

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'DB': NEW DELHI**

**BEFORESHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.55/DDN/2023, A.Y. 2014-15

Mussorie Dehradun Development Authority Transport Nagar, Saharanpur Road, Dehradun, Uttarakhand PAN: AAAAM4651Q	Vs.	Dy. Commissioner of Income Tax, Circle-1(1)(1), Aayakar Bhawan, 13A, Subhash Road, Dehradun
(Appellant)		(Respondent)

Appellant by	Sh. Saurabh Gupta, CA
Respondent by	Sh. A.S.Rana, Sr. DR

Date of Hearing	11/02/2025
Date of Pronouncement	19/02/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2014-15 filed by the assessee is directed against the order dated 15.06.2023 passed by the Commissioner of Income Tax (Appeals), NFAC, New Delhi [hereinafter, the 'CIT(A)'].

2. The sole ground raised in this appeal is that whether the amount of Rs.1,30,68,000/-; value of the property for stamp purposes, is chargeable to tax under section 43CA of the Income Tax Act, 1961 (hereinafter, the 'Act').

3. The relevant facts giving rise to this appeal are that the assessee, a corporate body (UP Urban Planning and Development Act, 1975), engaged in the business of promoting and securing the development of Mussoorie and Dehradun Urban Area by developing for housing scheme, constructing roads, drains, beautification, etc., filed its Income Tax Return (hereinafter, the 'ITR') on 30.09.2014 declaring income of Rs.7,63,21,400/-. The case was picked up for limited scrutiny. During the course of assessment proceedings, the Assessing officer (hereinafter, the 'AO') noticed that the assessee had transferred the immovable property for the sale consideration of Rs.14,00,415/- though its value for stamp purposes, as per the Circle Rate, was Rs.1,30,68,000/-. The assessee therefore, was show caused by the AO that why not the value for stamp purposes might be taken as a sale consideration in accordance with the provisions of Section 43CA of the Act. In response, the assessee filed a submission as detailed in Para No. 4 of the assessment order. However, the AO was not satisfied with the said submission of the assessee and therefore, he taxed the sum of Rs.1,30,68,000/- observing as under:-

“In view of the above provisions, the assessee was asked to furnish MOU signed with THDC and documentary evidence to prove that the part of sale consideration was received before the date of agreement. In his reply AR of the assessee submitted that only Rs. 14,00,415/- was received during the year and the assessee has inadvertently forgot to include this amount in its income. So, this may be considered as income from transfer of the above property. He furnished receipt of the above amount which is place on record.

Sub-section 4 of section 43CA clearly states that the provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.

But the assessee had failed to produce MOU (agreement) and evidence regarding payment received before the said MOU, therefore the value adopted by the Stamp Valuation Authority i.e. Rs. 1,30,68,000/- is being considered as income of the assessee during the year under consideration.”

3.1 Aggrieved, the assessee filed appeal before the CIT(A). The Ld. CIT(A) dismissed the appeal observing as under:

“9.3 The appellant vide notice dated 31.05.2023 was asked specifically whether any amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset. The query was as under:

“Whether appellant made any payment by other than cash before signing of MOU agreement dated 12.07.1991. Please submit documentary evidence in support of the same.”

However, the appellant has failed to submit any evidence in this regard. Thus, in the case of the appellant, no payment has been received on or before the date of agreement for transfer. Therefore, the benefit of 43CA (1) cannot be made available to the appellant.”

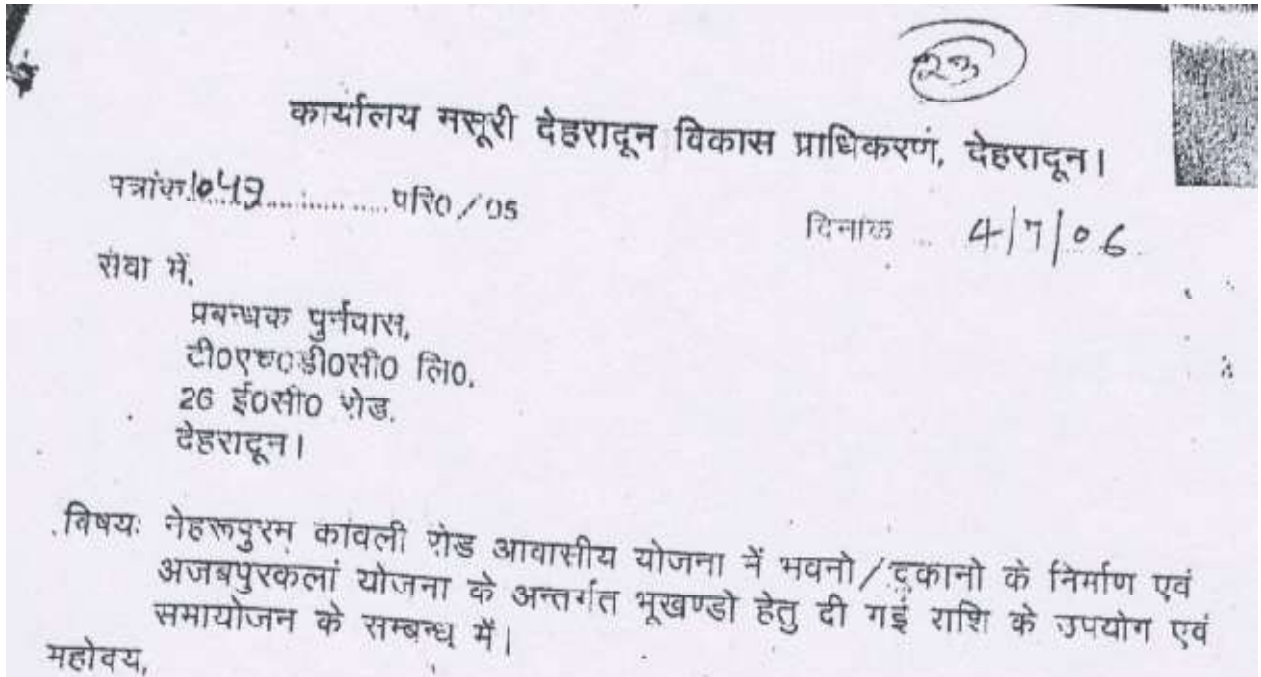
4. Before us, Ld. AR submitted that the appellantassessee had entered into a Memorandum of Understanding (MOU) dated 12th July, 1991 in respect of Rehabilitation of urban residents affected from the Tehri Dam Project. In the said MOU a piece of land admeasuring 20,841 Sq. Meters of was given to the Tehri Housing Development Corporation (hereinafter, the ‘THDC’), a State Government Corporation, on lease for the developmental work of Rehabilitation of urban residents by Tehri DAM. The said land was controverted into free hold during the

relevant year on receipt of amount of Rs.14,10,001/- whose value for stamp purposes was Rs.1,30,68,000/-. It was submitted that the appellant assessee was required to pay stamp duty on the free-hold charges. Our attention was drawn towards finding of the AO wherein the AO and the Ld. CIT(A) had held that the assessee had failed to produce any MOU regarding this land undertaken in 1991 and accordingly taxed Rs.1,30,68,000/- under section 43CA of the Act. The Ld. AR drew our attention to page No. 25 of the Paper Book which was nothing but the Draft agreement dated 12.07.1991, between TFDC and the assessee. He also drew our attention to page No. 30 of the Paper Book; i.e. the letter dated 24.06.1990 of the assessee.

4.1 Further, a sworn affidavit dated 07.12.2024 of the Finance Controller of the appellant assessee was also filed (page No. 32 of the Paper Book) wherein the reference of the letter dated 04.07.2006 was specifically mentioned. As per these referred documents, it was contended that the appellant assessee agreed to hand over the said land for Rs.6.00 Crores (Annexure-II of the sworn affidavit). Further, the ledger account of the Financial Year 1990-91 was also submitted at Page No.41 of the Paper Book wherein the sum of Rs. 2,50,01,500/- was shown/entered as receipt by the assessee in the year 1991. It was contended that the above-mentioned documents clearly demonstrated that the appellant assessee had received the major sale consideration prior to the free-hold of the said property and thus, the provisions of Section 43CA of the Act did not get attracted in this case. Further, it was submitted that since the matter was very old; therefore, the appellant assessee took much time to retrieve these documents.

5. On the other hand, the Ld. Sr. Departmental Representative (hereinafter, the Sr. 'DR') placed reliance on the order of the lower authorities and prayed for dismissal of appeal. However, he did not bring any material to controvert the submission of the Ld. AR.

6. We have heard both the parties and have perused the material available on record. We find merit in the arguments and submission of the Ld. AR. The above-mentioned documents submitted before us clearly demonstrate that the appellant assessee has entered into an agreement with the THDC in the year 1991 and has received the sum much before the relevant year. Only freehold charges of Rs.14,10,001/- has been received in the relevant year. This inference also gets buttressed by the letter dated 04.07.2006 of the appellant assessee addressed to the THDC as extracted herein under:



उपरोक्त प्रकरण के सम्बन्ध में अपने पत्र संख्या 161/टीएचडीसी/देहरादून दिनांक 8.6.06 का सन्दर्भ ग्रहण करने का कष्ट करें। आपके पत्र के सन्दर्भ में अवगत कराना है कि प्राधिकरण द्वारा इन कार्यों पर हुये व्यय की राशि रू0 6,00,70,179.00 का विवरण टी0एच0डी0सी0 को समय-समय पर पूर्व में तत्समय ही प्रेषित किया जा चुका है। पुनः प्राधिकरण द्वारा पत्र संख्या 679 दिनांक 21 जून, 2005 एवं पत्र संख्या 923 दिनांक 21.7.05 के द्वारा निर्गत की गई राशि के उपयोग किये जाने की सूचना प्रस्तुत की गई थी।

इस सन्दर्भ में पुनः अवगत कराना है कि प्राधिकरण द्वारा नेहरूपुरम आवासीय योजना के अन्तर्गत निर्मित किये गये 44 एच0आई0जी0, 96 एम0आई0जी0, 102 दुकाने एवं योजना के विकास पर हुये व्यय का संक्षिप्त विवरण निम्नवत है -

भूमि मूल्य	
समस्त निर्माण एवं विकास कार्यों पर हुआ व्यय	1,78,85,700.00 ✓ 3,53,25,934.77
कुल व्यय	
60 प्रतिशत दुकानो/भवनो पर हुआ व्यय	5,32,11,634.77
अजबपुरकला के भूखण्डो पर हुआ व्यय	3,19,26,979.00 (अ)
कुल व्यय (अ + ब)	2,81,43,200.00 (ब)
पूर्व में दिया गया अग्रिम	6,00,70,179.00
माह फरवरी 06 में दिया गया अवशेष राशि	6,00,00,000.00
अवशेष धनराशि	70,179.00
	शून्य

उपरोक्तानुसार प्राधिकरण द्वारा नेहरूपुरम योजना के अन्तर्गत 60 प्रतिशत भवनो एवं दुकानो पर कुल रू0 3,19,26,979.00 एवं अजबपुरकला भूखण्डो पर अंकन रू0 2,81,43,200.00 इस प्रकार कुल उक्त सम्पत्तियों पर प्राधिकरण द्वारा 6,00,70,179.00 का व्यय किया गया। इस राशि के सापेक्ष टी0एच0डी0सी0 द्वारा 6.00 करोड की राशि

अग्रिम एवं अवशेष राशि रू0 70,179.00 माह फरवरी, 06 में प्राधिकरण को भुगतान कर दिया गया है। प्राधिकरण द्वारा टी0एच0डी0सी0 द्वारा दी गई उपरोक्त समस्त राशि का उपभोग तत्समय ही कर लिया गया था।

बिन्दु संख्या 02 जो 26 ई0सी0रोड पर ट्राजिस्ट कैम्प (गैस्ट हाउस) के निर्माण एवं इसके व्यय का विवरण उपलब्ध कराये जाने का प्रश्न है, इस सम्बन्ध में अवगत कराना है कि प्रश्नगत निर्माण कार्य सिचाई विभाग द्वारा पूर्ण कराया गया था। प्राधिकरण द्वारा इस निर्माण कार्य से सम्बन्धित मूल पत्रावली एवं किये गये कार्य की मापपुस्तिका तत्समय ही सिचाई विभाग को हस्तान्तरित कर दी गई थी। इन निर्माण कार्य के विरुद्ध दी गई राशि का सत्यापन एवं समायोजन सिचाई विभाग को उपलब्ध

कराई गई मूल पत्रावली एवं माप पुस्तिका से किया जा सकता है।
अतः कृपया उक्त का अवलोकन कर अपने रिकार्डों में उपरोक्तानुसार आवश्यक
समायोजन करने का कष्ट करें।

भवदीय
सचिव,
मसूरी देहरादून विकास प्राधिकरण,
देहरादून।

7. In view the above facts, discussions and observations and theMOU, we are of the considered view that the provisionsof Section 43CA of the Act does not apply in this case. Ordered accordingly. Thus, we hold that the lower authorities have erred in taxing the sum of Rs.1,30,68,000/- under section 43CA of the Act. However, the actual receipt offreehold charges of Rs.14,10,001/- instead of the sum of Rs.1,30,68,000/-, which has not been offered for tax has to be taxed in the relevant year.We thus, uphold the addition of Rs.14,10,001/- out of addition of Rs.1,30,68,000/-. Consequentially, the appellant gets relief of Rs.1,16,57,999/-.

8. In the result, the appeal of the assessee is partly allowed as above.

Order pronounced in the open Court on 19th February, 2025

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated:19/02/2025
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT

4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI