

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.120/LKW/2024
A.Y. 2021-22

M/s K.G. Construction, 122/8 Goel House, Faizabad Road, Lucknow, Uttar Pradesh-226016	vs.	DCIT, Central Circle-1, Lucknow
PAN: AAKFK4805B		
(Appellant)		(Respondent)

Assessee by:	Sh. P.K. Kapoor, C.A.
Revenue by:	Sh. Vachaspati, CIT DR
Date of hearing:	06.01.2026
Date of pronouncement:	27.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT(A)-3, Lucknow under section 250 of the Income Tax Act, 1961 on 12.01.2024, wherein the Id. CIT(A) has partly allowed the appeals of the assessee against the orders of the Id. AO, passed under section 143(3) for the A.Y. 2021-22 on 31.12.2022. The grounds of appeal are as under:-

"1. BECAUSE the "CIT(A)" has erred in law and on facts in confirming the addition of Rs. 34,69,070/-, representing the difference between the stamp duty value and sale consideration of the three immovable properties, as business income by invoking the provisions of section 43CA of the Income-tax Act, 1961, on the ground that the assessee failed to produce copy of agreements with respect to the properties owing to which it was not verifiable whether the date of registration and the date of agreement was different.

2. BECAUSE Id. "CIT(A)" is not factually correct in holding that the appellant didn't produce the copy of agreement with respect to all the three properties whereas, as per the information on record the valuation report in respect of two properties sold to Mr. Arvind Kumar Agarwal and Mrs. Manju Upadhayay/ Mr. Paras Upadhayay were placed before the Id. CIT(A).

3. BECAUSE without prejudice to the aforesaid grounds in any case once the assessee disputed the adoption of stamp duty value it was incumbent on the authorities below to have referred the matter to the DVO contained in the sub-section (2) of section 43CA and this having not been done, the sale consideration declared in the sale deeds deserved to be accepted.

4. BECAUSE, without causing prejudice to the grounds hereinafore, the matter deserves to be restored to the assessing officer for referring the valuation of all the three properties to the DVO as per provisions contained in sub-section (2) of section 43CA and for passing the assessment order afresh after following the due process of law.

5. BECAUSE on the facts and in the circumstances of the case, the valuation of the properties made by the registered valuer in respect of the properties sold to Mr. Arvind Kumar Agarwal and Mrs. Manju Upadhyay/ Mr. Paras Upadhyay furnish before Id. "CIT(A)" was liable to be accepted, as no defect or discrepancy has been pointed out by the "CIT(A)" in the valuation report of the registered valuer furnished before him.

6. BECAUSE the order appealed against is contrary to facts, law and principles of natural justice.

7. The appellant craves leave, to add, delete or modify any of the grounds before hearing of appeal."

2. The facts of the case are that during the course of assessment proceedings, the Id. AO noted that the assessee had sold three immovable properties (stock in trade) in contravention of section 43CA during the year. The details of these properties were as under:-

S. No.	Date of Registry	Circle Rate (Rs.)	Consideration (Rs.)	Difference u/s 43CA, (Rs.)
1.	19.02.2021	62,51,934/-	41,75,000	20,76,934
2.	23.10.2020	45,76,304	36,67,288	9,09,016
3.	25.01.2021	9,83,120	5,00,000	4,83,120
				Total=34,69,070

2.1 Since the consideration was below 80% of the total circle rate and outside the permissible limit of relaxation in force during the year, he added back the sum of Rs. 34,69,070/- to the income of the assessee and initiated penalty proceedings under section 43CA. Some other additions were also made in variation of profit

rate, which was subsequently deleted by the Id. CIT(A) and are not the subject matter before us.

3. Aggrieved by these additions, the assessee went in appeal before the Id. CIT(A) and it was submitted that the AO had erred in facts and in law in making the addition of Rs. 34,69,070/- by invoking the provisions of section 43CA, because he had ignored the copy of the sale deed and the schedule of payments given in the sale deed. It was further submitted that in all these cases, the agreements had been entered into before the date of registration and the first payment had also been received through account payee cheque. The details of these were as under:-

Particulars	Date of agreement & first payment received	Sales Consideration	Stamp Duty Value	Difference
Arvind Kumar Agarwal	30.06.2017	41,75,000	62,51,934	20,76,934
Manju Upadhyay & Paras Upadhyay	04.11.2015	36,67,288	45,76,304	9,09,016
Pradeep Kumar	11.01.2021	5,00,000	9,83,120	4,83,120

3.1 The assessee submitted that the AO had chosen to ignore the date of agreement and date of first payment and should have taken the stamp duty value of property as on the date of agreement to determine violation of section 43CA, rather than taking the same on the date of Registry. It was further submitted that due to the Covid-19 pandemic, the assessee was forced to make distress sale of the properties in question and this aspect also had to be considered. The Stamp Duty Authority had valued the properties on the higher side and therefore, the valuation done by the assessee's valuer should have been adopted. It was further submitted that the AO had failed to obtain the valuation report of the Government valuer and therefore, the addition made by the Id. AO by invoking the provisions of section 43CA was against the rule of law and natural justice.

4. The Id. CIT(A) considered the submissions of the assessee and held that since the assessee had failed to produce the copies of the agreements with respect

to all three properties, therefore, it was not verifiable as to whether the date of registration and the date of agreement were different. Accordingly, he was of the view that the AO was justified in making addition on account of difference of Rs. 34,69,070/- between the stamp duty value and the sale consideration of all the three properties and the difference was liable to be taxed as business income under section 43CA. The ld. CIT(A) therefore, confirmed the addition so made.

5. The assessee is aggrieved at this order and has accordingly come in appeal. Sh. P.K. Kapoor, C.A. (hereinafter referred to as the ld. AR) argued the matter before us. At the first instance, he submitted that the assessee was not pressing ground nos. 1 and 2 of the appeal. Accordingly, the same are dismissed as not pressed. With regard to the issue of addition under section 43CA, it was submitted that once the assessee had disputed the adoption of stamp duty value, it was incumbent upon the authorities below to have referred the matter to the DVO as per sub section (2) of section 43CA, and this not having been done, the sale consideration declared in the sales deed deserved to be accepted. The ld. AR invited our attention to page nos. 21 and 22 of the paper book filed by him, wherein he had questioned the stamp duty value as being the fair market value of the property. Making reference to the fact that all the bookings had been done prior to F.Y. 2020-21 and some even as far back as F.Y. 2011-12 and F.Y. 2012-13, he also invited our attention to page no. 68 of the paper book which contained his submissions before the ld. CIT(A) where he had specifically raised the plea that the AO had failed to obtain the valuation report of the Government valuer and therefore, the addition made was bad in law and against the principles of natural justice. However, the ld. CIT(A) had not considered these pleas on the grounds that the assessee had not produced the agreements, while the CIT(A) should have referred or ordered that the matter may be referred to the Valuation Officer. The ld. AR placed reliance on the decision of the Hon'ble Kolkata High Court in the case of Sunil Kumar Agarwal vs. CIT, Siliguri (2014) 47 taxman.com 158 (Calcutta) wherein it had been held that even in the case where no specific prayer was made for reference to the Valuation Officer, the ld. AO had an obligation to act fairly and

give a fair treatment to the assessee by giving him the option to follow the course provided by law. The ld. AR pointed out that that as per the decision of the Hon'ble Supreme Court in the case of CIT vs. Nirbheram Deluram (1997) 91 taxman 181 (SC), since the first Appellate Authority had plenary powers in disposing of an appeal and the scope of his powers was co-terminus with that of the AO, he could do what the AO could do and also direct him to do what he had not done. Accordingly, ld. AR prayed that once the assessee had made a request for valuation, the ld. CIT(A) was obliged to order that the matter be referred to the Departmental valuer and he could not have confirmed the addition in this regard. He further placed reliance on the decision of the ITAT in M/s Karb Associates Pvt. Ltd. vs. DCIT, Circle-8(1), Kolkata in ITA No. 1941/KOL/2019, Vijay Arvind Raykar vs. ITO, Ward-6(2), Pune in ITA No. 3010/PUN/2017, Mohammed Khalid Habib Parihar vs. ITO, Ward-31(2)(1), Mumbai in ITA No. 3345/MUM/2024 and Razia Abu Khatri vs. ITO, Ward-22(4), New Delhi in ITA No. 5904/DEL/2016. The ld. AR pointed out that in all these matters, the ITAT had held that it was mandatory for the AO to refer the property for valuation to the DVO and in all these cases, the ITAT had restored the matter back to the lower authorities for making this reference. He accordingly prayed that similar treatment be afforded to the assessee in this matter.

6. On the other hand, Sh. Vachaspati Tripathi, Ld. CIT DR submitted that the ld. CIT(A) had recorded the fact that the assessee had not produced the agreements before the ld. CIT(A). He submitted that if the Bench was inclined to send the matter back for valuation, then he did not have any objection, but the assessee should be directed to produce these agreements for consideration of the lower authorities and if he failed to do so then then the ld. CIT DR submitted that the addition should be confirmed in view of the findings rendered by the ld. CIT(A).

7. We have duly considered the facts and circumstances of the case. We note that section 43CA read with section 50C(2) explains that whenever the assessee claims that value adopted for the purpose of stamp duty is in excess of fair market value, the AO may refer it for valuation to the DVO. Without making such reference,

the ld. AO cannot invoke section 50C/43CA of the Act. Accordingly, in the interest of justice, we restore the matter back to the file of the ld. AO with a direction to refer the matter to the Valuation Officer, for obtaining a report before proceeding further on the matter. The assessee shall produce copies of the agreements that pre-date the date of registry before the AO / Valuation Officer and the same may be considered in accordance with the provisions of law. Accordingly, ground nos. 3 and 4 are allowed for statistical purposes. Ground no. 5 has not been pressed by the ld. AR and is therefore, dismissed.

8. In the result, the appeal is partly allowed.

Order pronounced on 27.02.2026 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 27/02/2026

sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

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

By order
Sr. P.S.