

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No. 279/NAG/2025
(Assessment Year : 2016-17)**

DCIT, Central Circle-2(1), Nagpur	vs	Khare and Tarkunde Infrastructure Pvt. Ltd., 235, Shivaji Complex, Dharmpeth, Nagpur PAN : AAACK 7184 N
Department		Assessee

Assessee by	:	Shri Sachin V. Luthra, CA
Revenue by	:	Shri Surjit Kumar Saha, Sr. DR
Date of hearing	:	25.02.2026
Date of pronouncement	:	21.04.2026

ORDER

PER KHETTRA MOHAN ROY, AM:

This appeal by the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)-3, Nagpur (for short, "**CIT(A)**"), dated 27/02/2025 passed under section 250 of the Income Tax Act, 1961 (for short, "**Act**") which is arising out of assessment order passed u/s. 143(3), dated 30.12.2018

by the ACIT, Circle-1, Nagpur for the Assessment Year 2016-17 **(AY)**.

2. The sole issue raised by the Revenue in this appeal is, Ld.CIT(A) is not correct in deleting the addition of Rs. 5,56,72,000/- made by the Ld. Assessing Officer **(AO)** u/s. 43CA of the Act.

3. Facts of the case in brief are that assessee is company, engaged in the business of civil construction and development of infrastructure projects. It filed its e-return of income for A.Y. 2016-17 furnished on 17.10.2016 declaring total income of Rs. 18,32,36,180/-. Case was selected for scrutiny through CASS and statutory notices u/s. 143(2) & 142(1) of the Act were issued and served upon the assessee. In response to the notices issued, assessee made submissions and on perusal of the documents so submitted, Ld. AO noticed that during the assessee sold Transferable Developmental Rights (TDRs) of Rs. 6,51,63,000/-, but the market value was of Rs.12,08,35,000/- Ld. AO further observed that assessee has not computed income on TDRs under the provisions of section 43CA of the

Act. Therefore, show-cause notice dated 25.12.2018 was issued to the assessee. In response thereto, assessee stated that provisions of section 43CA are not applicable in the case of transfer of any intangible assets like TDR, tenancy right or development right in the ordinary course of business of the assessee who is engaged in the business of builders and developers. The explanation submitted by the assessee did not find favour with the Ld. AO, who calculated the sale consideration of TDRs on fair market value and the difference amount of Rs. 5,56,72,000/- (12,08,35,000 - 6,51,63,000) added to the total income of the assessee u/s. 43CA of the Act.

4. Assailing the above order of Ld. AO, assessee preferred appeal before the Ld. CIT(A), who after considering the submissions of the assessee allowed this ground of appeal holding that addition made by the Ld. AO u/s. 43CA is not sustainable as TDRs do not fall within the ambit of the section. The legislative intent behind section 43CA was to curb the undervaluation of tangible immovable property transactions and applying it to TDR sales would be an incorrect

interpretation of the provision as TDR is an intangible immovable property and directed the Ld. AO to delete the addition of Rs. 5,56,72,000/-. Aggrieved, Revenue is in appeal before this Tribunal.

5. Ld. Departmental Representative (**DR**) strongly relied upon the assessment order and submitted that Ld. AO has rightly invoked the provisions of section 43CA of the Act. It was argued that assessee has transferred valuable rights in immovable property in the form of TDRs at a consideration significantly lower than the stamp duty value/market value. Therefore, the difference was rightly brought to tax to prevent undervaluation of transactions. The Ld. DR contended that TDRs are intrinsically linked to land and building and hence fall within the scope of “land or building or both” as envisaged under section 43CA. Accordingly, the order of the Ld. CIT(A) deleting the addition was erroneous and deserves to be set aside. Ld. DR placed reliance on the following case laws:-

- i) Chheda Housing Development Corporation vs. Bibijan Shaikh Farid & Ors. 2007 (3) MHLJ 402 (Bom. HC)

- ii) Sadoday Builders Pvt. Ltd. vs Joint Charity Commissioner in WP No. 4543/2010, dt 23.06.2011 (Bombay HC at Nagpur)
- iii) Vidarbha Veneere Industries Ltd. vs. ITO [2025] 174 taxmann.com 223 (Bom. HC)
- iv) Arif Akhatar Hussain vs. ITO [2011] 45 SOT 257 (Mumbai)
- v) ACIT vs. Dattani Development [2016] 72 taxmann.com 330 (Mumbai – Trib.)

6. *Per contra*, learned counsel for the assessee supported the order of the Ld. CIT(A) and reiterated that section 43CA applies only to transfer of tangible immovable property being land or building or both, and not to intangible rights such as TDRs. It was submitted that TDR is a development right and not land or building *per se*. He further submitted that the legislature has consciously used specific terminology in section 43CA, and the same cannot be extended to cover intangible rights by interpretation. It was also argued that various judicial precedents have consistently held that TDRs are distinct from land/building and fall outside the ambit of section 43CA. Therefore, the Ld. CIT(A) has correctly deleted

the addition. He placed reliance, to support his contentions, on the following judgments:-

- i) ACIT vs. M/s. Triple Securities Pvt. Ltd. in ITA No.2270/MUM/2021, dated 20.12.2022 (ITAT – Bom.)
- ii) Romiel Samuel vs. ITO in ITA No. 437/MUM/2016, dated 13.06.2018 (ITAT – Bom.)
- iii) CIT vs. Greenfield Hotels & Estates (P) Ltd. [2016] 389 ITR 68
- iv) Noida Cyber Part (P) Ltd. vs. ITO [2021] 186 ITD 593

7. We have considered the rival submissions and perused the material on record. The issue for adjudication is whether section 43CA applies to transfer of TDRs. We find that section 43CA specifically applies to transfer of an asset, being land or building or both, held as stock-in-trade. In the present case, the subject matter of transfer is TDR, which is a development right and not land or building *per se*. Deeming provisions cannot be carried beyond the purpose for which they were enacted.

- *CIT vs. Amarchand N. Shroff* [1963] 48 ITR 59 (SC)
- *CIT vs. Mother India Refrigeration Industries P. Ltd.* (1985) 1551 ITR 711 (SC)

We find that this issue is no longer *res integra*. The Hon'ble Bombay High Court in *CIT vs. Greenfield Hotels & Estates Pvt. Ltd. (supra)* has held that transfer of TDR does not amount to transfer of land or building and hence provisions of section 50C are not applicable. Similar view has been taken by Mumbai Benches of the Tribunal in the cases of *C.R. Developers Pvt. Ltd. vs. JCIT* in ITA No. 4277/Mum/2013, dated 13.05.2015 wherein it was held that TDR/FSI rights are distinct from land or building and cannot be brought within the ambit of such deeming provisions. Respectfully following the above judicial precedents, we hold that TDR being an intangible right, does not fall within the scope of section 43CA. Therefore, the action of the Ld. AO in adopting the stamp duty value and making addition of Rs. 5,56,72,000/- is not in accordance with law and we find no infirmity in the well-reasoned order of the Ld. CIT(A) in deleting the addition. The grounds of appeal raised by the Revenue are dismissed.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 21.04.2026 under Rule 34 of Income
Tax (Appellate Tribunal) rules 1963

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

sd/-
KHETTRA MOHAN ROY
ACCOUNTANT MEMBER

Nagpur: Dated: 21/04/2026

vr/-

Copy to:

1. The Assessee
2. The Revenue
3. The Pr.CIT concerned.
4. The DR, ITAT, Nagpur
5. Guard file.

By order

Senior Private Secretary
ITAT, Nagpur