

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
ITA No.2593/Del/2014
Assessment Year : 2011-12**

Aims Max Gardenia Developers P. Ltd. Plot No. 9, Sector-75 Noida	Vs.	DCIT Central Circle-7 New Delhi
PAN : AAICA4047Q		
(Appellant)		(Respondent)

**ITA No. 2622/Del/2014
Assessment Year : 2011-12**

DCIT Central Circle-7 New Delhi	Vs.	Aims Max Gardenia Developers P. Ltd. Plot No. 9, Sector-75 Noida
PAN : AAICA4047Q		
(Appellant)		(Respondent)

Assessee by : None
 Department by : Mrs. Aparna Karan, CIT(DR)
 Date of hearing : 21-09-2017
 Date of pronouncement : 29-09-2017

ORDER

PER R. K. PANDA, AM :

These are cross appeals. The first one is filed by the assessee and the second one filed by revenue and are directed against the order dated 17th Feb, 2014 of the CIT(A)-1, New Delhi relating to assessment year 2011-12.

2. This case was last fixed for hearing on 7th August, 2017 and at the request of the Ld. DR, the case was adjourned to 21st September, 2017. However, when the name of the assessee was called, there was no appearance from the side of the assessee. Therefore, we proceed to decide the appeals on the basis of material available on record and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee company was incorporated on 29.09.2009 and is engaged in the business of building, construction & development of residential/commercial projects. It filed its original return of income on 30th September, 2011 declaring income of Rs. 7,27,550/-. A search and seizure action u/s 132 of the IT Act was carried out on 19th April, 2010 in Gardenia Group of cases. The case of the assessee was centralized by an order u/s 127 of the Income Tax Act, 1961. In response to notice u/s 143(2) and 142(1) along with a questionnaire, the assessee filed the requisite details before the AO from time to time. After considering the various submissions made by the assessee from time to time, the AO completed the assessment on a total income of Rs. 16,42,6,229/- by making the following additions :

	<i>“Returned Income</i>	<i>Rs. 7,27,550/-</i>
<i>Add:</i>	<i>Income on account of unexplained Expenditure u/s. 69 C of the I.T. Act related to amount received from Gromor & Kartikey</i>	<i>Rs. 3,00,00,000/-</i>
<i>Add:</i>	<i>Income on account of unexplained Expenditure u/s. 69C ascribed to advances to Suppliers</i>	<i>Rs. 13,09,33,749/-</i>
<i>Add:</i>	<i>Addition on account of cash receipt Taxed as deemed income u/s. 69A of the I.T. Act (as discussed above)</i>	<i>Rs. 26,01,000/-</i>
	<i>Taxable Income</i>	<i>Rs. 16,42,62,299/-”</i>

4. The assessee preferred an appeal before the CIT(A) who sustained the addition of Rs. 26,001,000/- but deleted an amount of 16,09,33,749/-.
5. Aggrieved with such part relief the assessee as well as revenue are in appeal before the Tribunal by raising the following grounds.

Grounds raised by the assessee are as under :-

1. *On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs. 26,01,000/- as income from other sources. On the facts and circumstances of case and in law, the addition of Rs. 26,01,000/- made by the assessing officer is erroneous and CIT(A) should have deleted the same.*
2. *On the facts and circumstances of case and in law, the assessment order passed by the assessing officer u/s 143(3) r.w.s 153A is illegal and without jurisdiction and Commissioner of Income Tax (Appeal) should have held so."*

Grounds raised by the revenue are as under :-

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld.CIT(A) has erred in addition of Rs. 26,01,000/- made by AO u/s 69A of the I.T.Act.*
3. *On the facts and circumstances of the cases the Ld. CIT(A) has erred in deleting the addition of Rs. 13,09,33,749/- made by AO on account of "unexplained expenditure".*
4. *On the facts and circumstances of the cases the Ld. CIT(A) has erred in deleting the addition of Rs. 3,00,00,000/- made by AO on account of unexplained investment.*
5. *On the facts and circumstances of the cases the Ld. CIT(A) has erred in directing the AO to cancel the reduction in closing work-in-progress on account of bogus purchases of Rs. 50,00,000/-."*

6. The ld. DR relied on the following decisions (1.) *Kahan Udyog vs. CIT, Delhi High Court, 2013 [2013] 38 taxmann. Com 261 (Delhi)* (2.) *CIT vs. Arun Malhotra, Delhi High Court, 2013 47 taxmann.com385 (Delhi)* (3.) *Vijay Proteins Ltd. vs. ACIT, ITAT Ahmedabad, 1996, 58 ITD 428 (Ahmedabad)* (4.)

N K Proteins Ltd. vs. DCIT, Supreme Court, 2017, [2017] 84 taxmann.com 195(SC). He submitted that in the light of the above decisions, the order passed by Ld. CIT(A) is erroneous and liable to be set aside.

7. We have considered the arguments advanced by the Ld. DR and perused the material available on record. We find the Ld. CIT(A) while deleting the additions made by the AO has passed a very cryptic order and deleted the addition of Rs. 26,01,000/- made by the AO which, in our opinion, is not just and proper. He should have passed an elaborate order while deleting the additions. In our opinion, the matter requires a re-visit to the file of the CIT(A) to adjudicate the issue afresh and in accordance with law and keeping in mind the decisions of the Hon'ble Delhi High Court and of the Hon'ble Supreme Court as relied on by the Ld. DR cited supra. We, therefore, deem it proper to restore the issue to the file of the CIT(A) with a direction to adjudicate the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. Grounds raised by the revenue are accordingly allowed for statistical purposes.

8. A perusal of the grounds raised by the assessee before the CIT(A) in form no. 35 shows that the assessee has not raised the validity of the assessment proceedings before him. Therefore, ground of appeal no. 2 of the assessee is dismissed. So far as ground of appeal no. 1 is concerned, we find the Ld. CIT(A)

in his order has given justifiable reasons for treating the amount of Rs. 26,01,000/- as taxable u/s 56 of the Income Tax Act under the head “other sources” . Therefore, we do not find any infirmity in the order of the CIT(A) confirming the addition of Rs. 26,01,000/- as “income from other sources”. The ground of appeal no. 1 of assessee is therefore dismissed.

9. In the result the appeal filed by the assessee is dismissed and the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open on this 29th day of September, 2017.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 29-09-2017.

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Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., Allahabad.

By Order

Assistant Registrar
ITAT, Allahabad

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	29.09.2017		Sr. PS/PS
2	Draft placed before author	29.09.2017		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			