

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3624/Del/2012  
(Assessment Year: 2008-09)

ACIT, Central Circle-21, Room No. 344, E-2, ARA Centre, Jhandewalan Extn., New Delhi (Appellant)	Vs.	Realtech Construction Pvt. Ltd, D-22, Deference Colony, New Delhi PAN:AADCR1099N (Respondent)
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Revenue by :	Mr. Parmita Tripathy, CIT DR
Assessee by:	Sh. Kapil Goel, Adv
Date of Hearing	13/04/2017
Date of pronouncement	16/10/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of Id CIT(A)-II, New Delhi dated 26.04.2012 for the Assessment Year 2008-09.
2. The revenue has raised the following grounds of appeal:-
  - “1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 200000000/- made by the Assessing officer on account of undisclosed sale.
  2. That the Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the disallowance of expenses of Rs. 3826000/- made by the Assessing Officer on account of inadmissible expenses.
  - 3 (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.”
3. The assessee is a company engaged in the business of real estate and has undertaken two project “Veritas” at Gurgagaon and City Emporio” at Chandigarh. The construction activities in collaboration with M/s. Pegasus Buildtech Pvt. Ltd at Gurgaon. The assessee filed its return of income on 24.10.2008 for Rs. 252695707/-. During the course of assessment a survey was carried out during the year and several incriminating documents were found showing receipt over and above the booking amount on the basis of which additional income was disclosed by the assessee. During the survey as per Annexure A-14 page No. 77 it was found that assessee has shown accounted receipt of Rs. 22.15 crores and unaccounted receipt of Rs. 16.31 crores for ‘Veritas’ at Gurgaon. Therefore as total bookings for the year was RS. 38.47 crores out of which accounted receipts were Rs. 22.15 crores i.e. approximately

58%, hence, Id AO presumed that approximately 40% of the receipts are not accounted for in the books. Similarly, with 'City Emporio' the Id Assessing Officer also determined the above ratio. During the course of assessment proceeding the Assessing Officer was asked to supply complete details of area constructed along with the list of bookings till 31.03.2008 which was not given by the assessee. Therefore, the Id Assessing Officer estimated the unaccounted receipts on estimate basis. He estimated a sum of Rs. 15 crores for the Gurgaon Project and Rs. 5 crores for Chandigarh Project making the total additions of Rs. 20 cores.

4. It was also found that assessee company has claimed a sum of Rs. 38.26 lakhs as claim of Shri Pankaj Dayal as compensation for which details were asked for but not given, hence, the expenditure of Rs. 38.26 lakhs was disallowed. Consequently, assessment order u/s 143(3) of the Act was made on 30.12.2010 at Rs. 456521707/- against returned income of Rs. 252695707/- .
5. On appeal before the Id CIT(A) the addition was deleted for the reason that Assessing Officer has made addition due to non furnishing of details by the assessee. It was further held that the addition cannot be made on the basis of imaginary figures. Further with respect to disallowance of expenditure the Id CIT(A) noted that appellant has failed to deliver the possession of the property and therefore the appellant has paid compensation to NAI Collaborators India. As the appellant company is engaged in the business of real estate the compensation so paid is revenue expenditure.
6. Revenue aggrieved with the order of the Id CIT(A) has preferred appeal before us.
7. The Id Departmental Representative submitted that assessee has not furnished the details of total area along with the details of project booked till 31.03.2008 and therefore, the Id AO was prevented from conducting any enquiry. He submitted that as the assessee has not given basic detail as stated in para No. 3.2 of the assessment order the addition is required to be made as per information available. He further submitted that Id CIT(A) has neither examined any of the evidences nor called for any of the information with respect to unaccounted sales and allowed the claim of the assessee. With respect to the claim of the assessee of Rs. 38.26 lakhs he submitted that no information was submitted before the Assessing Officer and therefore, addition is rightly made. With respect to the order of the Id CIT(A) he submitted that information stated in para NO. 12 was not at all available with the Assessing Officer and therefore, the order passed by the Id CIT(A) is without giving any opportunity to AO to rebut the claim of the assessee.
8. The Id AR vehemently reiterated the same explanation which was made before the Id CIT(A). He further submitted that Id CIT(A) has correctly deleted the same after considering the submission of the assessee that addition is made on imaginary figures. He relied on following decisions:-

- a. Nexus Builders & Developers Pvt. Ltd ITA No. 1484/Mum/2013 order dated 31.01.2017
- b. M/s. Sambhavnath Investment ITA NO. 3109/Mum/2011 order dated 31.12.2013
- c. Accord Properties ITa No. 741/Pn/2012 order dated 30.04.2014

9. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The assessee is carrying on two projects and during the course of survey and search proceedings it was found that in both the projects assessee is collecting "on money" towards the sale of space. In both the projects the accounted portion is undisputedly 58% of the total sale price. Therefore, during the assessment proceedings the Id Assessing Officer asked the details of total area constructed along with the list of bookings made till 31.03.2008 and till 30.12.2010 i.e. the date of passing of the order which was not submitted. It was further noted by him that there is wide difference between the rate of sales ranging from Rs. 2250 to Rs. 17000 per sq ft. The details of such difference was also not submitted. Therefore, the addition has been made on estimate basis of Rs. 20 crores. Before the Id CIT(A) the assessee submitted that full details of such advances were filed by the assessee and Id Assessing Officer issued notices u/s 133(6) of the Income Tax Act to various parties from whom advances have been received. The assessee has further stated before Id CIT(A) that replies were also received from the buyers. However, even before the Id CIT(A) the details called for by the Assessing Officer were not submitted. The Id CIT(A) deleted the addition stating that the Assessing Officer has assumed that there may be more salable area and therefore there may be more booking amount in cash. We do not find any infirmity in such assumption by the Id Assessing Officer because the assessee has not supplied any information about the total area and list of advances received from parties. It is also surprising that the assessee has stated before the Id CIT(A) that Assessing Officer has made enquiry u/s 133(6) of the Act and buyers have confirmed. No such evidences have been placed either before the Id CIT(A) or before us or no such reference could be found from the assessment orders itself. However we agree with the Id CIT(A) that AO cannot arrive at any figure without any basis by adopting an arbitrary method of calculation. Therefore, even the Assessing Officer is not justified in assuming the impugned figure of cash sale out of the books. In view of this we set aside the whole issue of this addition covered in ground No. 1 of the appeal of the Revenue back to the file of the Assessing Officer with the direction to the assessee to submit the details called for by the Assessing Officer about the total salable area of the project and the persons who have booked the space. The Assessing Officer is directed to verify the result of 133(6) enquiries made by him earlier and to verify about the fact of confirmation by the parties who have booked such spaces. The AO may examine the details

which assessee is directed to submit. After such examination and after giving proper opportunity of hearing to the assessee the Id Assessing Officer is directed to examine the issue afresh. In case the details required by the Id Assessing Officer or details which he may further require to decide the issue is not presented before him even after appropriate opportunity he may decide the issue on the merits of the case. in the result ground No. 1 of the appeal of the Revenue is allowed with above direction.

10. Ground No. 2 of the appeal of the revenue is allowed by the Id CIT(A) vide para No. 12 of this order where the assessee has filed documentary evidences in respect of agreement with Shri Pankaj Dayal. No doubt that if claim has arisen during the course of the business of the assessee same is allowable however, with respect to the above claim no details are furnished before the Id Assessing Officer and CIT(A) has also deleted the above disallowance without recording a finding that by which date the possession was to be given, what was the amount received at the time of original booking. Whether such claim has also arisen during the course of business vis a vis with respect to other buyers and whether at the time of booking of such space there was an agreement to pay such compensation. Before the Id Assessing Officer no details were furnished and the Id CIT(A) has not examined the claim of the assessee from above aspect. In view of this we set aside this ground of appeal to the file of the Id Assessing Officer to decide the issue of the claim afresh. Needless to say that opportunity of hearing may be granted to the assessee and after making proper enquiry the issue may be decided. In the result ground No. 2 of the appeal of the revenue is allowed with above direction.
11. In the result appeal of the revenue is allowed with above direction for statistical purposes. Order pronounced in the open court on 16/10/2017.

-Sd/-

(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:16/10/2017  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi