

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.6577/Del/2015
Assessment Year : 2012-13

ITO,
Ward 2(3),
New Delhi.

Vs. Amar Gyan Developments Pvt. Ltd.,
17-B, MGF House, Asaf Ali Road,
New Delhi.

PAN: AAFCA2818J

ITA No.6578/Del/2015
Assessment Year : 2012-13

ITO,
Ward 2(3),
New Delhi..

Vs. Amar Deep Buildcon Pvt. Ltd.,
17-B, MGF House, Asaf Ali Road,
New Delhi.

PAN: AAFCA2819K

Assessee By : Shri K. Sampath &
Shri V. Raja Kumar, Advocates
Deptt. By : Shri Amit Jain, Sr. DR

Date of Hearing : 21.12.2017
Date of Pronouncement : 21.12.2017

ORDER

These appeals by the Revenue pertaining to two different assesseees relate to the assessment year 2012-13. Since common issue is raised in both the appeals, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

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2. The only issue raised in this appeal is against the deletion of addition of Rs.43,40,786/-.

3. Briefly stated, the facts of the case are that the assessee entered into a collaboration agreement with EMAAR MGF under which the assessee was to procure land for and on behalf of its principal, namely, EMAAR MGF. The land acquired by the assessee was to be registered in its own name though under the supervision and control of its principal. Possession of such land was to be handed over to the principal for development and sale thereof. Notes to account attached to

the Balance sheet for the year indicated that during the year, the Government acquired 0.87 acre land with book value of Rs.42,87,471/-. Compensation of Rs.86,28,257/- was awarded to the assessee. On being called upon to explain as to why the resultant income was not shown, the assessee submitted that the compensation received was handed over to the principal and profit/gain arising there from was shown by its principal as income. Unconvinced, the Assessing Officer added profit of Rs.43,40,786/- (Rs.86,28,257/- minus Rs.42,87,471/-) to the assessee's income. The Id. CIT(A) deleted the addition.

4. Having heard both the sides and perused the relevant material on record, it is seen that the assessee entered into a collaboration agreement with EMAAR MGF under which it was to procure land for and on behalf of its principal. Out of such acquired land, the Government acquired 0.87 acre from which income of Rs.43.40 lac resulted, which has been added by the Assessing Officer. When the assessee was acting as an agent of its principal in acquiring the land for and on behalf of EMAAR MGF, any income from such land holding cannot be said to

have accrued to the assessee as there is diversion of income by overriding title. The assessee categorically stated before the Assessing Officer that the amount of compensation received was handed over to the principal and profit/gain arising on such acquisition was shown as income by the principal, which has not been controverted by the AO. In view of the foregoing discussion, it is clear that the income which accrued or arose to EMAAR MGF cannot be taxed in the hands of its agent, namely, the assessee. I, therefore, countenance the view taken by the Id. CIT(A).

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5. Both the sides are *ad idem* that the facts and circumstances of Ground No.2, being, the deletion of addition of Rs.42,67,009/- are similar to those discussed above in ITA No.6577/Del/2015. Following the view taken hereinabove, I uphold the impugned order on this score.

6. The only other ground which survives in this appeal is against the deletion of addition of Rs.13,94,189/- on account of disallowance of

expenses. The assessee claimed expenses to the tune of Rs.15,80,478/- comprising of office maintenance and rent etc. The Assessing Officer disallowed Rs.13,94,189/- as the same, in his opinion, was not commensurate with the fact that no expenditure on account of salary, etc. was booked. The Id. CIT(A) deleted the addition.

7. After going through the relevant material on record, it is seen, as an admitted position that the assessee was engaged in the business of real estate and entered into an agreement with its parent company, namely, EMAAR MGF Land Pvt. Ltd. When the assessee was running its business, it was, but, natural that the expenses were bound to be incurred. The Assessing Officer went on to make the disallowance of expenses in an arbitrary manner, which action rightly stood corrected by the Id. CIT(A). I, therefore, accord imprimatur to the view canvassed by the Id. CIT(A) on this issue.

8. In the result, both the appeals stand dismissed.

Order Pronounced in the open Court on 21.12.2017.

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 21st December, 2017.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.