IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA Nos. 5321 and 5319/MUM/2025
Assessment Years: 2016-17 and 2018-19

Bajaj International Reality Private Limited, 106-107, Bajaj Bhawan, 226, Nariman Point, Mumbai. **PAN NO. AAECB 3060 C** **Appellant**	***Vs.***	Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) DCIT – 1(2)1, Aayakar Bhawan, Mumbai – 400020. **Respondent**

Assessee by	:	Shri Kirit Kamdar
Department by	:	Shri Leyaqat Ali Aafaqui, Sr. AR.

Date of Hearing	:	16/12/2025
Date of pronouncement	:	13/02/2026

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against two separate orders, both dated 16.06.2025, passed by the Learned Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for Assessment Year (in short A.Y) 2016 -17 and 2018 -19 respectively. As common issue in dispute

is involved in these appeals and therefore same were heard together and disposed of by way of this consolidated order for sake of convenience

2. Firstly, we take up the appeal of the assessee for assessment year 2016 -17.

2.1 The grounds raised by assessee are reproduced as under:

*"**Addition made under section 43CA of the Act [Rs.63,37,500/-]***

1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as "Ld. CIT(A)'] erred in upholding the addition of Rs.63,37,500 made by the Assessing Officer under the provisions of section 43CA of the Act.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the allotment letters issued as "an agreement" as envisaged in section 43CA(3).

3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) failed to appreciate that the value of the consideration was fixed between the appellant and the buyers while issuing the allotment letters, which were issued even prior to the date of insertion of section 43CA in the Act, and the value of the consideration was agreed on the date of booking itself.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in ignoring that the provisions of section 43CA are not applicable in the instant case, since the said section was introduced by the Finance Act, 2013 w.e.f. 01-04-2014, whereas the booking and allotment to the buyer with respect to Flat No.1304, 1303, 1204 and 1004 was already made in the FY 2012-13, i.e., much prior to the insertion of provision in the Act.

5. Non-applicability of section 43CA when the appellant applies Percentage of Completion Method (POCM) for revenue recognition

(a) Without prejudice to Ground No. 1, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the revenue was required to be recognized under the Percentage of Completion Method ["POCM") as per the Guidance Note and Accounting Standards issued by the ICAI.

(b) Without prejudice to Ground No. 1. on the facts and in the circumstances of the case and in law. The Ld. CIT(A) erred in not appreciating that for the purpose of section 43CA, the definition of transfer as per section 2(47) of the Act cannot be applied and the date of transfer of property has to be construed in accordance with the provisions of the Transfer of Property Act, 1882.

(c) Without prejudice to Ground No. 1, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition without appreciating the fact that no 'transfer' of asset had taken place in the current assessment year, as the flats were non-existent at that point in time and no right of ownership and possession was given to the buyers pursuant to registration of agreement with the stamp duty valuation authorities, and the Ld. CIT(A) also erred in considering the building as 'stock in trade' while the same is appearing as 'Work in progress' under Inventories in the financials of the relevant assessment year.

(d) Without prejudice to Ground No. 1, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that even if section 43CA gets attracted, it is not applicable for the relevant assessment year.

6. Without prejudice to Ground No. 1,2 and 3 above and on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.8,18,500/- in respect of Flat No.1204 whose agreement value was only 8.39% less than the value fixed for stamp duty purposes and ignoring the fact that the amendment to section 43CA by Finance Acts of 2018 and 2020 for the tolerance limit of 10%, being curative in nature had retrospective effect from the day 43CA was introduced in the Act.

Disallowance under section 14A [Rs.1,19,32,795/-]

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.1,19,32,795 made under section 14A of the Act.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the appellant had not earned any exempt income during the year under consideration and hence the question of any disallowance under section 14A does not arise.

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the application of Rule 8D while computing the disallowance under section 14A.

10.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the investments were made for strategic reasons in group concerns and not for earning exempt dividend income.

11.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the adjustment of disallowance of proportionate interest under section 14A read with rule 80(2)(ii) of the Act amounting to Rs.68,78,718/- against the Work-In-Progress Account without appreciating the fact that the investments were made out of owned funds.

Disallowance u/s 14A r.w.r. 8D of the Act under the provisions of section 115JB [Rs.50,54,077/-]

12.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the learned Assessing Officer in applying rule 8D for the purpose of computing the expenditure relatable to exempt income while computing the book profit under section 115JB of the Act.

13. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not following the ratio of the decision of the Special Bench of the Hon'ble Tribunal in the case of Vireet Investments (P.) Ltd [2017] 165 ITR 27 (Delhi - Trib.) (SB), thereby violating the principles of judicial discipline.

The appellant reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at the time of appeal, to enable the Hon'ble Tribunal to decide the appeal in accordance with law."

3. Briefly stated facts of the case are that the assessee, filed return of income of the year under consideration on 17.10.2016 declaring current year loss at Rs. (-)1,59,99,289/- under normal provisions of the Income Tax Act, 1961 (in short Act) and declaring book profit u/s 115JB at Rs. (-1),59,11,647/-. Subsequently, the return of the income filed by the assessee was selected for the scrutiny assessment and statutory notices under the provisions of the Act were issued and complied with and the assessment was completed under Section 143(3). the Assessing Officer (AO) made addition of Rs.63,37,500/- invoking the deeming provisions of Section 43CA, due to difference between stated sale consideration and the value determined by the Stamp Duty Valuation (SDV) of Authority on the date of registration

in respect of the flats sold by the assessee. Further, disallowances under Section 14A invoking rule 8D of the Income Tax Rules,1962 amounting to Rs.50,54,027/- was made despite the Assessee's contention that no exempt income was earned. The Ld. CIT(A) affirmed these additions, leading to the present appeal.

4. Before us, the assessee filed a paper book containing pages 1-18.

4.1 The grounds raised primarily challenges two distinct additions. **Firstly**, the addition of **Rs. 63,37,500/-** under **Section 43CA** of the Act, regarding the difference between the sale consideration and the Stamp Duty Valuation (SDV). **Secondly**, the disallowance of **Rs. 1,19,32,795/-** under **Section 14A** read with **Rule 8D**, both under normal provisions and in the computation of book profits under **Section 115JB**.

5. In Ground Nos.1-4 of the appeal the primary grievance of the Assessee is that the AO applied the Stamp Duty Value prevalent on the **date of registration (FY 2015-16)** rather than the value prevalent on the **date of allotment/booking (FY 2012-13)**

5.1 Briefly stated the facts qua the issue in dispute are that Assessing Officer observed that during the year under consideration, certain properties i.e. flats developed by the assessee were sold by the assessee and registered for Stamp Duty purposes, but sale consideration reported in the registration documents was lower than

the value which was determined by the Stamp Duty Value Authorities. The assessee contended that all those flats were sold in the year 2012-2013, but were registered in the year 2016. The assessee referred to the provisions of section 43CA (3) and (4) and submitted that if assessee was entered into agreement for fixing the value of the consideration for transfer of the asset and the date of registration of such transfer of asset is not the same, then the Stamp Duty value as on the date of such agreement date may be substituted by the Stamp Duty value on the date of registration. But for invoking said proviso, an assessee is required to make part of the amount of consideration otherwise then by way of cash before or on the date of the agreement for transfer of the asset.

5.2 The assessee submitted that while sale of Flat No.1304 and 1303 to M/s Jayesh Rege and M/s Sambhavi Rege is concerned, same were registered on 24/02/2016. In the registration documents sale consideration is reported at Rs. 91,58,435/-. The stamp duty authorities valued each of the properties on date of registration at Rs. 1,04,01,500/-. The area of the each flat was 52.50 square meters so the price per square meter was worked out at Rs. 1,98,123/-. The said flats were however allotted to the couple on October, 2012 and stamp duty value i.e. ready reckoner value per square meter as on said date was Rs.1,45,900 per Sq. meter , which when multiplied by the area of the each flats, the total value for the purposes works out to Rs.76,58,781/-, which is less than the sale consideration value of

Rs.91,58,435/-. Similarly, the assessee made submissions in respect of the other flats sold i.e. (i) Flat no. 1204 to sh Dev Narendra Singh/ Vibha Narerndra Singh (ii) Flat no. 1004 to sh Uday Shetty/ Mrs Padmavati Shety/ Ms Kanchan Shety (iii) Flat No. 1203 to Mr Anil Mishra, however the Assessing Officer rejected the contention of the assessee observed as under:

> *"5.4 The submission made by the AR was duly considered. However, submission of the AR is not acceptable for the reasons as under:-*
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> *The Assessee has contended that the flat was booked by the customers in earlier period and initial booking amount was also received and therefore, stamp duty valuation on the date of booking of each flats works out to be less then agreement value. In this connection, the Assessee furnished allotment letter/ booking form /ledger accounts as well as bank statements reflecting the receipts from said customers. In this respect, it is stated that in the agreement there is no mention of issue of such allotment letter. In the said allotment letter there is mention of receipt of initial booking amount.*
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> *Moreover, section 43CA(3) of the Act states that, "where the dated of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement. The agreement has been defined in the Oxford dictionary "as a negotiated and typically legally binding arrangement between parties as to a course of action." In this case, it is mentioned in the allotment letter that* ***"immediately after the execution of regular agreement for sale between us this allotment letter shall be returned and the same shall have no effect and it will be deemed null and void."*** *Therefore, such allotment letters can only be considered as an intention of the builder to sale and not as an agreement as mentioned in section 43CA(3) of the Act. In this regard, it is stated that section 43CA is a deeming fiction of the Act and it is settled law that deeming section has to be interpreted strictly as the deeming fiction is incorporated in the Act for a definite purpose. Therefore, the contention of the Assessee in this regard is not acceptable."*

5.3 Before us the learned counsel for the assessee relied on various decisions (i) Kolte Patil Developers ltd vs DCIT (2024)(167 taxmann.com 385 (Pune-Trib) (ii) Parth Dashrath Gandhi in ITA No.

1990/Mum/2022 for AY 2018-19 (iii) Sulochana Sijan Modi Vs ITO in (2023) 152 taxmann.com 56 (Mumbai-Trib) and submitted that allotment letter has to be considered as an agreement.

5.4 We have heard rival submissions of the parties and perused the relevant material on record. The Assessee contends that while the formal sale deeds were registered in 2016, the "agreement fixing the value of consideration" was effectively entered into in 2012 via Allotment Letters. It is further submitted that (i) Part consideration was received via banking channels at the time of booking, satisfying the proviso to Section 43CA(3) and (4); (ii) Section 43CA was introduced w.e.f. 01.04.2014 and should not apply to transactions where rights were crystallised in FY 2012-13 ; and (iii) The tolerance limit (5%/10%) introduced by Finance Acts 2018/2020 is curative and applies retrospectively. The Assessing officer applied 43CA but held that allotment letters issued was not as per requirement of section 43CA of the Act.

5.5 The learned Assessing officer has rejected the allotment letter entered into by the assessee as an ‘agreement’ . The Revenue’s rejection of the Allotment Letter as an "agreement" rests on a narrow interpretation. The AO held that since the Allotment Letter was to be surrendered upon the execution of a formal sale deed, it lacked the finality of a "legally binding arrangement."

5.6 We find this interpretation to be fundamentally flawed. In real estate transactions, an Allotment Letter, accompanied by the payment of earnest money, creates a specific right in person in favor of the allottee. The subsequent execution of a Sale Deed is merely the culmination of the obligations initiated by the Allotment Letter. In our opinion such a condition does not take away the essence of the agreement.

5.7 In the various decisions cited by the assessee, it is evident that allotment letter also has to be considered as an agreement, therefore provisions of the section 43CA are duly applicable. The relevant finding of the Tribunal in Kolte patil Developers ltd (supra) is reproduced as under:

> "*13. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A)/NFAC and the paper book filed by both the sides. We find the Assessing Officer in the Instant case made addition of Rs. 25,02,250/- in respect of 8 flats on the ground that the market value of these flats was Rs.2,73,16,150/- whereas the assessee company has registered the flats for a consideration of Rs. 2,48,13,900/- on the basis of agreement Value and therefore, the provisions of section 43GA of the Act are applicable. We find the CIT(A)/NFAC, relying on the decision of the Pune Bench of the Tribunal in the case of Rahul Constructions (supra), deleted the addition in respect of certain flats where the difference is less than 10%. He, however, sustained the addition in respect of remaining flats where the difference is more than 10% between the agreement value and the market price. It is the submission of the Ld. Counsel for the assessee that since the assessee had received part of the consideration in cheque as per agreement much prior to the date of sale, therefore, such agreement value has to be considered for the purpose of provisions of section 43CA of the Act and no addition is called for. We find some force in the above argument of the Ld. Counsel for the assessee. Sub-clauses (3) and (4) of section 43CA of the Act are as under.*
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> *"43CA (1)....*

(2).....

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) 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 way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed on or before the date of agreement for transfer of the asset."
14. A perusal of the details filed by the assessee in the paper book reveals that the assessee has received advances by cheque in respect of those three flats as per agreement and the sale deeds were executed subsequently where the market price is more than the agreement value. Since the assessee has received a part of the consideration as advance as per agreement and the sale deeds were made on the basis of the agreement value, although the market price gone by that time, therefore, in view of the provisions of sub-clauses (3) and (4) of section 43CA of the Act, no addition is called for since a part of the consideration has been received by cheque on the basis of agreement and the sale deeds were registered on the basis of value mentioned in the agreement. We, therefore, set aside the order of the CIT(A)/NFAC and direct the Assessing Officer to delete the addition of Rs.14,70,250/-. The first issue raised by the assessee is accordingly allowed."

5.8 The finding of Tribunal in Parth dashrath Ganghi (supra) is reproduced as under:

10. Accordingly, following the above said decision, we hold that the respective allotment letters issued to the assessee should be considered as Since the "Agreement to sell" for the purposes of sec 56(2)(x) of the Act. Since the assessee has paid the parts of consideration as per the terms and conditions of allotment through banking channels prior to the execution of Sale agreement, we are of the view that the provisos to sec.56(2)(x) shall apply to the facts of the present case. Accordingly, the stamp duty valuation as on the date of respective Allotment letters should be considered for the purposes of sec. 56(2)(x) of the Act. Hence the AO was not justified in considering the stamp duty valuation as on the date of execution of agreement to sell.

11. On a perusal of record, we notice that the details of stamp duty value as on the date of respective allotment letters was not brought on record. Since we have held that the stamp duty valuation as on the date of respective allotment letters should be considered for the purpose of sec.56(2)(x) of the Act, it is imperative on the part of

the assessee to show that the actual consideration was equal or less than the stamp duty valuation as on the date of issue of respective allotment letters. Accordingly, we are restoring this issue to the file of AO for the limited purpose of comparing the actual sale consideration with the stamp duty valuation as on the date of respective allotment letters. In the limited set aside, the AO shall take appropriate decision in accordance with law after affording adequate opportunity of being heard."

5.9 Similarly in the case of Sulochana Saijan Modi (supra) the Tribunal fillwng the parth Dashrath Gandhi(suora) held that allotment letters issued to an assessee should be considered as agreement to sell for the purpose of section 56(2)(x). The section 56(2)(x), which is *pari materia* to section 43CA of the Act, hence ratio of said decision applied to the facts of assessee. Following the ratio laid down above decisions, we hold that:"*an Allotment Letter shall be treated as an 'agreement' for the purposes of Section 43CA(3), provided the consideration or part thereof is received through prescribed banking channels on or before the date of such allotment.*"

5.10 But, the learned counsel for the assessee has filed additional evidence in support of the Stamp Duty Valuation as on the date of the allotment letter by way of an application for additional evidence. A List of those additional evidences is reproduced as under:

INDEX OF ADDITIONAL EVIDENCE

Sl. No.	***Particulars***	***Page Number***
1	*Flat No. 1204:* - *Statement determining Stamp duty value (SDV) in the year of allotment* - *SDV determined by Registration and Stamp Department* - *Bank statement evidencing receipt of booking amount*	 *1* *2* *3*
2	*Flat No. 1004:*	

	- *Statement determining Stamp duty value (SDV) in the year of allotment* - *SDV determined by Registration and Stamp Department.* - *Bank statement evidencing receipt of booking amount*	*4* *5* *6*
3	*Flat No. 1203:* - *Statement determining Stamp duty value (SDV) in the year of allotment* - *SDV determined by Registration and Stamp Department* - *Bank statement evidencing receipt of booking amount*	 *7* *8* *9*
4	*Flat No. 1303 and 1304:* - *Statement determining Stamp duty value (SDV) in the year of allotment for Flat 1303* - *SDV determined by Registration and Stamp Department for Flat 1303* - *Statement determining Stamp duty value (SDV) in the year of allotment for Flat 1304* - *SDV determined by Registration and Stamp Department for Flat 1304* - *Bank statement evidencing receipt of booking amount for both the flats*	 *10* *11* *12* *13* *14*
5	*Stamp Duty Ready Reckoner Rates for year 2012, 2013, 2015 and 2016*	*15-18*
6	*Computation of Income*	*19-20*

5.11 The Assessee has furnished additional evidence, including bank statements and SDV Ready Reckoner rates for the year 2012, which were not fully examined by the lower authorities. These documents go to the root of the matter. Consequently, we **remit this issue to the file of the Assessing Officer** for the limited purpose of:

1. Verifying the receipt of part consideration via banking channels at the time of allotment.
2. Comparing the actual sale consideration with the SDV prevalent on the **date of the Allotment Letter**.

5.12 The ground No.1-4 of appeal of the assessee were accordingly allowed for statistical purpose.

6. The ground No.5 was not pressed by the assessee and accordingly same dismissed as infructuous.

7. The ground No.6 is alternative remedy in respect of ground Nos.1-3 which we have already restored to the file of the Assessing Officer (A.O), and therefore this ground seeking alternative remedy is also restored to the file of the assessing officer for deciding afresh after considering submission and documentary evidence of the assesse.

8. Ground Nos. 7 to 11 raised by the assessee assail the disallowance made under Section 14A of the Income-tax Act, 1961, quantified at ₹1,19,32,795/-.

8.1 Briefly stated, the Assessing Officer noted that the assessee was holding investments in quoted and unquoted shares amounting to ₹1,01,08,40,481/- as on the opening of the year and ₹1,01,07,90,481/- as on the closing of the year. The Assessing Officer further observed that similar disallowances had been made in the assessee's own case from Assessment Year 2011–12 onwards, as the assessee had not, in the opinion of the Assessing Officer, satisfactorily demonstrated that the investments were made exclusively out of own funds and not from interest-bearing borrowings. Invoking Rule 8D of the Income-tax Rules, 1962, the

Assessing Officer computed the disallowance and ultimately made a net disallowance of ₹50,54,077/- observing as under:

> *"6.4 The submission made by the AR was duly considered but found not to be acceptable. The investment in shares has not been made by the assessee during the year rather the same has been made in earlier years. Similarly, the claim of interest expenses made during the year relates to interest bearing fund received by the assessee in earlier years. The disallowance of interest and other expenses has been made in this case from A.Y.2011-12 onwards as the assessee could not satisfactorily explain that the investment has not made of own fund and not interest bearing fund. Therefore, disallowance of expense u/s. 14A as per Rule 8D is computed as under:-*

[1] The amount of expenditure directly relating to income which does form part of total income	*NIL -*
(2) Expenditure by way of interest = A X(B/C) *2.23.19.497 X 101.08.15.481* *3,27,98,10,648*	*68.78.718*
A = The amount of expenditure by way of interest other than amount of interest included in clause(i) incurred during the previous year.	*-*
Particulars	*Amount*
Interest	*2,23,19,497*
B = The average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and last day of the previous year.	
Particular	*Investment*
Opening Balance	*1,01,08,40,481*
Closing Balance	*1,01,07,90,481*
Average	*1,01,08,15,481*
C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.	
Particulars	
Opening Balance of total assets	*3,22,58,36,178/-*
Closing Balance of total assets	*3,33,37,85,117/-*
Total	*6,55,96,21,295/-*

Average of total assets	*3,27,98,10,648/-*
[3] An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee on the first day and last day of the previous year. ***i.e., Rs.101,08,15,481/-***	***50,54,077/-***
Disallowance u/s. 14A read with Rule 8D [1]+[2]+[3]	***1,19,32,796/-***

9. On further appeal, the learned CIT(A) upheld the disallowance made by the Assessing Officer.

10. We have heard rival submissions of the parties and perused the relevant material on record. The principal contention of the learned counsel for the assessee is that no exempt income was earned during the year under consideration and, therefore, no disallowance under Section 14A could have been made. Reliance was placed on the judgment of the jurisdictional High Court in Pr. CIT vs. Ballarpur Industries Limited *(ITA No. 51 of 2016),* no disallowance could have made in the hands of the assessee in the year under consideration.

10.1. From the assessment order itself, particularly paragraph 6.3, it is evident that the assessee had specifically asserted that no exempt income was received during the relevant previous year. This factual position has not been controverted by the Revenue.

The legal position is no longer res integra. The jurisdictional High Court has unequivocally held that in the absence of any exempt income, no disallowance under Section 14A of the Act is warranted.

Respectfully following the binding precedent, the disallowance sustained by the authorities below is unsustainable in law.

10.2 Accordingly, the disallowance made under Section 14A is directed to be deleted. Ground Nos. 7 to 11 are allowed.

11. The next ground in respect of the disallowance of 14A made in respect of computation of the book profit under the provisions of Section 115JB of the Act. As the issue in dispute is covered by the decision of the Special Bench in the case of the *Assistant Commissioner of Income-tax, Circle 17(1), New Delhi Vs. Vireet Investment Private Limited in* ITA No.502/Del/2012 for Asstt. Yr.: 2008-09 and accordingly no disallowance can be made u/s 14A while computing book profit under the provision of section 115JB of the Act. The ground No.12 and 13 of the appeal of the assessee are accordingly allowed.

12. Now we take up the appeal of the assessee for the Assessment Year 2018-19. The ground raised by the assessee are reproduced as under:

"Addition made under section 43CA of the Act (Rs. 1.59.21.788/-]

> *1. On the facts and in the circumstances of the case and in law, the Commissioner of income tax (Appeals), National Faceless Appeal Center (hereinafter referred to as "Ld. CITI(A)') erred in upholding the addition of Rs.1,59,21,788/- made by the Assessing Officer under the provisions of section 43CA of the Act.*

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the allotment letters issued as "an agreement" as envisaged in section 43CA(3).

3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) failed to appreciate that the value of the consideration was fixed between the appellant and the buyers while issuing the allotment letters, which were issued even prior to the date of Insertion of section 43CA in the Act, and the value of the consideration was agreed on the date of booking itself.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in ignoring that the provisions of section 43CA are not applicable in the instant case for 7 out of 8 flats, since the said section was introduced by the Finance Act, 2013 w.e.f. 01-04-2014, whereas the booking and allotment to the buyer with respect to these 7 out of & flats were already made prior to FY 2012-13, Le, much prior to the insertion of provision in the Act.

5. <u>Non-applicability of section 43CA when the appellant applies Percentage of Completion Method (POCM) for revenue recognition</u>

(a) Without prejudice to grounds above, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the revenue was required to be recognized under the Percentage of Completion Method ("POCM") as per the Guidance Note and Accounting Standards issued by the ICAI.

(b) Without prejudice to grounds above, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that for the purpose of section 43CA. the definition of transfer as per section 2(47) of the Act cannot be applied and the date of transfer of property has to be construed in accordance with the provisions of the Transfer of Property Act, 1882.

(c) Without prejudice to grounds above, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition without appreciating the fact that no 'transfer of asset had taken place in the current assessment year, as the flats were non-existent at that point in time and no right of ownership and possession was given to the buyers pursuant to registration of agreement with the stamp duty valuation authorities.

(d) Without prejudice to grounds above, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that even if section 43CA gets attracted, it is not applicable for the relevant assessment year.

Disallowance under section 14A [Rs. 1,01,07,904/-]

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 1,01,07,904/-made under section 14A of the Act.

7. On the facts and in the circumstances of the case and in law, the L. CIT(A) failed to appreciate that the appellant had not earned any exempt income consideration and hence the question of any disallowance under section 14A does not arise.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the application of Rule 8D while computing the disallowance under section 14A.

9. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the investments were made for strategic reasons in group concerns and not for earning exempt dividend income

Disallowance u/s 144 r.w.r. 80 of the Act under the provisions of section 115/8 [Rs. 1.01.07,904/-]

10. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the learned Assessing Officer in applying rule 8D for the purpose of computing the expenditure relatable to exempt income while computing the book profit under section 115JB of the Act.

11. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the disallowance computed under section 14A r.w.r 8D does not represent actual expenditure incurred for earning exempt income and the same therefore, need not be added back while computing book profit under section 115JB of the Act.

12. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to understand that section 115JB would cover only direct expenses which are actually been debited to Profit and Loss account. The appellant has not debited any actual expenditure relating to the earning of exempt income, therefore, the provisions of section 14A cannot be brought into the computation of book profit under section 115JB of the Income Tax Act, 1961.

13. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not following the ratio of the decision of the Special Bench of the Hon'ble Tribunal in the case of Vireet Investments (P.) Ltd (2017) 165 (TR 27 (Delhi- Trib) (5B), thereby violating the principles of judicial discipline.

Treatment of deferred tax [Rs. 98,966/-]

> *14. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating the ground raised by the appellant with respect to the addition made on account of deferred tax while computing the income u/s 115JB of the Act.*

The appellant reserves the right to add to, alter or amplify the above grounds of appeal, at any time before or at the time of appeal, to enable the Hon'ble Tribunal to decide the appeal in accordance with law."

12.1 Ground No.1-4 of the appeal are identically worded as grounds raised in the year Assessment year 2016-17. In the year under consideration also the assessee has filed additional evidence as we have accepted in Assessment Year 2016-17 and restored the matter back to the file of the assessing officer, therefore, following or finding in the Assessment Year 2016-17, the issue in dispute in the year under consideration is also restored to the file of the ld Assessing officer for adjudication after considering the additional evidence and other documents which may be filed by the assessee.

12.2. Ground No.5 of the appeal has not been pressed in the year under consideration also and therefore same is dismissed as infructuous.

13. In ground Nos.6-9, the assessee has raised the issue of the disallowance u/s 14A. Since in the year under consideration also no exempted year has been earned, therefore, following our finding in the assessment year 2016-17, ground Nos.6-9 of the appeal are accordingly allowed.

14. Ground Nos.10-13 of the appeal relates to adjustment for disallowance u/s 14A to the book profit computed under the provisions of Section 115JB. As the identical issue has been allowed in favour of the assesse in the assessment year 2016-17 and therefore following or finding in the assessment year 2016-17 the ground Nos.10-13 of the assessee are accordingly allowed.

15. Regarding ground No.14 for claim of the deferred taxes the learned counsel for the assessee before us submitted that matter may be restored to the file of Assessing officer for verification of the claim of the assessee. As both parties agreed that this is the matter of only verification at the level of the assessing officer and therefore, we feel it appropriate to restore the issue back to the file of the assessing officer for verification and decide in accordance with law.

16. In the result both the appeals of the parties are partly allowed for the statistical purposes.

Order pronounced in the open Court on 13/02/2026.

Sd/-	**Sd/-**
(KAVITHA RAJAGOPAL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 13/02/2026
M. Ranganath Vittal , Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai