

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.6626/Del/2019
Assessment Year: 2014-15

M/s. Ansal Housing Ltd. (formerly known as M/s. Ansal Housing & construction Ltd.), 606, 6 th Floor, Indra Prakash, 21, Barakhamba Road, New Delhi	Vs.	ACIT, Circle-2(2), New Delhi
PAN: AAACA0377R		
(Appellant)		(Respondent)

With

ITA No.6673/Del/2019
Assessment Year: 2014-15

ACIT, Circle-2(2), New Delhi	Vs.	M/s. Ansal Housing & Construction Ltd., 15, UGF, Indraprakash Building, 21 Barakhamba, CP, New Delhi
PAN: AAACA0377R		
(Appellant)		(Respondent)

Assessee by	Sh. Rohit Jain, Adv. Ms. Manisha Sharma, Adv. Sh. Jitendra Bhati, CA
Department by	Sh. Rajesh Tiwari, Sr. DR

Date of hearing	22.05.2025
Date of pronouncement	22.05.2025

ORDER

PER SATBEER SINGH GODARA, JM

These assessee's appeal ITA No.6626/Del/2019 and Revenue's cross appeal ITA No.6673/Del/2019 for assessment year 2014-15 are directed against the Commissioner of Income Tax (Appeals)-I [in short, the "CIT(A)"], New Delhi's order dated 27.05.2019 passed in case no.545/16-17 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case files perused.
3. This assessee's appeal herein ITA No. 6626/Del/2019 pleads the following substantive grounds:

1. *That on the law, facts and in the circumstances of the case, the Learned Commissioner of Income-tax (A) has erred in upholding the addition of Rs.65,83,703/- made by AO under the head 'Income from House Property' on account of notional annual letting value in respect of unsold vacant flats and commercial space held as stock in trade by the company.*
 - 1.1 *That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in upholding action of Assessing Officer in taxing alleged notional ALV of flats and spaces lying unsold in closing stock under the head 'Income From House Property' and also taxing the same closing stock under the head 'Profit and Gain of Business or Profession' in the same assessment year. This results in multiplicity of taxation on the assessee.*
 - 1.2 *That on the law, facts and in the circumstances of the case, the Learned Commissioner of Income-tax (A) has erred in not adjudicating ground No. 1.4 and 1.5 of appeal wherein the assessee has raised issue that section 23 has been amended w. e. f. assessment year 2002-03 and after taking into account of the amended provisions, ALV*

of the closing stock held by the company should have been taken at Nil. This fact was duly brought to the notice of AO during the course of assessment proceedings.

- 1.3 That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in upholding action of Assessing Officer in taxing notional ALV of flats and spaces lying unsold in closing stock under the head 'Income From House Property' on the basis of self-occupation of these assets, even though these assets are not habitable and after taking possession the owner have to do lot of things to make a particular-unit habitable.*
- 1.4 That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in upholding action of Assessing Officer in taxing notional ALV of farm land lying unsold in closing stock under the head 'Income From House Property' without taking into consideration direction of Hon'ble ITAT New Delhi in ITA No. 1254/Del/2009. The copy of order of Hon'ble ITAT was duly submitted before Hon'ble Commissioner of Income Tax (Appeal)-1.*
- 2. That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in invoking provisions of section 43CA(3) of Income Tax Act 1961 and confirming addition to the extent of Rs.41,85,600/- for the sale made in the financial year 2011-12 relevant to assessment year 2012-13, whereas the provisions of section 43CA came into force w. e. f. 01.04.2013 relevant to assessment year 2014-15.*
- 2.1 That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in invoking provisions of section 43CA against the assessee company for the transaction entered into between original allottees and there nominees on transfer of property between them.*
- 3. That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in upholding addition to the extent of Rs.9592822/- under section 43CA by relying upon the valuation of properties carried out by the Departmental Valuer on reference by the Ld. Assessing Officer.*
- 3.1 That on the law, facts and in the circumstances of the case The Ld. Commissioner of Income Tax (A) has erred in not considering the fact that Circle Rates prescribed by the State Authorities are not always, true indicators of market value of properties and addition has been made without considering the fact that the circle rates has been reduced by the State Authorities in subsequent years.*
- 4. That all the above grounds and sub-grounds have to be read conjunctively and also independent of each other.*
- 5. That the above ground(s) of appeal are to be considered separately and without prejudice to one another.*
- 6. That the appellant assessee craves, leaves to add, alter, amend, substitute, withdraw or forego any of the ground(s) of appeal before or at the time of hearing.*

7. *That the order of Learned CIT (A) is bad in law and wrong on facts of the case and is in violation of the principles of natural justice, as passed without providing reasonable opportunity to the appellant assessee to meet the merits of its case.*
4. The Revenue's cross appeal ITA No.6673/Del/2019 on the other hand raises the following substantive grounds:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the AO to recomputed the addition u/s 43CA of the Income Tax Act, 1961 ignoring the facts that the methodology of Valuation process used by the Valuation Officer suffers from infirmities and the Valuation Officer has failed to independently estimate the fair market value of the properties?*
 2. *On the facts and in the circumstances of the case, whether the Valuation process adopted by the Valuation Officer, wherein the sale value of certain properties has been used for arriving at the Fair Market Value and as one of the factors for adjustment, is not an invalid method of estimating the FMV of the property?*
 - 2.1 *The Properties being used as comparable have itself been referred for valuation by the Assessing Officer. Therefore, the proposed Fair Market Value suffers from circular referencing wherein the factors used for adjustment is itself dependent on the Valuation Process.*
 - 2.2 *The Valuation Officer has incorrectly arrived at the proposed Fair Market Value using factors of adjustment which are not independent and are themselves under the lens of Valuation process.*
 3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made u/s 43CA of the income tax act, 1961 on the basis of information received from the office of ITO (I&CI), Agra and directing the AO to take the circle rate of property in question as on 27.07.2011 instead of 31.03.2014 ignoring the facts that it is the date of registration of the sale deed which is to be considered for the purposes of date of transfer as per the provisions of section 2(47) of the income Tax, Act, 1961 and not the date of allotment letter?*
 4. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*
5. It is in this factual backdrop that we advert to the assessee's first and foremost substantive ground seeking to reverse both the learned lower authorities' action treating its notional income from inventory of unsold flats as assessable under the head income from

“house property” under section 22 of the Act. Both the parties are very much *ad idem* that the instant issue is no more *res integra* in the assessee’s case as the hon’ble jurisdiction high court in CIT Vs. Ansal Housing Finance and Leasing Company Ltd. (2013) 213 Taxman 143(Del) has already decided the same in the department’s favour.

6. Faced with this situation, learned counsel seeks to invite our attention to the assessee’s paper-book. His case is that although there would be hardly any dispute at the assessee’s behest in principle; but at the same time, there is no factual verification by both the learned lower authorities regarding its incomplete housing units and farm lands. That being the case, we deem it appropriate to restore the instant issue to this limited extent, back to the Assessing Officer for his afresh factual verification subject to a rider that the appellant only shall plead and prove all its case within three effective opportunities, in consequential proceedings. This assessee’s first and foremost substantive grievance is accepted partly for statistical purposes.

7. Next comes the assessee’s remaining twin and the Revenue’s sole substantive grievance in its cross-appeal ITA No.

6673/Del/2019 in principle qua applicability of section 43CA of the Act. A combined perusal of both these cases reveals that the learned Assessing Officer had made two additions under the above provision inter alia amounting to Rs.1,90,40,437/- representing the difference between actual sale price and circle rate of the assessee's corresponding asset/residential unit at Plot no. Kom-1, J.P. Nagar, Ansal Courtyard Mauja Dahtora, Tehsil & District Agra, having corresponding valuation of Rs.1,30,82,563/- and Rs.3,21,23,000/-, along with the latter component in case of 43 residential units sold in Thane, Indore, Ghaziabad, Agra and Noida having corresponding difference of Rs.6,55,37,183/- (Rs.15,75,55,593/- minus Rs.9,20,18,410/-); respectively. So far as the assessee's former residential unit is concerned, we note that not only it had allotted the same to the buyer concerned on 27.02.2011, but also it appears to have been duly recognized the income component therein, in its books of account. This clinching fact has gone unrebutted from the department side. It's only argument is that we ought to go by the corresponding actual transfer executed in the impugned assessment year invoking section 43CA of the Act.

8. We are of the considered view in this factual backdrop that even if the Revenue's stand is acted in principle the outcome would indeed remain the same going by section 43CA read with sub-section (3) and other clauses therein. And also that various judicial precedents i.e. *Balkishan Gupta Vs. ACIT (2023) 152 taxmann.com 567 (Del.-Trib.)* and *Reegal Construction v/s ITO, [2023] 154 taxman.com 350 (Kol. Trib.)* have already settled the issue against the department that in such an instance of the corresponding income already assessed in the earlier assessment years, the impugned provision would not get attracted. We thus accept the assessee's instant second substantive ground and reject the Revenue's all the corresponding pleadings qua the same in this cross appeal in very terms.

9. Next comes the last issue between the parties of correctness of the latter section 43CA addition of Rs.6,55,37,183/- involving the assessee's 43 residential units sold (supra). It is noticed from a perusal of the learned CIT(A)'s discussion in para 9.3.2 that the DVO had reduced the above difference to Rs.95,92,822/- only which indeed binds the Assessing Officer going by *CIT Vs. Dr. Indra Swaroop Bhatnagar [2012] 30 taxmann.com 293 (Allahabad)*. This

is indeed coupled with the fact that the legislature has itself adopted section 50C tolerance margin in third proviso thereto *mutatis mutandis* in section 43CA as well.

10. That being the case, we hereby quote Maria Fernandes Cheryl Vs. ITO (2021) 123 taxmann.com 252 (Mum) that such a tolerance margin of 10% therein carries retrospective effect being curative in nature. We accordingly direct the learned Assessing Officer to frame his consequential computation afresh, residential unit-wise, in very terms.

11. This assessee's appeal ITA No. 6626/Del/2019 is partly allowed and the Revenue's cross appeal ITA No. 6673/Del/2019 is dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 22nd May, 2025

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 22nd May, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi