

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI

**BEFORE SHRI PAWAN SINGH, JUDICIALMEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 528/MUM/2025
Assessment Year: 2016-17**

Ritu Multitrade Services Pvt. Ltd. 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai – 400025 (PAN : AAACR1995C)	Vs.	Income Tax Officer, Ward 8(1)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Shashank Mehta, AR
Revenue : Shri Nihar Ranjan Samal, Sr. DR

Date of Hearing : 18.03.2025
Date of Pronouncement : 27.05.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by assessee is against the order of Ld. CIT(A), Gurugram, vide order no. ITBA/APL/S/250/2024-25/1071491860(1), dated 23.12.2024 passed against the assessment order by Income-tax Officer, Ward-8(1)(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 11.12.2018 for AY 2016-17.

2. Grounds taken by the assessee are reproduced as under:

“1. That the assessment order u/s 143(3) of the Income Tax Act, 1961 (“the Act”) dated 11.02.2018 passed by the Assessing Officer (“AO”) and the additions/disallowances made therein are illegal, bad in law and without jurisdiction.

2. That the AO and the Commissioner of Income Tax (Appeals) (“CIT(A)”) have grossly erred on facts and in law in passing the orders without giving a sufficient and reasonable opportunity to the assessee to be heard. The orders have been passed in violation of principles of natural justice.

3. That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the assessment order u/s 143(3) of the Act and the additions/disallowances made therein.

4. That on the facts and circumstances of the case and law The Learned commissioner of Income tax (Appeals) has erred up holding the Addition made by the Ld. Assessing office erred in making addition Rs.15,86,710/- under section 43CA by adopting Stamp duty value in the place of sales consideration

5. That on the facts and circumstances of the case and law The Learned commissioner of Income tax (Appeals) has erred up holding the Addition made by the Ld. Assessing office erred in making addition amounting to Rs.15,86,710

6. All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.

3. Assessee filed its return of income on 15.10.2016, reporting total income at Rs.1,90,720/-. Assessment was completed after making an addition of Rs. 15,86,710/-, u/s.43CA by adopting stamp duty value in place of actual sales consideration for its consideration. Assessee had sold a property at a total sale consideration of Rs.60,50,000/- during the year. Stamp duty authority had determined the market value for the said property at Rs.76,36,708/-. Since the actual consideration was less than the stamp duty value, ld. Assessing Officer invoked the provisions of section 43CA, to arrive at the difference of Rs. 22,36,708/- for making an addition to the returned income. Assessee had offered capital gain of Rs. 6,50,000/- in the

return so filed, for which a credit was given and ultimately, the addition was made for Rs.15,86,709/-. It is important to note that assessee had offered capital gain of Rs. 6,50,000/-, since the sale of the property was not out of stock in trade, but part of its fixed assets duly reported in its audited financial statements. Assessee had calculated the capital gain by taking the consideration of Rs.60,50,000/- and cost of acquisition as Rs.54,00,000/-. Contrary to this, ld. Assessing Officer treated it as sale out of stock in trade and applied provisions of section 43CA. He replaced the actual consideration with stamp duty value and computed profits/gains at Rs.22,36,708/-.

3.1. In the course of assessment proceedings itself, assessee had submitted to refer the valuation of the property to the Departmental Valuation Authority by raising an objection on the stamp duty value, which was not entertained. Fact of this is noted by the ld. Assessing Officer in para 4.3 of the impugned order.

3.2. Aggrieved, assessee went in appeal before the ld. CIT(A). He also noted in para 6.1 about request by the assessee made to the ld. Assessing Officer for making a reference to the valuation officer for not accepting the sale price as per the registered agreement, but negated it by stating that no documentary evidence has been placed on record to this effect. Such an observation by ld. CIT(A) is not justified in view of the fact already noted by ld. Assessing Officer in the impugned assessment order in para 4.3, requiring documentary evidence of request made by the assessee for making a reference to the valuation officer.

3.3. Further, assessee demonstrated effectively that the impugned property forms part of its fixed asset reported in its audited financial statements and does not form part of the inventory. Accordingly, provisions of section 43CA do not apply. However, Section 50C becomes applicable, which also, provides for making a reference to the valuation authority when the stamp duty value is objected upon.

4. Sub-section 2 of section 50C provides for making a reference to valuation officer when the assessee objects upon the stamp duty value. Section 43CA also refers to section 50C(2) for its applicability in relation to determination of value adopted or assessed or assessable. Thus, where an objection is raised by the assessee on the stamp duty value adopted, a reference is to be made to the valuation officer. In the present case, assessee has made a request for making a reference to the valuation officer, fact of which is noted in the impugned assessment order itself. Ld. CIT(A) has also taken note of such an observation. However, both the authorities below failed to obtain a valuation report from the valuation officer on the objection raised by the assessee but have adopted the stamp duty value for the purpose of making addition in the hands of the assessee.

4.1 Considering the facts on record and the provisions of section 50C as well as 43CA, we restore the matter back to the file of ld. Assessing Officer, to make a reference to the valuation officer and obtain a valuation report on the objection raised by the assessee for adopting stamp duty value. Ld. Assessing Officer is directed to provide reasonable opportunity to the assessee for making necessary submissions in this respect and consider the valuation report so obtained in accordance with the provisions of law. Further, assessee has evidently demonstrated that the impugned transaction in the

property is that of its own premises forming part of fixed assets duly reported in its audited financial statements and does not form part of inventory. Accordingly, provisions of section 50C becomes applicable rather than section 43CA applied by Id. Assessing Officer. Accordingly, grounds raised by the assessee in this respect are allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 27 May, 2025

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 May, 2025

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai