

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 2109/KOL/2025
Assessment Year: 2016-17**

| | | |
|---|-----|---|
| Ascon Infrastructure (India) Ltd. (Appellant) | Vs. | A.C.I.T., Circle-9(1), Kolkata (Respondent) |
| PAN: AAHCA7166K | | |

Appearances:

Assessee represented by : S.S. Gupta, FCA, Ld. AR.

Department represented by : Santanu Ghosh, Sr. D.R.

Date of concluding the hearing : 18-November-2025

Date of pronouncing the order : 28-January-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17 dated 22.07.2025.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. That the Ld. AO erred in law as well as in facts in assessing the total income at Rs. 1,04,55,342/- as against the Returned income of Rs. 47,32,200/- and the Ld. CIT(A) erred in confirming the same, in as much as in view of the facts and circumstances of the case no such assessment was at all called for.

2. That the Ld. AO erred in law as well as in facts in making addition of Rs. 57,23,142/- U/s. 43CA of the Income Tax Act, 1961 and the Ld. CIT(A) erred in confirming the same, in as much as in view of the facts and circumstances of the case no such addition was at all called for.

3. That the Ld. AO erred in law as well as in facts in not accepting that the provisions of Section 43CA of the Income Tax Act, 1961 are not applicable



for agreements which have been entered prior to Assessment Year 2014-15 and the Ld. CIT(A) erred in confirming the same, in as much as in view of the facts and circumstances of the case the said legal position should have been accepted by the Ld. AO and the Ld. CIT(A).

4. That the Ld. AO erred in law as well as in facts in invoking provisions of Section 43CA of the Income Tax Act, 1961 in respect of agreements entered into on or after 01.04.2013 where the difference between agreement value and stamp duty value was upto 10-11% and the Ld. CIT(A) erred in confirming the same, in as much as in view of the facts and circumstances of the case no such invocation of Section 43CA was at all called for.

5. That the Ld. CIT(A) erred in law as well as in facts in not accepting the applicability of the first proviso to section 43CA of the IT Act, 1961 by virtue of confirming the addition even in respect of the cases where the Stamp Duty Value was within the limit of 110% of the actual sale consideration received, in as much as in view of the facts and circumstances of the case the said addition as sustained by the Ld. CIT(A) is contrary to settled legal position in light of the various judicial decisions.

6. That the Ld. AO erred in law as well as in facts in initiating penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 and the Ld. CIT(A) erred in confirming the, same in as much as in view of the facts and circumstances of the case no such initiation was at all called for.

7. That the Ld. AO erred in law as well as in facts in arbitrarily levying interest of Rs. 7,29,483/- u/s. 234B and Rs. 60,002/- U/s. 234C of the Income Tax Act, 1961 and the Ld. CIT(A) erred in confirming the same, in as much as in view of the facts and circumstances of the case no such interests were at all liable to be levied.

8. That the appellant craves leave to adduce additional grounds and/ or amend or withdraw any of the aforesaid Grounds before or at the time of hearing of appeal.”

3. Brief facts of the case are that the assessee is a company and had filed the income tax return for AY 2016-17 showing total income of ₹47,32,200/-. The case was selected for limited scrutiny under Computer Assisted Scrutiny Selection (in short 'CASS'). During the year under consideration the assessee had sold properties and in respect of some of the properties, there was variation between the stamp duty value and the actual sale consideration amounting to ₹57,23,142/-. Accordingly, notices u/s 143(2) and 142(1) of the Act were issued and



served upon the assessee requiring the assessee to furnish explanation for the variation and the assessee furnished certain documents in response to the same. Thereafter, the Assessing Officer (hereinafter referred to as Ld. 'AO') added a sum of ₹57,23,142/- u/s 43CA of the Act to the total income of the assessee and completed the assessment u/s 143(3) of the Act dated 17.12.2018 assessing the total income of the assessee at ₹1,04,55,342/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 22.07.2025, dismissed the appeal of the assessee as per his findings as under:

“4.2 Ground No.2, 3 and 4: The appellant has challenged the addition of Rs. 57,23,142/- and invoking of section 43CA of the Income-tax Act, 1961. In the instant case the assessee company is involved in the business in property developers. During the assessment proceedings it was found by the Assessing Officer that the property which had been sold during the Financial Year 2015-16, In some of the flats sold by the assessee company, the consideration received or accrued as a result of the transfer by assessee company was less than the value adopted or assessed by any authority of a state government for the purpose of payment of stamp duty in respect of such transfers, as on the agreement date or as on the date of registration. Further, Section 43CA of the Income Tax Act, 1961 is applicable to transaction of transfer of immovable property held as Stock-in-trade by the transferor, if the value at which it is sold is less than the Stamp Duty Value. It is also provided that where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of Registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. In view of the above reasons given by the Assessing Officer disallowance of Rs. 57,23,142/- was made u/s 43CA of the Act.

During the appellate Proceedings, the assessee filed written submission through ITBA module. After perusal of the same, it is concluded that the assessee failed to furnish the corroborative documentary evidences as required to establish the grounds taken by the assessee. The onus lies on the appellant to support any claim by bringing in cogent documentary evidence. In absence of any evidence in support of its grounds of appeal, I have no basis to take a contrary view in the appellate proceedings. I have no reason to interfere with the assessment order. As such, I do not find any infirmity in the order of



Assessing Officer. Therefore, addition of Rs. 57,23,412/- is hereby sustained on merits and the grounds of appeal are dismissed.

Ground No. 5: In this ground of appeal the appellant has challenged the levy of penalty u/s 271(1) (c) of the Act which is consequential in nature. As the main ground of appeal does not hold its ground the consequential ground of appeal is also dismissed.

Ground No. 6: In this ground of appeal the appellant has challenged the levy of interest u/s 234B, 234C of the Act, which is consequential in nature. As the main ground of appeal does not hold its ground, the consequential ground of appeal is also dismissed.

5. In the result, the appeal is dismissed.”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The assessee is a real estate developer and there was variation in the stamp duty value and the value as per the agreements which were made on different dates. The Ld. AO added the difference u/s 43CA of the Act.

6. It was argued that the agreements were made in different years spread over four financial years. For FY 2012-13, section 43CA of the Act was not applicable as it was brought into the statute with effect from 01.04.2014 only and was applicable for AY 2014-15 and not for AY 2013-14 relevant for FY 2012-13. In the FY 2013-14 relevant for AY 2014-15, there was variation of 10% which was within the tolerance limit as per the first proviso to section 43CA of the Act and therefore, no addition was called for. In FY 2014-15 relevant for AY 2015-16, again in view of the first proviso to section 43CA of the Act, the difference was within the tolerance limit of 10% and, therefore, no addition was called for and as regards FY 2015-16 relevant to AY 2016-17, the Ld. AR conceded that the difference was more than the tolerance limit and,



therefore, requested that the matter may be decided as per law. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld. However, he could not rebut the facts as submitted by the Ld. AR before us. Our attention was drawn by the Ld. AR to page 34 of the paper book, which is a summary chart of the addition made u/s 43CA of the Act which is extracted as under:

Ascon Infrastructure India Ltd
PAN: AAHCA7166K
Assessment Year: 2016-17

| Date of Agreement | Financial Year | Name of Purchaser | Date of Conveyance | Sale Price | SDV/ MV | Differance | Percentage of Deviation |
|---------------------------------------|----------------|------------------------------------|--------------------|------------|-----------|------------------|-------------------------|
| 05.10.2012 | 2012-13 | Sanjay Ghosh | 07.04.2015 | 17,21,025 | 24,50,875 | 7,29,850 | N.A. |
| 09.06.2012 | 2012-13 | Dibyendu Bardhan | 22.12.2015 | 30,00,000 | 41,65,087 | 11,65,087 | N.A. |
| 24.04.2012 | 2012-13 | Aditi Bera & Achintya Bera | 08.06.2015 | 24,35,280 | 30,67,095 | 6,31,815 | N.A. |
| 24.04.2012 | 2012-13 | Achintya Bera & Aditi Bera | 08.06.2015 | 21,93,712 | 28,17,806 | 6,24,094 | N.A. |
| 08.03.2013 | 2012-13 | Rachna Ghosh & Chandradeep Ghosh | 10.09.2015 | 48,22,140 | 48,30,940 | 8,800 | N.A. |
| 04.03.2012 | 2011-12 | Shrishendu Bardhan | 17.09.2015 | 25,00,000 | 42,35,112 | 17,35,112 | N.A. |
| Total (Financial Year 2012-13) | | | | | | 48,94,758 | |
| 15.08.2013 | 2013-14 | Amit Chatterjee & Leena Mukherjee | 29.06.2015 | 30,00,000 | 33,12,000 | 3,12,000 | 10% |
| Total (Financial Year 2013-14) | | | | | | 3,12,000 | |
| 22.10.2014 | 2014-15 | Sampa Karmakar & gourango Karmakar | 05.06.2015 | 44,57,620 | 45,51,120 | 93,500 | 2% |
| 09.03.2015 | 2014-15 | Rinku Karati Susanta Karati | 16.11.2015 | 48,96,860 | 50,50,260 | 1,53,400 | 3% |
| Total (Financial Year 2014-15) | | | | | | 2,46,900 | |
| 07.08.2015 | 2015-16 | Swapn Kundu | 06.01.2016 | 47,57,220 | 48,90,600 | 1,33,380 | 3% |
| 02.12.2015 | 2015-16 | Dibyendu Bardhan | 22.12.2015 | 54,466 | 82,500 | 28,034 | 51% |
| 11.05.2015 | 2015-16 | Dheepa Ganes | 22.05.2015 | 36,85,000 | 37,55,200 | 70,200 | 2% |
| 09.09.2015 | 2015-16 | Shrishendu Bardhan | 17.09.2015 | 44,630 | 82,500 | 37,870 | 85% |
| Total (Financial Year 2015-16) | | | | | | 2,69,484 | |

| Financial Year | Total Differance in Price |
|----------------|---------------------------|
| 2012-13 | 48,94,758 |
| 2013-14 | 3,12,000 |
| 2014-15 | 2,46,900 |
| 2015-16 | 2,69,484 |
| Total | 57,23,142 |



7. We have considered the facts of the case, the submissions made and the documents filed. In view of the preceding para 6 above, we find that only in respect of the two agreements dated 02.12.2015 with Dibyendu Bardhan and dated 09.09.2015 with Shrishendu Bardhan, the variation was 51% and 85%, which works out to difference of ₹28,034/- and ₹37,870/- respectively and therefore, only in respect of these two agreements the addition u/s 43CA of the Act was justified which works out to ₹65,904/-. Hence, out of the total addition made in respect of various agreements amounting to ₹57,23,142/-, a sum ₹65,904/- is liable to be sustained and the rest of the addition is hereby deleted. Hence, Ground Nos. 1 and 2 of the appeal are partly allowed while Ground Nos. 3, 4 and 5 are allowed. Ground No. 6 is premature, therefore, does not call for any adjudication. Ground No. 7 is consequential in nature and the Ld. AO is directed to recompute the same as per law. Ground No. 8 being general in nature does not require any separate adjudication.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 28th January, 2026.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 28.01.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Ascon Infrastructure (India) Ltd., 31, Indira Biswas Road, Belgachia, Kolkata, West Bengal, 700069.**
2. **A.C.I.T., Circle-9(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata