

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 3003/Mum/2023  
(Assessment Year: 2014-15)**

<b>Mukesh Vasantkumar Chandan</b> 168/D, 3 <sup>rd</sup> Floor, Aashirwad Bldg, Dr. Ambedkar Road, Dadar East, Maharashtra – 400 014	Vs.	<b>ITO-20(2)(1),</b> 2 <sup>nd</sup> floor Piramal Chambers, Maharashtra – 400 013
PAN/GIR No. ACXPC6318E		
(Applicant)		(Respondent)

Assessee by	Shri Viraj Mehta, Ld. AR
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	24.02.2026
Date of Pronouncement	26.02.2026

आदेश / ORDER

**PER MAKARAND VASANT MAHADEOKAR, AM:**

This appeal filed by the assessee is directed against the order dated 12.11.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”] for the Assessment Year

2014–15, arising out of the assessment order passed by the Income Tax Officer, Ward 20(2)(1), Mumbai[hereinafter referred to as “Assessing Officer”] under section 143(3) of the Act dated 30.12.2016.

2. The assessee had earlier filed appeal before the Co-ordinate Bench, which came to be disposed of vide order dated 13.01.2025. Subsequently, on a Miscellaneous Application filed by the assessee in M.A. No. 194/Mum/2025, the Co-ordinate Bench vide order dated 15.10.2025 recalled the ex-parte order dated 13.01.2025 and restored the appeal for adjudication on merits. The appeal is therefore being adjudicated afresh in the present proceedings.

### **Condonation of Delay**

3. At the outset, we take up the petition filed by the assessee seeking condonation of delay in filing the present appeal before the Tribunal. The impugned order passed by the learned CIT(A) is dated 12.11.2021 and the appeal before the Tribunal was required to be filed on or before 11.01.2022. The present appeal has been filed on 25.08.2023, resulting in a delay of 591 days.

4. The learned Authorised Representative (AR) submitted that the delay occurred on account of circumstances beyond the control of the assessee and drew our attention to the petition for condonation of delay dated 20.02.2026 and the supporting affidavit sworn by the assessee. It was submitted that the order dated 12.11.2021 passed by the learned CIT(A) was an ex parte

order and neither a physical copy of the appellate order nor any notice of hearing, whether physical or virtual, was received by the assessee. Consequently, the disposal of the appeal did not come to the knowledge of the assessee within the period prescribed for filing the appeal before the Tribunal.

5. It was further submitted that the order came to the knowledge of the newly authorised representative only while attending to the regular income tax return proceedings in July 2023, where after the assessee was advised to prefer an appeal before the Tribunal. After perusal of the order and preparation of appeal papers, the assessee immediately signed the appeal memo and the appeal came to be filed on 25.08.2023. The assessee has stated on affidavit that the delay was not intentional and that there was no mala fide intention in not filing the appeal within the prescribed period.

6. The assessee has further stated that during the relevant period he was suffering from fragile health and had undergone hospitalisation and, for convenience, he had changed his authorised representative from Santacruz to Matunga near his residence, which also contributed to the delay. It has also been stated that the assessee has otherwise co-operated with the Department in completion of tax proceedings for earlier and subsequent assessment years and therefore the delay cannot be attributed to any deliberate inaction.

7. The learned Departmental Representative (DR) opposed the prayer for condonation of delay and submitted that the delay in the present case is substantial being more than one year and the assessee has failed to demonstrate sufficient cause warranting condonation.

8. We have considered the rival submissions and carefully perused the petition for condonation of delay and the affidavit filed by the assessee. The assessee has categorically stated on oath that the order of the learned CIT(A) dated 12.11.2021 did not come to his knowledge as neither the physical copy of the order nor any hearing notice was received by him. The affidavit further states that the order came to knowledge only in July 2023 through the newly authorised representative and thereafter prompt steps were taken to file the appeal. The appeal has been filed within a reasonable period thereafter.

9. The explanation furnished by the assessee appears to be plausible and supported by affidavit. There is nothing on record to indicate that the delay was deliberate or that the assessee derived any benefit by not filing the appeal within the prescribed period. On the contrary, refusal to condone the delay would result in denial of the statutory right of appeal without adjudication on merits.

10. It is well settled that the expression “sufficient cause” appearing in section 253(5) of the Act should receive a liberal construction so as to advance substantial justice. The Hon’ble

Supreme Court in ***Collector, Land Acquisition vs. Katiji (167 ITR 471)*** has laid down that a pragmatic approach should be adopted in condoning delay and that ordinarily a litigant does not stand to benefit by lodging an appeal belatedly.

11. In the present case, the explanation that the order came to knowledge only in July 2023 and that thereafter steps were taken to file the appeal is supported by sworn affidavit and there is no material placed by the Revenue to controvert the same. The Department has merely opposed condonation on the ground of length of delay, which by itself cannot be a decisive factor. The length of delay is not material so long as the explanation is found to be bona fide and reasonable.

12. Considering the totality of the facts and circumstances of the case, particularly the fact that the delay is supported by affidavit and that no mala fide intention is discernible, we are satisfied that the assessee was prevented by sufficient cause from filing the appeal within the prescribed period. Accordingly, the delay of 591 days in filing the present appeal is condoned and the appeal is admitted for adjudication on merits.

### **Facts of the Case**

13. The assessee is an individual engaged in business through proprietary concern and deriving income from business, rent and interest. The assessee filed the return of income for A.Y. 2014-15 on 26.03.2015 declaring total income of Rs.5,09,584/-. The case was selected for scrutiny and thereafter the assessment was

completed under section 143(3) on 30.12.2016 determining total income at Rs.26,47,600/-.

14. During the course of assessment proceedings, the Assessing Officer observed that the assessee was engaged in building and development activity through proprietary concern. The development project had originally been undertaken by M/s Vasant Kumar D. Chandan and the assessee had subsequently become proprietor after demise of his father. The project consisted of 19 flats having total area of about 11,690 sq.ft. and the assessee had acquired unsold stock measuring about 7,275 sq.ft. as proprietor of the concern. During the year under consideration, the assessee sold one flat for a consideration of Rs.45,00,000/-, while the stamp duty valuation was Rs.58,23,600/-. The assessee declared business income under section 44AD and submitted Profit and Loss Account, balance sheet, bank statements and other details during the course of assessment proceedings.

15. The Assessing Officer made the following additions:

- i. Addition under section 41(1) Rs. 5,74,420/-
- ii. Addition on account of estimated income Rs. 2,40,000/-
- iii. Addition under section 43CA Rs. 13,23,600/-.

16. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A).The CIT(A) observed that the sundry creditors represented current year liabilities and no evidence was

brought on record by the Assessing Officer to establish cessation of liability. The addition of Rs.5,74,420/- was therefore deleted. The CIT(A) accepted the explanation that the bank entries were repetitive and that income had already been declared under section 44AD. The addition of Rs.2,40,000/- was deleted.

17. The CIT(A) observed that the assessee had not produced any evidence to establish that the stamp duty valuation had been challenged before the appropriate authority. The CIT(A) therefore confirmed the addition of Rs.13,23,600/- made under section 43CA.

18. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *Hon. CIT Appeal has erred in confirming the action of the Learned Assessing Officer in making the Addition by way extending the scope & gambit of section 41 (1) of the Income Tax Act, 1961 without considering the fact that the said amount of Rs. 574420 /= were never fall within the scope of Addition & Dis-allowance u/s 41 (1) of the Income Tax Act, 1961.*
2. *Hon. CIT Appeal has erred in confirming the action of the Learned Assessing Officer in considering that no separate Ad-hoc disallowances of Rs. 240000/= [ 8% on Rs. 30,00,000/= ] were required for business income declared & falling within the scope & gambit of section 44AD of the Income Tax Act, 1961*
3. *Hon. CIT Appeal has erred in confirming the action of the Learned Assessing Officer in making the Addition by way extending the scope & gambit of section 43CA of the Income Tax Act, 1961 without considering the fact that the said amount of Rs. 1323600/= were never fall within the scope of Addition & Dis-allowance u/s 43CA of the Income Tax Act, 1961.*

19. At the time of hearing, the learned AR submitted that the assessee does not wish to press Ground No. 1 relating to addition of Rs.5,74,420/- made under section 41(1) of the Act and Ground No. 2 relating to addition of Rs.2,40,000/- on account of estimated income. The learned DR raised no objection to the request of the assessee. In view of the submission made by the learned AR, Ground Nos. 1 and 2 are dismissed as not pressed.

20. Accordingly, the only surviving issue for adjudication in the present appeal is Ground No. 3 relating to addition of Rs.13,23,600/- made under section 43CA of the Act.

21. The learned AR submitted that the learned CIT(A) erred in confirming the addition of Rs.13,23,600/- by extending the scope and ambit of section 43CA of the Act without appreciating that the said amount did not fall within the scope of addition under section 43CA. The learned AR submitted that the assessee had declared business income in accordance with the provisions of section 44AD of the Act and the income was computed on presumptive basis. It was contended that once income is declared under section 44AD, the provisions relating to computation of business income under sections 28 to 43C do not apply in the usual manner and the income is to be accepted on presumptive basis. It was further submitted that section 43CA is a deeming provision, whereby the stamp duty valuation is deemed to be the full value of consideration for the purpose of computing business income in respect of transfer of land or building held as stock-in-trade. The learned Authorised Representative contended that

such deeming provisions cannot be invoked where the income is declared under the presumptive scheme of section 44AD, as the scheme of section 44AD itself provides a complete code for determination of business income on presumptive basis. According to the learned AR, once the assessee has opted for taxation under section 44AD and has declared income accordingly, the Assessing Officer was not justified in substituting the sale consideration with stamp duty value by invoking section 43CA and making a separate addition.

22. Per contra, the learned Departmental Representative relied upon the orders of the Assessing Officer and the learned CIT(A).

23. We have considered the rival submissions and perused the material on record. The only surviving issue is the addition of Rs.13,23,600/- made by the Assessing Officer under section 43CA and sustained by the learned CIT(A).

24. It is not in dispute that the assessee transferred one flat during the year for a stated consideration of Rs.45,00,000/- and that the value adopted by the stamp valuation authority (as per Index-2) was Rs.58,23,600/-, resulting in a difference of Rs.13,23,600/-.

25. Equally, it is an admitted and recorded position that the assessee offered business income under the presumptive scheme of section 44AD. The Assessing Officer himself has noted the relevant facts in para 2.3 of the assessment order, reproduced below (as placed before us):

*“The assessee has offered income u/s 44AD from the proprietary concern business M/s.V.D. Chandan. Other than this the assessee has income from rent and interest. Vide letter dtd.11.10.2016, the assessee has informed the nature of business as builder and developer. During the year, there was sale of Rs.45,00,000/-. The turnover is shown at Rs.58,23,600/-. The copy of sale agreement dtd.29.7.2013 was filed. As per Index-2 of the property, Stamp Duty Valuation is of Rs.58,23,600/-. The assessee has filed Profit & Loss Account showing direct income of Rs.94,18,075/- which includes rent income, closing stock and presumption of Rs.12,73,600/-. The income from business u/s 44AD has been declared at Rs.4,65,888/-. The expenses claimed are majorly taxes paid, electricity and water charges and bad debts. At the Balance Sheet, assessee has shown sundry creditors for material & labour of Rs.5,74,420/-.”*

26. Two aspects of this factual narration are decisive for adjudication:

- i. The Assessing Officer has proceeded on the basis that the assessee has offered income under section 44AD and has not rejected that method of computation.
- ii. The Assessing Officer has also recorded that the “turnover is shown at Rs.58,23,600/-”, which corresponds to the stamp duty valuation.

27. Section 44AD is a special provision for computation of profits and gains of business on presumptive basis in eligible cases. The charging mechanism, for such eligible cases, is to deem a prescribed percentage of “total turnover or gross receipts” as the profits and gains chargeable under the head “Profits and gains of business or profession”. In other words, where section 44AD applies and is accepted, the statute substitutes the

ordinary computation exercise by a legislative presumption linked to turnover or gross receipts.

28. A necessary corollary is that once the presumptive scheme is accepted, business income is not to be recomputed by importing individual computation provisions in a piecemeal manner, because the very purpose of section 44AD is to replace the normal computation by a deeming rule. Any attempt to apply selected provisions to enhance profits, while simultaneously retaining the presumptive computation, results in an impermissible hybrid computation not contemplated by the Act.

29. Section 43CA is also a deeming provision. It substitutes, for the limited purpose of computation of business income from transfer of land or building held as stock-in-trade, the “full value of consideration” with the value adopted for stamp duty purposes where the stated consideration is less. Thus, section 43CA does not create a separate head of income or a separate charge. It is a computation rule that deems a higher consideration to be taken for computing business profits under the normal computation framework.

30. Both section 44AD and section 43CA are deeming provisions operating in the field of computation. When two deeming provisions overlap, we must harmonise them in a manner that gives effect to both, avoids double counting, and preserves the integrity of the statutory scheme.

31. On a harmonious construction, the correct approach is as follows:

- i. If the assessee's business income is being computed under section 44AD, then "turnover or gross receipts" becomes the base for deeming profits.
- ii. If section 43CA is attracted, its effect can, at best, be to determine the appropriate "turnover/gross receipts" for the purpose of section 44AD, by adopting the stamp duty value in place of stated consideration.
- iii. Once turnover is so adopted and presumptive profits are computed as a percentage thereof, there is no further scope to make a separate addition of the differential amount, because the business profits stand statutorily determined under section 44AD on the adopted turnover.

32. In short, section 43CA can influence the base (turnover) for section 44AD, but it cannot be used to create a second layer of taxation over and above presumptive profits, unless the Assessing Officer first rejects or displaces the applicability of section 44AD and proceeds to compute income under normal provisions.

33. In the present case, the Assessing Officer has himself recorded that the assessee has offered income under section 44AD and the "turnover is shown at Rs.58,23,600/-", which is the stamp duty valuation.

34. This factual foundation has two consequences:

- i. The stamp duty value stands embedded in the turnover figure on which presumptive taxation is applied. Therefore, the statutory substitution contemplated by section 43CA stands, in substance and effect, already absorbed in the turnover base used for section 44AD.
- ii. Once the Assessing Officer accepted computation under section 44AD on the turnover so recorded, a further addition of Rs.13,23,600/- separately under section 43CA amounts to taxing the same substitution twice, first by using stamp duty value as turnover base, and second by an independent addition of the very differential amount.

35. Such duplication is not sanctioned by the Act. It is also contrary to the architecture of presumptive taxation which is intended to replace transaction level profit computation with a turnover linked presumption.

36. If the Assessing Officer's case was that section 43CA must apply independently, then the proper course would have been to determine business profits under normal provisions by adopting stamp duty value as consideration and thereafter compute profits in the regular manner. That is not what has been done. The Assessing Officer has retained section 44AD presumptive computation and additionally made a separate adjustment under section 43CA. This produces an impermissible hybrid computation.

37. The learned CIT(A) confirmed the addition essentially on the ground that the assessee did not produce evidence of challenging the stamp duty valuation before the stamp authority. That finding may have relevance where section 43CA is being applied in a normal computation setting.

38. However, the foundational question in the present appeal is anterior, namely whether, in a case where income is computed and accepted under section 44AD and turnover is already recorded at stamp duty value, a separate addition under section 43CA can be sustained. For the reasons recorded above, we hold that such separate addition is not legally sustainable.

39. In view of the foregoing statutory interpretation and the factual position recorded by the Assessing Officer himself, we hold that the addition of Rs.13,23,600/- made under section 43CA and sustained by the learned CIT(A) is not sustainable and results in duplication under a hybrid computation approach. Accordingly, the addition is deleted.

40. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.02.2026.

**Sd/-**  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 26/02/2026  
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai