IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 6353/Mum./2025	**ITA No. 6354/Mum./2025**
(Assessment Year : 2016-17)	**(Assessment Year : 2017-18)**

M/s. Haware Engineers and Builders Pvt. Ltd.,
413-416, Vardhaman Market, Sector 17,
Vashi, Navi Mumbai – 400075
PAN : AAACH2577C

……. Appellant

v/s

Assistant Commissioner of Income Tax, Circle – 15(1)(2)
Aayakar Bhawan, Maharishi Karve Road,
Mumbai – 400020

……. Respondent

Assessee by : Shri Bhavik Chheda
Revenue by : Shri Ritesh Misra, CIT-DR

Date of Hearing – 24/03/2026	Date of Order – 02/04/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate impugned orders of even date 09.08.2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-52, Mumbai ["*learned CIT(A)*"], for the assessment years 2016-17 and 2017-18.

2. Since both the appeals pertain to the same assessee, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2017-18 is considered as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to the assessee's appeal for the assessment year 2016-17.

ITA No.6354/Mum/2025
Assessee's Appeal – A.Y. 2017-18

3. During the hearing, the assessee filed the revised grounds of appeal, which were taken on record, and are reproduced as follows: -

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the additions made by Ld. AO amounting to Rs. 4,30,92,138/-on account of deemed notional income from house property from unsold inventory held as stock-in-trade by the Appellant.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the issue relating to deemed notional income from house property' was concluded in favour of the Appellant in their own case for previous Assessment Years by the Hon'ble Tribunal.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not following the binding judicial decisions rendered by the Hon'ble Tribunal as well as various Hon'ble High Courts on the issue of 'deemed notional income from house property'.

4. Without prejudice to above grounds, on facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the excessive valuation adopted by the Ld. AO to make the additions, without any justification, basis and rationale.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowances made by Ld. AO on account of business expenses amounting to Rs. 66,397/- without considering the explanation provided by the Appellant.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowances made by Ld. AO u/s 43CA of the Act amounting to Rs. 3,26,342/- without considering the submissions made by the Appellant."

4. Ground Nos. 1–4, raised in assessee's appeal, pertain to the addition on account of deemed notional income from unsold inventory held as stock-in-trade by the assessee.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a private limited company engaged in the business of builders and developers. For the year under consideration, the assessee filed its return of income on 31.03.2018, declaring a loss of Rs. 49,89,196/-. The return filed by the assessee was selected for scrutiny, and statutory notices under sections 143(2) and 142(1) of the Act were issued and served on the assessee. During the year under consideration, the assessee recorded a turnover of Rs. 57,03,92,192/-, primarily arising from the sale of units in the building.

6. During the assessment proceedings, it was observed from the details submitted by the assessee that at the close of the year, the assessee had shown closing work-in-progress ("*WIP*") of Rs. 1,65,83,92,183/- on a cost of construction, which consists of WIP of completed projects of Rs. 50,69,66,694/-. Accordingly, the assessee was asked to submit details of the unsold stock of flats/shops shown as stock-in-trade, along with their construction costs. After perusal of the details submitted by the assessee, it was observed that the unsold stock of completed units has been constructed at an aggregate cost of Rs. 50,69,66,694/-. Accordingly, the assessee was asked to explain why the stock of completed flats should not be deemed as let out, relying upon the decision of the Hon'ble Delhi High Court in CIT vs.

Ansal Housing Finance and Leasing Company Ltd., reported in (2013) 354 ITR 180 (Del.).

7. In response, the assessee placed reliance upon the decision of the Hon'ble Gujarat High Court in CIT vs. Neha Builders Pvt. Ltd., reported in (2008) 296 ITR 661 (Guj.). The assessee also placed reliance upon the decision rendered in its own case for earlier years as well as decisions rendered in group cases in support of the contention that since the assessee's main business activity is that of a builder, the units developed by it are primarily business assets of the assessee and the income derived therefrom is taxable under the head "*business income*".

8. The Assessing Officer ("*AO*"), vide order dated 24.06.2019 passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the issue is squarely covered by the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*). Accordingly, the AO computed the Annual Letting Value of these properties at 8.5% of the cost of construction and, after allowing a deduction of 30% under section 24(b) of the Act, made an addition of Rs. 3,01,64,518/- under the head "*income from house property*".

9. The learned CIT(A), vide impugned order, after taking into consideration the fact that the decision of the Tribunal in the assessee's own case was rendered on 10.10.2018 and thereafter in subsequent years, the Tribunal has taken a different stand and pronounced the decision in favour of the Revenue,

upheld the findings of the AO. Being aggrieved, the assessee is in appeal before us.

10. During the hearing, the learned Authorised Representative ("*learned AR*") vehemently relied upon the decision of the Tribunal in the assessee's own case for assessment year 2012–13 and submitted that since the unsold inventory was held by the assessee as its stock-in-trade, any income derived therefrom is taxable under the head "*business income*". The learned AR also relied on the decision of the Hon'ble Jurisdictional High Court in PCIT vs. M/s. Classique Associates Ltd., in ITA No. 1216/2016, dated 28.01.2019, and submitted that following the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*), a similar issue was decided in favour of the taxpayer by the Hon'ble Jurisdictional High Court.

11. On the other hand, the learned Departmental Representative ("*learned DR*"), vehemently relying upon the order of the lower authorities, submitted that the issue is squarely covered by the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*). Further, the learned DR, placing reliance on the decision of the Tribunal in DCIT vs. M/s. Inorbit Malls Pvt. Ltd., in ITA No. 2220/2021, dated 11.10.2022, for the assessment year 2017–18, submitted that the Tribunal after noting the factual difference held that the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*) is not applicable in case where the taxpayer has unsold units which are lying vacant in his possession. The learned DR submitted that, accordingly, the Tribunal in M/s. Inorbit Malls Pvt. Ltd. (*supra*) held that notional rent needs to be computed on the unsold units.

12. We have considered the submissions of both sides and perused the material available on record. In the present case, from the details filed by the assessee during the assessment proceedings, it is observed that the assessee has unsold stock of flats/shops shown as stock-in-trade. Since the assessee did not compute any notional rent on the unsold stock, the AO, vide order passed under section 143(3) of the Act by placing reliance upon the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*), held that notional rent needs to be computed on the unsold stock lying vacant with the assessee and held as stock-in-trade.

13. The learned CIT(A), vide impugned order, following the decisions of the Coordinate Benches of the Tribunal in Dimple Enterprises vs. DCIT, reported in [2023] 154 taxmann.com 53 (Mum – Trib.), DCIT vs. Rustomjee Evershine Joint Venture in ITA No. 1349/Mum/2022 dated 31.07.2023, and Ramesh Dungarshi Shah vs. DCIT, reported in [2025] 174 taxmann.com 589 (Mum – Trib.), which in turn have followed the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*), dismissed the grounds raised by the assessee on this issue and upheld the computation of notional rent on unsold inventory/stock held by the assessee as stock-in-trade.

14. As per the assessee, this issue is covered by the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*), wherein it was held that if a property is held as stock-in-trade, then the said property would partake the character of stock and any income derived therefrom would be taxable

under the head "*business income*". The assessee also placed reliance upon the decision of the Coordinate Bench in its own case for the assessment year 2012–13. From the perusal of the said decision, we find that the Coordinate Bench has followed the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. ("*supra*") and held that if the immovable property in shape of flats/shops is held as stock-in-trade, then it becomes part of trading operations of the assessee and as a natural corollary, any income derived therefrom would be taxable as "*business income*" and not as "*income from house property*".

15. During the hearing, the learned DR placed reliance upon the decision of the Coordinate Bench in M/s. Inorbit Malls Pvt. Ltd. (*supra*), and submitted that the Coordinate Bench after considering the decisions of the Hon'ble Delhi High Court and the Hon'ble Gujarat High Court arrived at the conclusion that the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*) is applicable in the cases of unsold units which are lying vacant in the possession of the assessee as stock-in-trade.

16. From the perusal of the decision of the Coordinate Bench in M/s. Inorbit Malls Pvt. Ltd. (*supra*), we find that the Coordinate Bench of the Tribunal in paragraphs 8 and 9 duly considered the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*) and held that the Hon'ble Gujarat High Court was dealing with the case where the property considered as stock-in-trade was given on rent and rental income was earned by the taxpayer. Accordingly, in such circumstances, the issue arises before the Hon'ble Gujarat High Court was whether such rental income derived from letting out the

immovable property is assessable under the head "*income from house property*" or "*business income*". The Coordinate Bench thereafter in paragraphs 10-12 took into consideration the decisions of the Hon'ble Jurisdictional High Court in Mangla Homes P. Ltd. vs. ITO, reported in (2010) 325 ITR 281 (Bom.), CIT vs. Sane and Doshi Enterprises, reported in (2015) 377 ITR 165 (Bom.), and CIT vs. Gundecha Builders, reported in (2019) 102 taxmann.com 227 (Bom.), and observed that in all these decisions, the rental income received by the taxpayer from unsold portion of the property constructed by it was held to be assessable under the head "*income from house property*". Accordingly, in paragraph 13, the Coordinate Bench noted the divergent views of the Hon'ble Bombay High Court and the Hon'ble Gujarat High Court on the nature of rental income received by the taxpayer from the unsold stock or property given on rent. The relevant observations of the Coordinate Bench in paragraph 13 of its order are reproduced as follows: -

> *"13. Thus, in all these cases there was actual receipt rental income from the unsold stock of property and the controversy of whether income is to be assets under the head income from house property or business income. Hon'ble Bombay High Court in all the aforesaid decisions has taken a contrary view to judgment of Hon'ble Gujarat High Court in the case of Neha Builders and held that the rent received from property held as stock-in-trade and any rent received on such unsold closing stock, then income is assessable as 'income from house property' and not as a "business income".*"

17. Thereafter, the Coordinate Bench in M/s. Inorbit Mall Pvt. Ltd. (*supra*) held that neither the ratio of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*) nor the decisions of the Hon'ble Jurisdictional High Court in decisions cited *supra* shall be applicable to the cases where the taxpayer has unsold units which are lying vacant in its possession and the Revenue has computed the notional rental income under the head "*income from house*

property". The relevant findings of the Coordinate Bench, in this regard, are reproduced as follows: -

> *"14. The aforesaid ratio and principle, either of the Hon'ble Gujarat High Court or the Hon'ble Bombay High Court is not applicable on the facts of the present case, because, here in this case the Assessee had unsold units which were lying vacant and were in the possession of the Assessee Company. Assessing Officer held that these properties are liable to be taxed on notional rental income under the head income from house property' on the basis of ALV. It is not a case that there is any actual receiving of rent as was the case before the Hon'ble Gujarat High Court and Hon'ble Bombay High Court. Had it been a case were Assessee have fetched rental income from the unsold stock, then following the principle laid down by the Hon'ble Bombay High Court same would have been assessed under the head income from house property."*

18. Accordingly, after taking into consideration the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*), the Coordinate Bench in M/s. Inorbit Mall Pvt. Ltd. (*supra*) held that the Hon'ble Delhi High Court dealt with the issue of notional rental income when the property was held as stock-in-trade, which has not been actually let out. Accordingly, the Coordinate Bench arrived at the conclusion that there is no contrary decision of any other High Court on this issue, and the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*) was not on the issue of notional rent on unsold stock lying vacant in the possession of the taxpayer. The Coordinate Bench of the Tribunal also took into consideration the amendment brought in the statute in section 23(5) of the Act, with effect from assessment year 2018–19, and held that the said amendment is applicable prospectively. Accordingly, following the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*), the Coordinate Bench of the Tribunal in M/s. Inorbit Mall Pvt. Ltd. (*supra*) held that the Revenue was correct in computing the notional rent on unsold stock. Further, following the decision of the Hon'ble Jurisdictional High Court in CIT

vs. Tip Top Typography, reported in (2014) 48 taxmann.com 191 (Bom.), the Coordinate Bench of the Tribunal directed the AO to compute the Annual Letting Value as per the Municipal Rateable Value. The relevant findings of the Coordinate Bench of the Tribunal, in this regard, are reproduced as follows: -

> *"17. Though, the judgment which has been referred by the Hon'ble Delhi High Court in the case in "East India Housing & Land Development Trust (Supra)", "Sultan Bros" and "Karan Pura Development Company Ltd". (Supra) wherein, in all the cases the issue whether the rental income received from the property is to be assessed as business income or income of house property. No where, the Hon'ble Supreme Court in any of the cases which has been referred by the Hon'ble Delhi High Court dealt with issue of notional rental income when the property held as stock-in-trade or closing stock which has not been actually let out, is liable to be taxed as income from house property. However, be that as may be, there is no contrary decision of any other High Court and therefore, this decision Hon'ble Delhi High Court will have both binding and persuasive value. No direct contrary decision has been brought to our knowledge of any other High Court and we have already noted above that the decision of Hon'ble Gujarat High Court in the case of Neha Builder (supra) was not on the issue on notional rent from unsold stock. Therefore, it cannot be held that on this issue the judgment of Hon'ble Gujarat High Court is in favor of the Assessee and therefore, the judgment of Delhi High Court in the case of Ansal Housing Finance Leasing Company Ltd (Supra) should not be followed. Thus, in our opinion this Tribunal in the case of Dimple Enterprises vs. DCIT (Supra) as cited and relied upon by the Ld. DR has correctly appreciated this distinction.*
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> *18. One very important development took place post these judgments, that an amendment has been brought in the statute in section 23(5) which is applicable from AY 2018-2019 which reads as under,*
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> > *"Where the property consisting of any building or land appurtenant there to is held as stock-in trade and the property of any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year form the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil."*
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> *It is trite that the said amendment has to be given effect prospectively from 01.04.2018 as mentioned in the Explanatory Notes to the provisions of the Finance Act, 2017. It is a cardinal principle of the interpretation that the normal presumption which respect to an amendment is that is applicable prospectively unless and until specifically stated otherwise. The logic behind such as interpretation is that the law should govern current activities; i.e. to say "lex prospicit non respicit", which means that "The Law looks forward and not backward."*
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> *19. Now, that specific provision has been brought in the statute which provides that, if building or land held as stock in trade and the property has not been let out during the whole or any part of the previous year, then annual value of such property after the period of one year (which was increased 2 years), shall*

be computed as income from house property and up to period of one year/two years income shall be taken to be 'nil'. Thus, when specific provision has been brought with the effect from 01.04.2018 which cannot be applied retrospectively, then in our humble opinion it cannot be imputed that ALV of the flats held as stock in trade should be taxed on notional basis prior to AY 2018-19. Without any legislative intent or specific provision under the Act, such notional or deeming income should not be taxed as cardinal principle, because assessee is not aware that any hypothetical income is to be shown when he has not received any real or actual income. In our view of Hon'ble Delhi High Court is too harsh an interpretation.

20. Since, even prior to the amendment, there is one High Court judgment of Hon'ble Delhi High Court which is directly on this issue and against the Assessee, therefore same needs to be followed. Accordingly, we hold that Assessing Officer is correct in computing ALV on notional rent on unsold stock, but with following riders and directions to the AO as discussed herein after.

21. Firstly, the flats or units on which assessee has received any advance in this year or in the earlier years but has not delivered or given final possession of the said flat/unit to the buyer, then no notional rent can be charged as it tantamount to sale. Secondly, if unit of flat is shown as work-in-progress in the books then also no notional rent can be computed. And Lastly, Ld. Assessing Officer is not justified in making estimate of 8.5% of investment as ALV which is unsustainable in view of the decision of Hon'ble Bombay High Court in the case CIT Vs. Tip top Typography reported in 368 ITR 330, wherein, it has been held that rent should be computed at Municipal ratable value. We accordingly direct the AO to ascertain the Municipal ratable value for computing the notional rent. This isalso been held by ITAT Mumbai Bench in the case of Dimple Enterprise Vs. DCIT (Supra), in the following manner:-

> *"Now the question is of the rental value. The assessing officer has not levied the deemed rent on municipal ratable value or any nearly similar instance. The reliability of municipal ratable value has been duly upheld in several decisions. The Assessing Officer cannot make any ad hoc computation of deemed rent. Honorable Bombay High Court decision in the case of CIT us. Tip Top Typography (2014) 48 taxmann.com 191/[2015/ 228 Taxman 244 (Mag.)/(2014) 368 ITR 330 duty supports this proposition. Thus assessing officer has made an ad hoc estimate of 8.5% of investment on the plea that assessee has not been able to provide the municipal ratable value. This is not sustainable on the touchstone of Hon'ble Bombay High Court decision in the case of Tip Top Typography (supra)In our considered opinion nothing stops the assessing officer from obtaining the municipal ratable value from Departmental or government machinery. Hence we direct the assessing officer to compute the valuation of deemed rent in accordance with our observation as above and take into account the Hon'ble Jurisdictional High Court decision as above. Since we have decided the issue by duly taking note of Hon'ble Jurisdictional High Court decision and have also applied Hon'ble High Court decision, the reference to other decision in this case is not considered relevant to adjudication in this case."*

22. Thus, AO is directed to compute accordingly as per direction given above. Accordingly, ground No.1 of the revenue is partly allowed for statistical purposes."

19. During the hearing, the learned AR placed reliance upon the decision of the Hon'ble Jurisdictional High Court in M/s. Classique Associates Ltd. (*supra*). From the perusal of the said decision, we find that in the facts of the case before the Hon'ble High Court, the taxpayer earned an amount of Rs.1.51 crore (*approx*.) by leasing out certain flats and treated such income as "*business income*". The Hon'ble High Court, vide its order dated 28.01.2019 passed in ITA No.1216/2016, dismissed the Revenue's appeal in M/s. Classique Associates Ltd. (*supra*) and upheld the findings of the Tribunal by placing reliance upon the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*). Therefore, in M/s. Classique Associates Ltd. (*supra*), the Hon'ble High Court was dealing with a case where the property considered as stock-in-trade was given on rent and rental income was earned by the taxpayer. Thus, it is ostensible that the facts and the issue involved in M/s. Classique Associates Ltd. (*supra*) is distinguishable from the facts and issue involved in the present case, i.e. computation of notional rent on unsold stock lying vacant in the possession of the assessee as stock-in-trade.

20. For completeness, we may also note the relevant observations of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*), which are reproduced as follows: -

> *"Question No. 4 Whether the respondent could have been assessed on the basis of ALV of the unsold flats?*
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> *3. The facts relevant to the issue raised relate to the addition on account of annual letting value (ALV) of flats, added on notional basis are that the assessee-company engages itself in the business of development of mini-townships, construction of house property, commercial and shop complexes etc. In the assessment completed for the year under consideration, the AO assessed the ALV of flats which the assessee had constructed, but were lying unsold under the head "Income from house property". The assessee however, contended that the said flats were its stock-in-trade and therefore the ALV of*

the flats could not be brought to tax under the head "Income from house property". The AO however did not accept the stand of the assessee and therefore, added the notional value of unsold flats to the total income of the assessee. On appeal by the assessee, the CIT(A) however set aside the addition made by the AO. The revenue's appeal to the Tribunal was unsuccessful.

4. It is argued on behalf of the revenue that in the present case, regardless of whether income was earned from the vacant flat, the assessee had to, in its capacity as owner, pay tax on the ALV. Counsel emphasized the fact that tax incidence did not depend on whether the assessee actually rented out with the intention of carrying on business, but on the mere factum of ownership. Counsel for the revenue relied on the decision of the Calcutta High Court, in Azimganj Estate (P.) Ltd. v. CIT [2012] 206 Taxman 308/20 taxmann.com 203 and contended that in that case too under identical circumstances, when the builder assessee had vacant flats, which were let out, the Court held that the rental income was assessable not under the head of profits or income from business, but as properly assessable under the head income from house property. It was submitted that as long as the assessee continued to be owner of the vacant flats, it had to be assessed under the head of income from house property; since there was no letting out, the basis of assessment had to be ALV, which was rational and scientific.

5. Counsel for the assessee argued that there is no universal rule as urged by the revenue. It was submitted that unlike in the case cited, i.e. Azimganj Estate (P.) Ltd.'s case (supra) assessee in the present case did not actually let out the vacant flats; it was not even in the business of renting out its flats, unlike in the case of East India Housing & Land Development Trust v. CIT [1961] 42 ITR 49 (SC) or in Sultan Bros. v. CIT [1960] 38 ITR 353 (Bom.) Learned counsel submitted that letting but vacant or other properties was not part of the business or objectives of the assessee, and its case stands on a better footing than the other judgments, because in fact the assessee did not derive an income as a result of letting out. Counsel underlined that income tax is a levy on the income received, and not only notional calculations. In other words, the levy of income tax is for receipts, and not for notional amounts. It is also argued, in the alternative, that the flats cannot be taxed on the basis of their ALV, notionally because the owner is an occupant, and such occupation is in the course of, and for the purpose of business, as a builder.

6. This Court has considered the submission of parties. In East India Housing & Land Development Trust (supra) the assessee, incorporated with the object of buying and developing landed properties and promoting and developing markets, purchased land in Calcutta and set up a market. The question was whether the income realized from the tenants of those shops taxable as "business income" under section 10 of the Income-tax Act or "income from property" under Section 9. The Supreme Court held that the income derived by the company from shops and stalls was income received from property and fell under the specific head described in Section 9. The character of that income was not altered either because it was received by a company with the specific object of setting up markets, or because the company was required to obtain a licence from the Municipality to maintain sanitary and other services, and resultantly had to maintain staff and to incur expenditure. The income did not become "profits or gains" from business within the meaning

of Section 10. The character of the income altered merely because some stalls were occupied by the same occupants and the remaining stalls were occupied by a shifting class of occupants. The primary source of income from the stalls was the occupation of the stalls and it was a matter of little moment that the occupation which was the source of income was temporary. It was held that:

> *"As has been already pointed out in connection With the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or subletting is part of a trading operation The dividing line is difficult to, find but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings I with, its property, it: is possible to say on which side the operations fall, and to what head the income is to be assigned.*
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> *Ownership of property and leasing it out may be done as a part of business, or it may be done as land owner. Whether it is the one or the other must necessarily depend upon the object with which the Act is done. It is not that no company can own property and enjoy it as property, whether by itself or by giving the use of it to another on rent. Where this happens, the Appropriate head to apply is "income from property" (s. 9), even though the company may be doing extensive business otherwise. But a company formed with the specific object of acquiring properties not with the view to leasing them as property but to selling them or turning them to account even by way of leasing them out as an integral part of its business cannot be said to treat them as landowner but as trader The cases which have been cited in this case both for and against the assessee company must be applied with this distinction properly borne in mind. In deciding whether a company dealt with its properties as owner,, one must see not to the form which it gave to the transaction but to the substance of the matter. The Californian Copper Syndicate case ((1904) 5 T. C 159) illustrates vividly dealings with mineral rights and concessions by a company as part of the objects of its business, or, in other words, in the doing of the business. The Calcutta cases and the case of Fry v. Salisbury House Estate Ltd. (1930 A. C. 432) illustrate the contrary Proposition. There, the property, though dealt with by a company intending to do business, was dealt with as landowner. The intention in those cases was not to derive profit by business done with those properties but to derive income by renting them out Where a Company acquires properties which it sells or leases out with a view to acquiring other properties to be dealt with in the same manner, the company is not treating them as properties to be enjoyed in the shape of rents which they yield but as a kind of circulating capital leading to profits of business, which profits may be either enjoyed- or put back into the business to acquire more properties for further profitable exploitation."*

7. In Sultan Bros (P.) Ltd. v. CIT [1964] 51 ITR 353 the Supreme Court held that:

> *"It seems to us that the inseparability referred to in sub-section (4) is an inseparability arising from the intention of the parties. That intention may be ascertained by framing the following questions : Was it the intention in making the lease-and it matters not whether there is one lease or two, that is, separate leases in respect of the furniture and the building-that the two should be enjoyed together ? Was it the intention to make the letting of the two practically one letting ? Would one have been let alone and a lease of it accepted without the other ? If the answers to the first two questions are in the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable. This view also provides a justification for taking the case of the income from the lease of a building out of section 9 and putting it under section 12 as a residuary head of income. It then becomes a new kind of income, not covered by section 9, that is, income not from the ownership of the building alone but an*

income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it.

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whether a particular letting is business has to be decided in the circumstances of each case. Each case has to be looked at from a businessman's point of view to find out whether the letters was the doing of a business or the exploitation of his property by its owner."

8. In S G. Mercantile Corpn. (P.) Ltd. v. CIT AIR 1972 SC 732 it was held that:

"It is noteworthy that the liability to tax under section 9 of the Act is of the owner of the buildings or lands appurtenant thereto. In case the assessee is the owner of the buildings or lands appurtenant thereto, he would be liable to pay tax under the above provision even if the object of the assessee in purchasing the landed property was to promote and develop market thereon. It would also make no difference if the assessee was a company which had been incorporated with the object of buying and developing landed properties and promoting and setting no markets thereon. The income derived by such a company from the tenants of the shops and stalls, constructed on the land for the purposes of setting up market, would not be taxed as "business income" under section 10 of the Act... "

9. Again, in the case of CIT v. Vikram Cotton Mills Ltd. AIR 1988 SC 460. it was observed that whether a particular income is income from business or from investment must be decided according to the general commonsense view of those who deal with those matters in the particular circumstances and the conduct of the parties concerned. In O. Rm. Sp. Sv. Firm v. CIT [1960] 39 ITR 327 the Madras High Court held that:

"Under the Indian Income-tax Act, 1922, the income of an assessee is one and section 7 to 12 of the Act direct the modes in which the income-tax is to be levied. No one of those sections can be treated to be general or specific for the purpose of any particular source of income. They are all specific and deal with the various heads in which an item of income, profits and gains of an assessee falls. These sections are mutually exclusive and where an item of income falls specifically under one head it has to be charged under that head and no other."

No doubt in that case the learned judges had to decide whether the interest on securities, which fall under section 8 of the Income-tax Act, also came within the scope of section 10 of that Act. But what applies to section 8 obviously also applies to section 9 in relation to section 10. What has to be computed for purposes of assessment under section 9 cannot be brought within the scope of section 10 of the Income-tax Act. With reference to the interest on securities what the Supreme Court laid down was :

"Income from interest on securities falls under section 8 of the Act and not under section 10; it cannot be brought under a different head of income, viz., profit and gains of business under section 10, even though the securities are held by a banker as part of his trading assets in the course of his business."

Therefore, the fact that the house properties in question constituted the stock-in-trade or the trading assets of the assessee firm made no difference to the question, was the income from these properties assessable under section 9 or under section 10 of the Income-tax Act. It was assessable only under section 9, and it was correctly assessed under section 9 of the Income-tax Act in the course of the proceedings to assess the assessee to income-tax."

10. In Karan Pura Development Co. Ltd. v. CIT [1962] 44 ITR 362 (SC) the Supreme Court indicated the possibility that the ownership of property and

leasing it out may be done either as part of business or as landowner. The relevant observations, are as follows:

> *"Ownership of property and leasing it out may be done as a part of business, or it may be done as landowner. Whether it is the one or the other must necessarily depend upon the object with which the act is done. It is not that no company can own property and enjoy it as property, whether by itself or by giving the use of it to another on rent. Where this happens the appropriate head to apply is "Income from property" (s. 9) even though the company may be doing extensive business otherwise. But a company formed with the specific object of acquiring properties not with the view of leasing them as property but to selling them or turning them to account even by way of leasing them out as an integral part of the business, cannot be said to treat them as landowner but as trader."*

11. This court is conscious about indivisibility of the levy of income tax, which are neither general or specific for the purpose of any source of income, as held in United Commercial Bank Ltd. v. CIT [1957] 32 ITR 688. where the Supreme Court observed that:

> *"No one of those sections can be treated to be general or specific for the purpose of any one particular source of income; they are all specific and deal with the various heads in which an item of income, profits and gains of an assessee falls. These sections are mutually exclusive and where an item of income falls specifically under one head it has to be charged under that head and no other."*

12. Likewise, in CIT v. Chugandas & Co. [1965] 55 ITR 17 (SC) it was held that business income was broken up under different heads under the Income-tax Act only for the purpose of computation of the total income and by that break up the income did not cease to be the income of the business. Therefore, the court observed that:

> *"The heads described in Section 6 and further elaborated for the purpose of computation of income in Sections 7 to 10, and 12, 12A, 12AA and 12B are intended merely to indicate the classes of income : the heads do not exhaustively delimit sources from which income arises."*

It was also held that:

> *"even if an item of income is earned in the course of carrying on a business, it will not necessarily fall within the head "profits and gains of business" within the meaning of section 10 read with section 6(iv). If securities constitute stock-in-trade of the business of an assessee, interest received from those securities will for the purpose of determining the taxable income be shown under the head "interest on securities" under section 8 read with section 6(ii) of the Act. Similarly, dividends from shares will be shown under section 12(1A) and not under section 10. If an assessee carries on business of purchasing and selling buildings, the profits and gains earned by transactions in buildings will be shown under section 10, but income received from the buildings so long as they are owned by the assessee will, be shown under section 9 read with section 6(iii)."*

13. In the present case, the assessee is engaged in building activities. It argues that flats are held as part of its inventory of stock-in-trade, and are not let out. The further argument is that unlike in the other instances, where such builders let out flats, here there is no letting out and that deemed income - which is the basis for assessment under the ALV method, should not be attributed. This Court is of the opinion that the argument, though attractive cannot be accepted. As repeatedly held, in East India, Housing & Land Development Trust's case (supra) Sultan Bros's case (supra) and Karan Pura Development Co. Ltd.'s case (supra) the levy of income tax in the case of one

holding house property is premised not on whether the assessee carries on business, as landlord, but on the ownership. The incidence of charge is because of the fact of ownership. Undoubtedly, the decision in Vikram Cotton Mills Ltd.' case (supra) indicates that in every case, the Court has to discern the intention of the assessee; in this case the intention of the assessee was to hold the properties till they were sold. The capacity of being an owner was not diminished one whit, because the assessee carried on business of developing, building and selling flats in housing estates. The argument that income tax is levied not on the actual receipt (which never arose in this case) but on a notional basis, i.e. ALV and that it is therefore not sanctioned by law, in the opinion of the Court is meritless. ALV is a method to arrive at a figure on the basis of which the impost is to be effectuated. The existence of an artificial method itself would not mean that levy is impermissible. Parliament has resorted to several other presumptive methods, for the purpose of calculation of income and collection of tax. Furthermore, application of ALV to determine the tax is regardless of whether actual income is received; it is premised on what constitutes a reasonable letting value, if the property were to be leased out in the marketplace. If the assessee's contention were to be accepted, the levy of income tax on unoccupied houses and flats would be impermissible - which is clearly not the case.

14. As far as the alternative argument that the assessee itself is occupier, because it holds the property till it is sold, is concerned, the Court does not find any merit in this submission. While there can be no quarrel with the proposition that "occupation" can be synonymous with physical possession, in law, when Parliament intended a property occupied by one who is carrying on business, to be exempted from the levy of income tax was that such property should be used for the purpose of business. The intention of the lawmakers, in other words, was that occupation of one's own property, in the course of business, and for the purpose of business, i.e. an active use of the property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. This contention is, therefore, rejected. Thus, this question is answered in favour of the revenue, and against the assessee.

21. Further, as already noted in the foregoing paragraphs, in the assessee's own case for the assessment year 2012-13, the Coordinate Bench of the Tribunal decided the issue in favour of the assessee by following the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*). During the hearing, the learned DR, by referring to page no.4 of the assessment order, submitted that the said decision was not accepted by the Department. However, no appeal could be filed before the Hon'ble High Court due to the low tax effect. Therefore, it is evident that due to technical reasons, i.e. compliance of the CBDT's Circular on Tax Effect, the order passed by the

Coordinate Bench in the assessment year 2012-13 could not be challenged by the Revenue, and the same cannot be treated as equivalent to the Revenue allowing the order to be sustained without challenging the same. Be that as it may, we find that the said decision was rendered prior to the decision in the case of M/s. Inorbit Malls Pvt. Ltd. (*supra*), which has clarified the nuances of this issue, as noted in the foregoing paragraphs, and has elucidated that the decision in Neha Builders Pvt. Ltd. (*supra*) and other decisions of the Hon'ble Jurisdictional High Court have been rendered in a different factual matrix. For similar reasons, the decisions of the Coordinate Bench in the case of the assessee's sister concern are distinguishable and thus not applicable to the present case. Further, from the perusal of the decision in Dosti Realty Ltd. vs. DCIT, reported in [2025] 177 taxmann.com 317 (Mum-Trib.), relied upon by the learned AR, we find that the Coordinate Bench followed the decision in M/s. Classique Associates Ltd. (*supra*), which, as noted in the preceding paragraph, has been rendered in a different factual matrix.

22. Therefore, having carefully considered the decision relied upon by both sides, we are of the considered view that since in the present case the issue is of notional rental income from the unsold units lying vacant in possession of the assessee as stock-in-trade, the same is squarely covered by the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*). Thus, concurring with the observations of the Coordinate Bench of the Tribunal in M/s. Inorbit Malls Pvt. Ltd. (*supra*), as noted in the foregoing paragraphs, we are of the considered view that the decision in Neha Builders Pvt. Ltd.(*supra*) was rendered in a different factual

matrix, wherein part of the property was given on rent and income derived thereon was computed as "*business income*" by the assessee. Further, as noted above, the decision in the case of M/s. Classique Associates Ltd. (*supra*) was also rendered in the facts, wherein certain flats were given on lease by the taxpayer. From the perusal of the decision relied upon by both sides, we find that till the decision of the Coordinate Bench of the Tribunal in M/s. Inorbit Malls Pvt. Ltd. (*supra*), the decision of the Hon'ble Gujarat High Court in Neha Builders Pvt. Ltd. (*supra*) was followed. However, once the Coordinate Bench of the Tribunal has highlighted the distinction in paragraphs 13 and 14 of its order, as noted in the foregoing paragraphs, we are of the considered view that in cases where unsold stock of units is lying vacant in the possession of the assessee as stock-in-trade, the Annual Letting Value needs to be computed and taxed under the head "i*ncome from house property*". We find that similar findings were rendered by the Coordinate Bench of the Tribunal in Ramesh Dungarshi Shah (*supra*).

23. Accordingly, respectfully following the decision of the Hon'ble Delhi High Court in Ansal Housing Finance and Leasing Company Ltd. (*supra*) and the decision of the Coordinate Bench in M/s. Inorbit Malls Pvt. Ltd. (*supra*), we are of the considered view that notional rent has to be determined on vacant unsold flats/shops held as stock-in-trade by the assessee under the head "*income from house property*". As regards the computation of notional rent, respectfully following the decision of the Hon'ble Jurisdictional High Court in Tip Top Typography (*supra*), we direct the AO to determine the notional rent in accordance with principles laid down by the Hon'ble High Court in said

decision. Accordingly, Grounds No.1-4 raised in assessee's appeal are partly allowed.

24. Ground no.5, raised in assessee's appeal, pertains to the *ad hoc* disallowance of business promotion expenses.

25. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that from the perusal of the profit and loss account, it was observed that for the assessment year 2017-18, the assessee incurred an amount of Rs.6,63,972/- towards business promotion expenses. However, the assessee could not substantiate the entire expenditure by producing bills and vouchers. Accordingly, the AO, vide order passed under section 143(3) of the Act, held that the expense for a non-business purpose by the assessee cannot be ruled out and made an *ad hoc* disallowance of 10%, being Rs. 66,397/-.

26. Even during the appellate proceedings before the learned CIT(A), the assessee failed to substantiate its case with documentary evidence. Accordingly, the learned CIT(A) dismissed the ground raised by the assessee on this issue.

27. In the appeal before us, apart from raising the ground, the assessee has not produced any bills/vouchers and necessary documentary evidence in respect of its claim of incurring business promotion expenditure of Rs. 6,63,972/-. Accordingly, we do not find any infirmity in the disallowance of 10% made by the lower authorities. As a result, Ground No.5 raised in assessee's appeal is dismissed.

28. Ground No.6, raised in assessee's appeal, pertains to the disallowance made under section 43CA of the Act.

29. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that during the assessment proceedings, from the details filed by the assessee, it was observed that the assessee had sold certain flats for consideration which was lower than the value of the property adopted by the Stamp Valuation Authority. Accordingly, the AO, by applying the provisions of section 43CA of the Act, made an addition of Rs. 3,26,342/- being the difference between the consideration received by the assessee and the value of the property adopted by the Stamp Valuation Authority. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue.

30. Before proceeding further, it is pertinent to note the relevant provisions of section 43CA of the Act, as existed during the year under consideration, and the same reads as follows: –

> *"Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.*
>
> *43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*
>
> *(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).*

(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 any mode other than cash on or before the date of agreement for transfer of the asset."

31. Therefore, as per the provisions of section 43CA of the Act where the sale consideration of any immovable property, being land or building or both, is less than the value adopted by the authority of the State Government for the purpose of payment of stamp duty, then the value so adopted by the authority of State Government shall be deemed to be the full value of consideration received for computing the profits and gains from transfer of such asset. It is pertinent to note that vide Finance Act, 2018 first proviso was inserted to section 43CA(1) of the Act, w.e.f. 01.04.2019, which reads as follows: –

"Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration."

32. Therefore, as per the aforesaid proviso inserted by the Finance Act 2018, w.e.f. 01.04.2019, if the value adopted by the authority for the payment of stamp duty is not more than 105% of the consideration received as a result of the transfer of the immovable property, then the consideration so received shall be deemed to be the full value of consideration for the purpose of computing the profits and gains from the transfer of such assets.

33. Further, vide Finance Act 2020, w.e.f. 01.04.2021, the first proviso to section 43CA(1) of the Act was again amended, and the tolerance limit was increased from 5% to 10% of the consideration.

34. We find that the Coordinate Bench of the Tribunal in Maria Fernandes Cheryl vs. ITO, reported in [2021] 123 taxmann.com 252 (Mum.-Trib) held that amendment made in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5% to 10% are effective from the date on which section 50C, itself was introduced, i.e. 01.04.2003. The relevant findings of the Coordinate Bench, in the decision mentioned above, are reproduced as follows: –

> *"7. These submissions, however, do not impress us. As noted by the Central Board of Direct Taxes circular # 8 of 2018, explaining the reason for the insertion of the third proviso to Section 50C(1), has observed that "It has been pointed out that the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including the shape of the plot or location". Once the CBDT itself accepts that these variations could be on account of a variety of factors, essentially bonafide factors, and, for this reason, Section 50C(1) should not come into play, it was an "unintended consequence" of Section 50(1) that even in such bonafide situations, this provision, which is inherently in the nature of an anti-avoidance provision, is invoked. Once this situation is sought to be addressed, as is the settled legal position- as we will see a little later in our analysis, this situation needs to be addressed in entirety for the entire period in which such legal provisions had effect, and not for a specific time period only. There is no good reason for holding the curative amendment to be only as prospective in effect. Dealing with a somewhat materially identical situation in the case of Rajeev Kumar Agarwal v. Addl. CIT [2014] 45 taxmann.com 555/149 ITD 363 (Agra) wherein a coordinate bench was dealing with the question whether insertion of a proviso to Section 40(a)(i) to cure intended consequence could have retrospective effect, even though not specifically provided for, and speaking through one of us (i.e. the Vice President), the coordinate bench had, after a detailed analysis of the legal position, observed that, "Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may*

not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced". Referring to this decision, and extensively reproducing from the same, including the portion extracted above, Hon'ble Delhi High Court, in the case of CIT v. Ansal Landmark Township (P.) Ltd. [2015] 61 taxmann.com 45/234 Taxman 825/377 ITR 635 (Delhi), has approved this approach and observed that "the Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to section 40(a)(ia) of the Act and its conclusion that the said proviso is declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance". The same was the path followed by another bench of this Tribunal in the case of DharamashibhaiSonani v. Asstt. CIT [2016] 75 taxmann.com 141/161 ITD 627 which has been approved by Hon'ble Madras High Court in the judgment reported as CIT v. VummudiAmarendran [2020] 120 taxmann.com 171/429 ITR 97]. The question that we must take a call on, therefore, is as to what is the rationale behind the insertion of the third proviso to section 50C(1), and if that rationale is to provide a remedy for unintended consequences of the main provision, we must hold that the third proviso to section 50C(1) comes into force with effect from the same date on which the main provision, unintended provisions of which are sought to be nullified, itself was brought into effect. Let us understand what the nature of the provisions of section 50C is. In terms of this provision, if the property is sold below the stamp duty valuation rate, which is often called circle rate, this stamp duty valuation report is assumed as sale consideration for the property in question, and, accordingly, capital gains tax is levied. This deeming fiction to substitute apparent sale considerations by notional consideration computed on the basis of a stamp duty valuation rate, was thus to address the issue with respect to potential evasion of taxes by understating the sale consideration amount in a sale deed. As noted by the CBDT, while explaining the justification for insertion of section 50C, "(t)he Finance Act, 2002, has inserted a new section 50C in the Income-tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property". Section 50C, thus, on a conceptual note, is a provision to address capital gains tax evasion on account of understatement of the consideration. Of course, the law provides, under section 50C(2), that wherever an assessee claims that the actual market rate is less than the stamp duty valuation, he can have the matter referred to a Departmental Valuation Officer for the ascertainment of the market value, but then it is a cumbersome procedure and, at the end of the day, every valuation, whether by the departmental valuation officer or under the stamp duty valuation notification, is an estimate, and there can always be bonafide variations, though to a certain limited extent, in these estimations. Unless, therefore, some kind of a tolerance band or a safe harbour provision, in respect of such bonafide variations, is implicit in the scheme of law, the assessees are bound to face undue hardships. The mechanism under section 50C proceeds on the assumption that when the sale consideration is less than the stamp duty valuation, the sale consideration is to be treated as understated. This assumption is, however, laid to rest when the variations between the stated consideration and the stamp duty valuation figure are treated as explained. The insertion of the third proviso to Section 50C(1) provides for this tolerance band with respect to a certain degree of variations between the stamp duty valuation and the stated consideration of an immovable property. In other words, as long as the variations are within the permissible limits, the anti-avoidance provisions of Section 50C do not come

into play. As we have noted earlier, the CBDT itself accepts that there could be various bonafide reasons explaining the small variations between the sale consideration of immovable property as disclosed by the assessee vis-à-vis the stamp duty valuation for the said immovable property. Obviously, therefore, disturbing the actual sale consideration, for the purpose of computing capital gains, and adopting a notional figure, for that purpose, will not be justified in such cases. On a conceptual note, an estimation of market price is an estimation nevertheless, even if by a statutory authority like the stamp duty valuation authority, and such a valuation can never be elevated to the status of such a precise computation which admits no variations. The rigour of Section 50C(1) was thus relaxed, and very thoughtfully so, to take these bonafide cases of small variations between the stated sale consideration vis-à-vis stamp duty valuation, out of the scope of adjustments contemplated in the computation of capital gains under this anti-avoidance provision. In our humble understanding, it is a case of a curative amendment to take care of unintended consequences of the scheme of Section 50C. It makes perfect sense, and truly reflects a very pragmatic approach full of compassion and fairness, that just because there is a small variation between the stated sale consideration of a property and stamp duty valuation of the same property, one cannot proceed to draw an inference against the assessee, and subject the assessee to practically prove his being truthful in stating the sale consideration. Clearly, therefore, this insertion of the third proviso to Section 50C(1) is in the nature of a remedial measure to address a bonafide situation where there is little justification for invoking an anti-avoidance provision. Similarly, so far as enhancement of tolerance band to 10% by the Finance Act 2020, is concerned, as noted in the CBDT circular itself, it was done in response to the representations of the stakeholders for enhancement in the tolerance band. Once the Government acknowledged this genuine hardship to the taxpayer and addressed the issue by a suitable amendment in law, the next question was what should be a fair tolerance band for variations in these values. As a responsive Government, which is truly the hallmark of the present Government, even though the initial tolerance band level was taken at 5%, in response to the representations by the stakeholders, this tolerance band, or safe harbour provision, was increased to 10%. There is no particular reason to justify any particular time frame for implementing this enhancement of tolerance band or safe harbour provision. The reasons assigned by the CBDT, i.e., "the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including the shape of the plot or location," was as much valid in 2003 as it is in 2021. There is no variation in the material facts in this respect in 2021 vis-à-vis the material facts in 2003. What holds good in 2021 was also good in 2003. If variations up to 10% need to be tolerated and need not be probed further, under section 50C, in 2021, there were no good reasons to probe such variations, under section 50C, in the earlier periods as well. We are, therefore, satisfied that the amendment in the scheme of Section 50 C(1), by inserting the third proviso thereto and by enhancing the tolerance band for variations between the stated sale consideration vis-à-vis stamp duty valuation to 10%, are curative in nature, and, therefore, these provisions, even though stated to be prospective, must be held to relate back to the date when the related statutory provision of Section 50C, i.e. 1st April 2003. In plain words, what is means is that even if the valuation of a property, for the purpose of stamp duty valuation, is 10% more than the stated sale consideration, the

stated sale consideration will be accepted at the face value and the anti-avoidance provisions under section 50C will not be invoked.

8. Once legislature very graciously accepts, by introducing the legal amendments in question, that there were lacunas in the provisions of section 50C in the sense that even in the cases of genuine variations between the stated consideration and the stamp duty valuation, anti-avoidance provisions under section 50C could be pressed into service, and thus remedied the law, there is no escape from holding that these amendments are effective with effect from the date on which the related provision, i.e., Section 50C, itself was introduced. These amendments are thus held to be retrospective in effect. In our considered view, therefore, the provisions of the third proviso to Section 50C (1), as they stand now, must be held to be effective with effect from 1st April 2003. We order accordingly. Learned Departmental Representative, however, does not give up. Learned Departmental Representative has suggested that we may mention in our order that "relief is being provided as a special case and this decision may not be considered as a precedent". Nothing can be farther from a judicious approach to the process of dispensation of justice, and such an approach, as is prayed for, is an antithesis of the principle of "equality before the law," which is one of our most cherished constitutional values. Our judicial functioning has to be even-handed, transparent, and predictable, and what we decide for one litigant must hold good for all other similarly placed litigants as well. We, therefore, decline to entertain this plea of the assessee."

35. We further find that the Coordinate Bench of the Tribunal in Karb Associates (P.) Ltd. vs. Dy. CIT, in IT Appeal No. 1941/Kol/2019, vide order dated 25.08.2021, following the aforementioned decision in Maria Fernandes Cheryl (supra), observed as follows: –

"As has been aptly explained above, the rational for holding newly inserted proviso to sub-section (1) to section 50C of the Act as curative in nature, hence, having retrospective application, the same analogy would apply to the provisions of section 43CA of the Act. Both the sections are similarly worded except that both the sections have application on different sets of assessee. As has been pointed earlier, section 43CA gets attracted where the consideration received or accrues as a result of transfer of an asset (other than a capital asset) being land or building or both. Whereas, provisions of section 50C operates where the consideration received or accrues as a result of transfer of a capital asset being land or building or both. Both the sections induce deeming fiction to substitute actual sale consideration with notional value of asset based on Stamp Duty valuation. Further, a perusal of Circular 8 of 2018 (supra), would show that identical reasons have been given in Para 16 for 'Rationalization of Sections 43CA and 50C'. The proviso has been inserted and subsequently tolerance band limit has been enhanced to mitigate hardship of genuine transactions in the real estate sector. Ergo, in the light of reasoning given for insertion of the proviso and exposition by the Tribunal for retrospective application of the said proviso, I have no hesitation in holding

that the proviso to sub-section (1) to section 43CA and the subsequent amendment thereto relates back to the date on which the said section was made effective i.e. 01/4/2014."

36. From the computation of deemed sale value under section 43CA of the Act by the AO, as noted at pages 15-16 of the assessment order, we find that the excess of value determined by the Stamp Valuation Authority was less than 5% of the sale consideration. In this regard, it is relevant to note the following details: -

Sr. No.	*Description of Property*	*Sale Consideration offered for taxation (₹)*	*Stamp Value Authorities (₹)*	*Difference to be taxed as deemed business income (₹)*
1.	*Seetharam Kandrapa and Shewata Seetharam Kandrapa*	*71,27,358*	*71,33,500*	*6,142*
2.	*Govind Ramrao Kulkarni and Sanjeevani Govind Kulkarni*	*65,00,000*	*66,73,500*	*1,73,500*
3.	*Hanif Rasool Mulani and Jahinda Mulani*	*9,25,000*	*9,65,500*	*40,500*
4.	*Ujjawala Satish Haware*	*68,46,000*	*68,47,000*	*1,000*
5.	*Ujjawala Satish Haware*	*2,51,82,000*	*2,51,83,600*	*1,600*
6.	*Ujjawala Satish Haware*	*3,36,59,000*	*3,36,61,000*	*2,000*
7.	*Haware Realty*	*99,86,400*	*99,86,500*	*100*
8.	*Ujjawala Satish Haware*	*2,47,24,000*	*2,47,25,500*	*1,500*
9.	*Haware Realty*	*4,87,00,000*	*4,87,97,500*	*97,500*
10.	*Ujjawala Satish Haware*	*70,13,000*	*70,14,000*	*1,000*
11.	*Ujjawala Satish Haware*	*75,35,000*	*75,36,500*	*1,500*
---	***Total***	***17,81,97,758***	***17,85,24,100***	***3,26,342***

37. Accordingly, respectfully following the decision of the Coordinate Bench of the Tribunal cited (*supra*), we are of the considered view that the provisions of section 43CA of the Act are not applicable to the present case and the

addition made by the AO under section 43CA is deleted. As a result, Ground No.6 raised in assessee's appeal is allowed.

38. In the result, the appeal by the assessee for the assessment year 2017-18 is partly allowed.

ITA No.6353/Mum/2025
Assessee's Appeal – A.Y. 2016-17

39. In this appeal, the assessee has raised the following revised grounds of appeal: -

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the additions made by Ld. AO amounting to Rs. 3,38,35,638/-on account of deemed notional income from house property from unsold inventory held as stock-in-trade by the Appellant.*
>
> *2. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the issue relating to deemed notional income from house property' was concluded in favour of the Appellant in their own case for previous Assessment Years by the Hon'ble Tribunal.*
>
> *3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not following the binding judicial decisions rendered by the Hon'ble Tribunal as well as various Hon'ble High Courts on the issue of deemed notional income from house property'. 4. Without prejudice to above grounds, on facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the excessive valuation adopted by the Ld. AO to make the additions, without any justification, basis and rationale.*
>
> *5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowances made by Ld. AO on account of business expenses amounting to Rs. 1,84,507/- without considering the explanation provided by the Appellant."*

40. Ground No.1-4, raised in assessee's appeal, pertain to the addition on account of deemed notional income from unsold inventory held as stock-in-trade by the assessee. Since a similar issue arising from a similar factual matrix has been decided in the assessee's appeal for the assessment year 2017-18, our findings/conclusions are rendered therein shall apply *mutatis*

mutandis. With similar directions, Grounds No.1-4 raised in assessee's appeal are partly allowed.

41. Ground No.5, raised in assessee's appeal, pertains to the *ad hoc* disallowance of business promotion expenses. In the absence of any documentary evidence in the form of bills/vouchers substantiating the claim of incurring business promotion expenses, we do not find any infirmity in the disallowance made by the AO on this issue. Accordingly, the findings of the lower authorities on this issue are upheld. As a result, Ground No.5 raised in assessee's appeal is dismissed.

42. In the result, the appeal by the assessee for the assessment year 2016-17 is partly allowed.

43. To sum up, both the appeals by the assessee are partly allowed.

Order pronounced in the open Court on 02/04/2026

Sd/- **OM PRAKASH KANT** **ACCOUNTANT MEMBER**	**Sd/-** **SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 02/04/2026
Prabhat

Copy of the order forwarded to:
(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai