IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, HON'BLE JUDICIAL MEMBER

&

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2086/MUM/2023 (A.Y: 2018-19)

Jaydeep Construction Shop No. 07/08, Patidar Complex Kannamwar Nagar, Vikroli (E) Mumbai – 400083 **PAN: AAFFJ0346M**	*v.*	Pr. CIT -41 Room No. 541, Kautilya Bhavan C-41 to C-43, G Block Bandra Kurla Complex Bandra (E), Mumbai - 400051
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri. Tanmay Phadke**
Department Represented by	**:**	**Shri. Ujjawal Kumar Chavan**
Date of conclusion of Hearing	**:**	**19.10.2023**
Date of Pronouncement	**:**	**24.11.2023**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Principal Commissioner of Income-Tax, Mumbai - 41 [hereinafter in short "Ld. Pr.CIT"] dated 31.03.2023 for the A.Y. 2018-19 passed under section 263 of Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, Ld. Pr.CIT observed that assessee is a partnership firm and is involved in real estate business. The case was selected under CASS for complete scrutiny and the Assessing Officer completed assessment of the firm u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Act on 27.02.2021 accepting the return of income declared by the assessee at ₹.Nil. On examination of records, he observed that assessment order suffers from infirmities warranting revision within the scope of section 263 of the Act.

3. Ld. Pr.CIT observed that Assessee has registered a sale agreement before the Stamp Duty Authority for the agreement value of ₹.35,00,000/- on 22.09.2017 whereas as per Stamp Duty Authorities market value is ₹.89,93,442/-. He observed that the property referred to is the stock-in-trade of the assessee, who is a builder and developer, and hence covered by the provisions of section 43CA of the Act. He observed that the Auditor of the company has not reported this fact in Clause No 17 of Form 3CD Audit Report for the current assessment year 2018-19. In view of the above there is violation of the provision of section 43CA of the Act to the tune of ₹.54,93,442/- for the year under consideration.

4. Further, he observed that assessee has taken unsecured loans from various parties to the extent of ₹.2,47,20,530/-. He observed that loan confirmations, bank statements of the above loans and copy of return of income of the above said parties were not submitted before Assessing Officer. Therefore, the creditworthiness and genuineness of loan transactions remained unexplained.

5. Further, he observed from the profit and loss account, bank interest and finance cost of ₹.2,67,61,964/- is debited to profit and loss account and on perusal of balance sheet for the year under consideration, he observed that partners capital account is running in negative capital of ₹.2,08,69,147/-. He observed that assessee had advanced an interest-free loan of ₹.4,87,26,557/- to various parties. Based on the above observation, he is of the view that assessee has diverted interest- bearing loan funds to various borrowers' as interest-free loans and claimed huge interest expenses on loans borrowed.

6. Further, he observed that on perusal of Form 3CD assessee has shown GST Payable at ₹.3,83,732/-. However, Assessing Officer has not verified whether the said amount is paid by the assessee or not, also there is no documentary evidence in the file.

7. Further, he observed that assessee has disclosed a loss of ₹.11,29,530/- and noticed that the assessee has sold immovable properties (flats / shops) in the project and received advance against booking of flats / shops amounting to ₹.28,30,20,904/- but assessee has not declared any profit from the project. He observed that during the course of assessment proceedings, basic details of the project have not been submitted. Based on the above observations he issued notice under section 263 of the Act on 04.03.2023.

8. In response, assessee has submitted detailed submissions which is reproduced by Ld. Pr.CIT at Page No. 9 to 14 of the order. After considering the detailed submissions of the assessee, Ld. Pr.CIT has dealt with issue wise. With regard to issue of section 43CA of the Act he observed that this provision was inserted by the Finance Act, 2013 w.e.f. 01.04.2014 which is a special provision which is applicable in the case of assessee. He analysed the provisions with the section 54 of the Transfer of Property Act, and he came to the conclusion that the Assessing Officer has not examined this issue although this was an important aspect and deserves his application of mind. These details should have been obtained and examined by the Assessing Officer during the course of assessment proceedings. It clearly shows that assessment was completed

in a routine and mechanical manner without due diligence and without due application of mind.

9. With regard to unsecured loans, he observed that the submissions of the assessee have been considered and the assessee has sought adjournment of two weeks which is not possible at this stage due to limitation of time involved and the assessee has conceded and requested for setting aside the order on this issue. He further observed that during the assessment proceedings, assessee has not submitted cogent evidences regarding source of fund to prove the identity, creditworthiness of the parties and genuineness of transactions based on the decision of Hon'ble Gujarat High Court in the case of Pavan Sanghvi (404 ITR 601) and other decisions of Hon'ble Supreme Court. In view of the above, he observed that assessment was completed in a routine and mechanical manner and hence he came to the conclusion that assessment order is "erroneous" as well as "prejudicial to the interest of the revenue" and covered by clause (a) of Explanation 2 of section 263 of the Act.

10. Similarly, with regard to GST Payable, Non-declaration of profits of the project and Verification of interest expenses, he came to the conclusion after verifying detailed submissions of the assessee that

Assessing Officer has not verified and passed the assessment order on routine and mechanical manner and according to him the assessment order is "erroneous" as well as "prejudicial to the interest of the revenue" in the light of Explanation 2 section 263 of the Act. Accordingly, he set-aside the assessment order and directed the Assessing Officer to redo the assessment denovo after giving reasonable opportunity of being heard to the assessee and directed to pass the speaking order.

11. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

> *"Grounds for all the issues*
>
> *1. On the facts and in the circumstances of the case and as per the law, the learned principal Commissioner of income tax, Mumbai-41 ("the learned PCIT") erred in concluding that the assessment order dated 27.02.2021 is erroneous and prejudicial to the interest of the revenue requiring the revision under section 263 of the Act. The revision made by the learned PCIT is illegal and without jurisdiction and thus, the order dated 31.03.2023 passed by the learned PCIT may be reversed/quashed.*
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> *2. On the facts and in the circumstances of the case and as per the law, the learned PCIT erred in invoking the explanation 2 to section 263 of the Act blanketly and mechanically without appreciating that the assessment order dated 27.02.2021 was neither erroneous nor prejudicial to the interest of the revenue. Thus, the order dated 31.03.2023 passed by the learned PCIT may be quashed/reversed.*
>
> *Revision on the issue of non-declaration of profits of the project (i.e. project completion method or percentage completion method)*
>
> *3. On the facts and in the circumstances of the case and as per the law, the learned PCIT erred in considering the assessment order erroneous and prejudicial to the interest of the revenue on the application of the provisions of section 43CB of the Act when the show cause notice was not issued on the same and the Appellant was never provided an opportunity of being heard on the application of Section 43CB of the Act. Thus, the revision of the assessment order being without jurisdiction, bad in law and*

in violation of the principle of justice. Thus, the order dated 31.03.2023 passed by the learned PCIT may be quashed/reversed.

4. On the facts and in the circumstances of the case and as per the law, the assessment order accepting the project completion method as followed by the Appellant is neither erroneous nor prejudicial to the interest of the revenue. Thus, the order dated 31.03.2023 passed by the learned PCIT directing the learned assessing officer to compute the income on a percentage completion basis on the alleged applicability of section 43CB of the Act being without jurisdiction. illegal and bad in law may be quashed.

5. On the facts and in the circumstances of the case and as per the law, the learned PCIT has reached the erroneous conclusion that the income accrued to the Appellant on the receipt of advance and the registration of the agreement as the risk and rewards were transferred. Thus, the said observation may be reversed and the project completion method as followed by the Appellant and accepted by the learned assessing officer may be upheld.

Revision on the issue of invocation of Section 43CA of the Act with respect to the agreement registered on 22.09.2017

6. On the facts and in the circumstances of the case and as per the law, the learned PCIT erred in reaching the conclusion that the provisions of section 43CA of the Act apply to the transactions entered into on 04.11.2010 (prior to the incorporation of section 43CA. Thus, the observation of the learned PCIT regarding the applicability of Section 43CA of the Act being untenable in law may be reversed.

7. Without prejudice to the above, on the facts and in the circumstances of the case and as per the law, the learned PCIT failed to appreciate that even if the section 43CA of the Act is held applicable, no income is liable to be assessed since the Appellant has been following a project completion method and the income can be added only in the year in which the project gets completed. Thus, the assessment order is neither erroneous nor prejudicial to the interest of the revenue and the order dated 31.03.2023 passed by the PCIT may be reversed/quashed.

8. Without prejudice to the above, on the facts and in the circumstances of the case and as per the law, the learned assessing officer may be directed to consider the applicability of Section 43CA(3) and 43CA(4) of the Act and make the addition if any only in the year in which the project is completed.

Verification of GST Payable of Rs. 3,83,732/

9. On the facts and in the circumstances of the case and as per the law, the learned PCIT failed to appreciate that the GST of Rs. 3,83,732 was paid on 18.04.2018 requiring no revision in this regard since the assessment order is neither erroneous nor prejudicial to the interest of the revenue. Thus, the order dated 31.03.2023 passed by the learned PCIT may be quashed/reversed.

Verification of interest expense

10. On the facts and in the circumstances of the case and as per the law the learned PCIT failed to appreciate that the Appellant has been following a project completion and did not avail any expenditure of interest in the year under consideration ruling out any disallowance of such interest expenditure in the present year. The assessment order is neither erroneous nor prejudicial to interest of the revenue and thus, the direction of revision may be reversed.

Revision on the issue of unsecured loans of Rs. 2,47,20,530/-

11. On the facts and in the circumstances of the case and as per the law, the learned PCIT erred in revising the assessment order to the extent directing the learned assessing officer to verify the unsecured loans of Rs. 2,47,20,530/-. Thus, the order dated 31.03.2023 passed by the learned PCIT in this regard may be quashed/reversed.

Miscellaneous ground:

12. The Appellant craves leave to add, alter, rescind, or amend any of the above grounds of appeal,"

12. At the outset, Ld.AR of the assessee submitted that assessee prefers not to press the Ground Nos. 6 to 11 raised in the grounds of appeal and he submitted that assessee is intended to press only Ground Nos. 1 to 5.

13. At the time of hearing, Ld.AR of the assessee brought to our notice Page No. 18 of the Ld. Pr.CIT order and submitted that assessee has undertaken projects having two wings "A" and "B". In this regard he brought to our notice Page No. 21 of the Paper Book wherein assessee

has followed accounting standards and the same was declared in Clause 6 of the notes to accounts in which it was declared that assessee is following Project Completion method/Completed Contract method for recognition of profits from real estate project. Under this method profit from real estate project is recognized only in the year in which project is complete. All the project related costs are accumulated and transferred to closing Work-in-progress on a year-on-year basis and in the year in which the project is completed the sales revenue is recognized and the profit is offered to tax. As on 31.03.2018 Project "Prathamesh Pearl" was not completed and hence no income from the project is recognized during the current assessment year. He brought to our notice there is one more Project "Prathamesh Vaibhav" which was completed long time back but Occupancy Certificate for the same has not yet been received from the competent authority. He submitted by bringing on record the above method of accounting and he submitted that the assessee has started the project before the introduction of section 43CA of the Act i.e., before 01.04.2014 and brought to our notice the advances received from the parties and agreement of sale was registered before 01.04.2014. He argued that the new provision brought into statute was subsequent to the sale agreement executed by the assessee, therefore the above provision will have no application.

14. Further, he submitted that even though the provision of section 43CA are applicable, the relevant current stamp duty have no application and he prayed that Ld. Pr.CIT has overlooked the above aspect of the legal issues and remitted the issue back to the file of the Assessing Officer. With regard to other issues raised by the Ld. Pr.CIT he did not make any submissions.

15. On the other hand, Ld. DR supported the findings of the Ld. Pr.CIT and submitted that provisions of section 263 of the Act are applicable in this case considering the fact that the assessment order passed by the Assessing Officer is cryptic and not speaking and further he submitted that Ld. Pr.CIT has only given direction to the Assessing Officer to redo the assessment denovo and he has not commented anything on the method of accounting adopted by the assessee. Therefore, the order passed by the Ld. Pr.CIT under section 263 of the Act is proper and just.

16. Considered the rival submissions and material placed on record, we observe from the record that no doubt the assessment order is cryptic and it is not a speaking order. Further, we observe that in the 263 revision order several issues were raised by Ld. Pr.CIT like the issue of 43CA, GST Payable, Non-declaration of profits of the project and unsecured loans.

Not convinced with the submissions of the assessee, Ld. Pr.CIT has discussed elaborately in his order and remitted the issue back to the file of the Assessing Officer to redo the assessment denovo. Before us, Ld.AR of the assessee has made detailed submissions only relating to the issue of section 43CA of the Act and however, he has not pressed any other grounds. This itself shows that the order passed under section 263 of the Act is proper and just. Ld.AR of the assessee has made submissions only relating to issue of section 43CA of the Act, we are restricted ourselves to discuss only the above issue and other issues are sustained as such and the directions given by Ld. Pr.CIT holds good for all other issues.

17. Coming to the issue of section 43CA of the Act, Ld.AR of the assessee brought to our notice that assessee has two running projects during the current assessment year i.e., "Prathamesh Pearl" and "Prathamesh Vaibhav". The project "Prathamesh Vaibhav" was completed by the assessee before the current assessment year and the current running project is only "Prathamesh Pearl" which is not completed. There seems to be certain confusion since it was not clearly brought on record by the assessee before the lower authorities. It is relevant to note that nothing was discussed about the above issue in the assessment order and

even before Ld. Pr.CIT this issue of two projects were never discussed before Ld. Pr.CIT.

18. In our considered view, the issue of Section 43CA and non-declaration of profits of the project are inter related and it has direct relationship to the method of accounting adopted by the assessee. The issue raised by the Ld. Pr.CIT relating to section 43CA which is relating to the project "Prathamesh Vaibhav" in which the flats were completed and is not registered and certain flats were registered only during the current assessment year. In our considered view, section 43CA is applicable to this project, since issue is remitted back to the file of the Assessing Officer, it has to be analysed strictly based on the provision 43CA of the Act which is similar to section 50C of the Act. The Assessing Officer has to complete the assessment based on Sub-section (3) of the section 43CA wherein the amount of consideration or part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset. It means the sale agreement signed before the registration of sale deed is relevant. Further, we observe that Ld.AR of the assessee has made a detailed submission objecting to the application of section 43CA in this case, in our considered view no doubt the project was completed long before and sale agreement also was signed prior to introduction of

section 43CA, however, assessee has executed the agreement for sale prior to 01.04.2014, but, completed the registration process only during the current assessment year i.e. 2018-19. In our view once a new provision is introduced in the Act, any project which was under construction or has not reached its completion will automatically come under the above said provision when the same is executed subsequently. In this case no doubt the assessee has entered into sale agreement prior to 01.04.2014 and completed the flats for sale, however, it has actually executed the sale deed subsequent to 01.04.2014. Therefore, the provisions of section 43CA is applicable to the case of the assessee. However, in our considered view, the assessee can take advantage of sub-section (3) of section 43CA where the date of agreement fixing the value of consideration of transfer and the date of registration of such assets are not the same, the value for section 43CA(1) be taken as the value stamp valuation as on the date of agreement. In this case, the assessee can apply the stamp duty valuation as on the date of actual agreement i.e., prior 01.04.2012. Since the issue is remitted back to the file of the Assessing Officer, we direct the Assessing Officer to verify the stamp duty value as per the provisions of Section 43CA in this case and we are not altering any of the other directions of the Ld. Pr.CIT in this

regard. Accordingly, we hold the order passed under section 263 of the Act is proper and just.

19. In the result, appeal filed by the assessee is dismissed with the above observations.

Order pronounced in the open court on 24th November, 2023.

Sd/-	Sd/-
(NARENDRA KUMAR CHOUDHRY)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 24.11.2023
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum