to hold/sale the same. Thus, we concur with the CIT(A) that the area allotted to the tenants (including the additional area) cannot be regarded as stock-in-trade of the Assessee and therefore, the provisions of Section 43CA of the Act would not be attracted. In view of the aforesaid, we decline to interfere with the order passed by the CIT(A) on this issue. Ground No. 1 raised by the Revenue is, therefore, dismissed.”

7. The Ld.DR vehemently argued and fully relied on the order of the revenue authorities. The Ld.DR in arguments stated that the assessee has executed a registered agreement and accordingly, the higher rate in stamp duty valuation is prevailed. So the difference is rightly added back by the Ld.AO. He prayed for upholding the addition made by the Ld.AO in impugned assessment order.

8. In our considered opinion, we find that the assessee acted as a contractor or developer for reconstructing the dilapidated property of 'Priya Co-operative Housing Society Ltd' pursuant to the redevelopment agreement. The assessee merely allotted the additional area to the existing owner, Smt. Mohini R. Adiecha. As the assessee is not the owner of the property, there is no sale of property or transfer of right under Section 54 of the Transfer of Property Act, 1882.

Furthermore, Section 43CA of the Act, which pertains to stock-in-trade in the real estate business, is not applicable in this case as the assessee does not hold the property as stock-in-trade. This view is supported by the decision of the coordinate bench of the ITAT, **Mumbai Bench**, in the case of **Tripple Securities Pvt. Ltd.** (supra). The Ld. DR was unable to counter the submissions made by the

assessee with any contrary judgment. Additionally, the Ld. AR did not press any other grounds before the Bench.

Accordingly, we find that the Ld. CIT(A)erred in confirming the addition in the impugned appeal order. Therefore, the addition of Rs. 13,93,680/- is deleted.

9. In the result, the appeal of the assessee bearing **ITA 4368/Mum/2024** is allowed.

Order pronounced in the open court on 06th day of December, 2024.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 06/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai