

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR  
(Through Virtual Mode)  
BEFORE SH. KUL BHARAT, VICE PRESIDENT  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER  
ITA No.78/JAB/2025  
A.Y. 2018-19**

Landmark Developers, Blooms Campus, N.H. 75, Panna Road, Satna-485001, M.P.	vs.	National e-Assessment Centre
<b>PAN:AAEFL2527R</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Sanjay Mishra, Advocate
Revenue by:	Sh. N.M. Prasad, Sr. DR
Date of hearing:	21.08.2025
Date of pronouncement:	24.09.2025

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.**

This is an appeal filed by the assessee against the order of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 dated 18.02.2025 in which the Id. CIT(A) has dismissed the appeal of the assessee filed against the order of the Id. AO under section 143(3) r.w.s. 143(3A) & 143(3B) on 14.04.2021. The grounds of appeal are as under:-

- “1. That, the assessment order has been passed by NFAC and no designation of AO is mentioned in the assessment order which is illegal and unjustified.*
- 2. That, the digital signature in the assessment order are not verified and it does not amount to signing of assessment order by AO. Hence, the whole assessment order deserves to be set aside.*
- 3. That, the Ld. CIT Appeal is unjustified in holding the addition of Rs. 30,03,163.00 by applying Sec. 43CB of the Act without the considering the fact that same is not applicable to the project started prior to 01.04.2017.*
- 4. That Sec 43CB is applicable only where there agreement exist between the land owner and developer whereas in the present case the assessee firm itself carrying*

*on the construction on its own land and not in the capacity of developer or contractor. This fact has not been considered by the Ld. CIT(Appeal).*

*5. That the Ld CIT (Appeal) is totally unjustified in holding rejection of the books of accounts and estimating the profit at the rate of 6 percent and assessing the appellant under sections 144.*

*6. That Ld. CIT (Appeal) erred in not considering that Ld. AO has not given any proper reason for rejecting the books of accounts.*

*7. That Ld. CIT (Appeal) erred in not considering that the Assessing Officer has never gone through the books of accounts nor has raised any query regarding production of books of account rather the assessee in the reply dated 15.03.2021 submitted that the assessee is ready to produce the books accounts before the local assessing officer who can verify the same. Therefore the rejection of books of account is illegal and unjustified.”*

2. The facts of the case are that the assessee, a firm, filed its return of income for the assessment year 2018-19 declaring a total income of Rs. 16,550/-. It is a partnership firm that is engaged in the construction of a residential property in the name of Capetown Project. Perusing the return of income, the ld. AO observed that the assessee had shown income of Rs.4,814/- as profits and gains of business, and opening work in progress of Rs.25,01,77,220/-, receipts from flats sold of Rs.3,78,74,423/-, costs of flats sold of Rs.3,70,72,525/- and closing work in progress of Rs. 26,30,65,889/-. Accordingly, the profits from the business were shown at Rs.8,01,898/- and after deducting interest from partners, business income were shown at Rs.4,814/-. The ld. AO asked the assessee to explain whether it was following percentage completion method for Revenue recognition or not. However, the assessee submitted that section 43CB was not applicable in its case, as the sanction for construction was granted on 30.05.2013 and the section 43CB was introduced w.e.f. 1.04.2017. It was submitted that the assessee was regularly following the same method of accounting from year to year and there was no deviation in the same. It was submitted that it makes the sale when the complete unit was constructed and after the registration of the title goods. The same was therefore, in the nature of sale of goods. As the project had

commenced prior to 31.03.2016, but was not completed, it was to be recognized based on the method regularly followed by the assessee in accordance with the ICDS Standards notified by the Central Government w.e.f. 1.04.2015. However, when the Assessing Officer asked the assessee to provide the tower-wise details of cost incurred and revenue recognized till 31.03.2017, it did not produce the details and refuse to produce any accounts relating to a period of more than three years, stating that the same were barred. It also did not produce any architect certificate, stating that the same was not available, but it maintained that the books of accounts were properly maintained and audited by a C.A. The Assessing Officer concluded from the same that the assessee was refusing to provide relevant details and without these relevant details, it could not be ascertained whether revenue had been recognized properly or not. The assessee's submission that tower-wise cost could not be ascertained was found to be self-contradictory. Thereafter, the Id. AO, perusing the order of the previous assessment year, found that the AO had rejected the books of accounts under section 145(3) and invoked the provisions of section 144 to estimate the net profit of 6% of work in progress. He held that in the absence of submission of relevant details by the assessee, he was obliged to follow the same methodology. Accordingly, a show cause notice was issued to the assessee as to why the net profit should not be estimated at 6% of WIP and worked out at Rs.30,03,163/-. In response, the assessee once again submitted that section 43CB was not applicable because the project started on 30.05.2013. Furthermore, the assessee was both the owner of the land and developer of the property and was not working as a constructor. The assessee had submitted all details relating to transaction that took place in the F.Y. 2017-18 and the Act nowhere provided that the books of accounts should be maintained on the basis of an architect's certificate. Therefore, the books could not be rejected under section 145(3) and the total project cost tower-wise could not be presently

submitted, because it was dependent on future eventualities. It reiterated that its books were properly maintained and requested for a personal hearing. The ld. AO offered video conferencing but records that the same was not availed by the assessee, despite link being sent. Therefore, the ld. AO proceeded to complete the assessment to the best of his judgment and determined the net profit at Rs. 30,03,163/- on this basis and brought the same to tax.

3. Aggrieved with the said assessment, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) records that three opportunities were given to the assessee to file submissions in support of its grounds of appeal but the assessee did not choose to file any written submissions or documentary evidences before him. Therefore, he proceeded to decide the issue on the merits of the case without offering further opportunity to the assessee. He held that since the assessment year was subsequent to assessment year 2017-18, thus the provisions of section 43CB was to be applied. He further pointed out that the ld. AO had asked for details which the assessee did not provide and therefore, he declined to grant relief to the assessee on this account. He also held that the assessee was a contractor engaged in the construction and sale of building. It was not a case where the assessee had constructed its own individual property and therefore, the provisions of section 43CB were applicable. He also held that in the absence of production of the books of accounts, the estimation of income by the ld. AO was justified and he accordingly dismissed the appeal of the assessee on this account. He also noted that the ld. AO had recorded the fact that no details had been furnished before him and therefore, he had estimated the income only after providing sufficient opportunities and he rejected the plea of the assessee, that the assessee had not been confronted with any query regarding production of books of accounts. Accordingly, the ld. CIT(A) dismissed the appeal of the assessee.

4. The assessee is aggrieved with such orders rejecting its appeal, and has accordingly come before us. Sh. Sanjay Mishra, Advocate (hereinafter referred to as the Id. AR) drew our attention to the fact that the project of the assessee firm commenced before the assessment year 2017-18 and therefore, since section 43CB had been brought on to the statute books w.e.f. 1.04.2017, the provisions of the said section were not applicable to it. It was further submitted that the assessee was not a contractor but was developing a property on its own land and selling it and for this reason also, section 43CB could not apply to the assessee, because the assessee was not performing any construction or service contract. It was submitted that the Id. CIT(A) had not offered adequate opportunity to the assessee to represent its case. Perusal of the order of the Id. CIT(A) would show that the order had been passed *ex parte* without hearing the assessee and for this reason, the order was against the principles of natural justice. It was submitted that since the books of accounts were properly maintained and audited and no defect had been pointed out in these books of accounts by the Id. AO, there was no simply no reason to reject the said books and estimate the assessee's net profit at 6% of WIP, without first considering the assessee's submissions that it was not hit by the provisions of this section. It was, therefore, submitted that since important legal issues had been raised before the Id. CIT(A), which the Id. CIT(A) had not addressed with any due application of mind, the order of the Id. CIT(A) may be quashed or in the alternative the assessee may be given may be given an opportunity to place its arguments before the Id. CIT(A) afresh.

5. On the other hand, Sh. N.M. Prasad, Sr. DR (hereinafter referred to as the Id. DR) arguing on behalf of the Department pointed out that the assessee had not been able to show why, despite the fact that the assessment pertained to a period after 1.04.2017, the profits of the assessee company should not be assessed under the percentage completion methods in accordance with the

income computation and disclosure standards (ICDS) notified under sub section (2) of section 145. He, therefore, submitted that the appeal of the assessee should be dismissed and the orders of the lower authorities be upheld.

6. We have duly considered the facts and circumstances of the case. Grounds no 1 & 2 were not argued before us and therefore we take them as not pressed. With regard to the application of Section 43CB to the assessee, we note that in the matter of DCIT vs. Aryan Build Space LLP (2025) 172 taxman.com 806 (Ahmedabad-Trib), the ITAT has held that the provisions of section 43CB do not apply to real estate developers but only to construction contracts and contracts for providing services and since that assessee did not provide construction services to any third party under a contract, it did not fall within the ambit of section 43CB of the Act which was specifically designed to regulate the revenue recognition of contractors executing construction projects for clients rather than developers selling self-constructed properties. We also note that the ICDS-3 contains certain transactional provisions in para 22 wherein contract revenue and contract costs associated with the construction contract, which commenced on or before the 31<sup>st</sup> day of March, 2016 but not completed by 1.04.2017 shall be recognized based on the method regularly followed by the person prior to the previous year beginning on the 1<sup>st</sup> day of April, 2016. It is clear that the ld. CIT(A) has, in the absence of compliance by the assessee during appellate proceedings, not considered these legal issues in any great detail before holding that the percentage completion method as laid down in section 43CB was applicable to the assessee. In the circumstances, we deem it fit in the interest of justice to restore this matter back to the file of the ld. CIT(A), so as to make enquiry on the nature of the project and the date of commencement of the project being executed by the assessee and thereafter to determine whether the assessee was liable to be assessed under the provisions of section 43CB or not. The assessee may submit all necessary details before the

ld. CIT(A) to establish its case that it was covered under the exceptions provided above and the ld. CIT(A) may thereafter take a considered decision in accordance with law.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced on 24.09.2025 in the open Court.

**Sd/-**

**[KUL BHARAT]  
VICE PRESIDENT**

DATED: 24/09/2025

<sup>Sh</sup>

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

**Sd/-**

**[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER**

By order  
Sr. P.S.