

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.48/Chd/2013
Assessment Year: 2009-10

Greenview Land & Buildcon Pvt. Ltd.
SCO 854, NAC, Manimajra
Chandigarh

Vs. The ACIT
Central Circle II
Chandigarh

PAN No. AACCG3524C

(Appellant)

(Respondent)

Assessee By : Shri. Neeraj Jain
Revenue By : Dr. Gulshan Raj

Date of hearing : 10/07/2018
Date of Pronouncement : 24/07/2018

ORDER

PER DR. B.R.R. KUMAR, A.M.:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A), Gurgaon dt. 12/12/2012.

2. The assessee has raised following grounds of appeal:

1. *That the Ld. CIT (A) is not justified in not giving the proper opportunity of hearing which is against the natural justice.*

2. *That the Ld. CIT (A) is not justified in confirming the assessment made u/s 153B (1) (b) r.w.s. 143(3) of I.T.Act 1961 which is not as per the provisions of the assessment in search cases.*

3. a) *That the Ld. CIT (A) is not justified in confirming the addition of Rs. 51.00 Lacs on account of unexplained investment u/s. 69 of the I. T. Act.*
b) *That the Ld. CIT (A) is not justified in not accepting the book results in which entries of such cash of Rs. 51.00 Lacs was duly recorded.*

4. a) *That without prejudice to the above Grounds of Appeals the appellant disputes the quantum of additions.*
b) *The Ld. CIT (A) is not justified in not giving the telescoping/set off of addition of Rs. 51 Lacs against the surrendered income of Rs. 1.25 Crores.*

3. brief facts of the case are that a search and seizure action was conducted on 16.012009 at the residences and offices of the group concerns of

M/s AP Shrestha Group of cases. The assessment in the case of the assessee was framed on 29.12.2010 determining an income of Rs. 89,86,360/-.

4. The addition of Rs. 51,00,000/- on account of unexplained investment u/s 69 was made by the Assessing Officer by not accepting the book results in which entries of such cash was duly recorded. This addition comprises of two amounts viz. Rs. 15,00,000/- and Rs. 36,00,000/-.

5. As per the document seized and marked A-I containing pages 1-3 was an agreement to sell dated 07.10.2008 for Rs. 1 crore for which an advance of Rs. 15 lacs was paid by the assessee in cash. This agreement for purchase of property at Shimla was found and seized for which Rs. 15 lacs was the cash advanced on 07/12/2008. On confronting, Shri Sandeep Bansal, Director of the assessee company, admitted in the statement recorded in the course of survey operation that Rs. 15 lacs was paid out of books and offered the same as additional income. This statement was retracted during the assessment proceedings.

6. Before the Ld. CIT(A) the assessee, regarding the sources stated that the cash withdrawals from banks as reflected in the cash book amply proves the availability of cash which totals to Rs. 18,66,200/-. It was argued that the cash withdrawn from three separate bank accounts from dates ranging from 04.09.2008 to 06.10.2008 to be the source of investment.

7. The Ld. CIT(A) held that this contention was never put forth before the Assessing Officer when the assessee was asked to produce the persons from whom the cash was received as reflected in the books of account prior to the payment of the advance. This explanation now advanced, is not prudent, as it implies that the cash withdrawals from the banks as early as 04.09.2008 were accumulated over the days so as to make the payment of Rs. 15 lacs on 07.10.2008. It was held by the Ld. CIT(A) that the bank statement furnished, which in any case is not complete statements, reveal that some are contra entries besides cash received from its sister concern M/s Greenview Heights.

8. Before us, Ld. AR argued that the surrendered income of Rs. 125,00,000/- stands offered to taxation under the head sale of flats as reflected in the Schedule – VIII – Sales and other income. He argued that prior to the payment of Rs. 15,00,000/- on 07/10/2008, the assessee has withdrawn the cash from bank accounts maintained by the assessee and complete details of the same along with copy of relevant pages in the books of accounts and bank statements showing the withdrawals been filed at page no. 18 to 22 of paper book.

9. We have perused the documents and the bank statements, the Assessing Officer is hereby directed to obtain the copies directly from banks, examine the withdrawals and give due benefit of the withdrawals to the assessee after due examination.

10. The other amount involved is Rs. 36 lacs which again emanates from the seized document being another agreement to sell dated 03.05.2008, marked A-I pages 47-52. Against the total consideration of Rs. 3,21,00,000/- an advance of Rs. 51 lacs was made which comprised of Rs. 36 lacs as cash component. This cash portion was stated to be out of the books of account in the statement recorded of Shri Sandeep Bansal, Director, who surrendered the same as additional income. Likewise, the assessee was asked to produce the persons from whom cash was received as reflected in the books of account prior to the payment of advance by the Assessing Officer.

11. In the written submission, the source of cash was said to be arising from cash received from 4 persons against sale of flats between 01.04.2008 to 30.04.2008 which on adding up totals to Rs. 37,77,500/-. This explanation offered at the appellate stage as regards the source of investment was not accepted by the Ld. CIT(A) on the grounds that if the source were from the sale of flats there was no reason why the assessee could not have provide the information as well as produce the parties when asked by the AO. Moreover the assessee has not elucidated the details of the flats viz the concerned project, the consideration along with supporting documents etc.

12. Before us, the Ld. AR argued that they have sold flats of Shama Rani 10A Ph-2, Shama Rani 3A-2, Nasib Singh, 12C-1 , Vineet Garg, 2C-1, and explained that the following amounts were received by the assessee on dates mentioned below:

Date of Receipt	Amount Received	Source
30/04/2008	3,00,000/-	Vineet Garg against sale of flat 2C-1
25/04/2008	11,00,000/-	Shama Rani against sale of flat 10A-II
25/04/2008	11,00,000	Shama Rani against sale of flat 3A-II
15/04/2008	3,00,000/-	Vineet Garg against sale of flat 2C-1
01/04/2008	9,77,500/-	Naseeb Singh against sale of flat 12C-I

13. It was further argued that an amount of Rs. 36,00,000/- which was paid on 01/05/2008 to Décor Promoters India Pvt. Ltd. is out of the receipts in cash received by the assessee against the sale of the flats.

14. Ld. DR argued that the assessee has retracted the statement given at the time of search and argued that it was admitted at the time of the search that the advance were unrecorded. Even if these were from the cash deposits reflected in the books, the assessee could not support the same during the course of assessment proceedings and the explanations now offered, as discussed above are to be held as mere addendums. Thus the assessee having admitted incurrance of the expenditure but at the same time has not been able to account satisfactorily for the same. Hence the inference can be drawn that the expenditure/ the unaccounted part thereof have been met out of the undisclosed income of the previous year and argued that considering the facts and circumstances of the issue at hand, the addition made by the Assessing Officer is ought to be confirmed.

15. We have heard the rival contentions and perused the material available on record and we find that the assessee has received monies in cash against the sale of flats as explained above. Revenue could not controvert the facts

either by examining the supposed payers or bringing anything contra on record. The respective sale deeds of the flats were also available on record. Hence, the cash received from 01/04/2008 to 30/04/2008 being available at hand with the assessee can be accepted to have been used for payment of purchase of land on 01/05/2008 as there is not much time lag. Keeping in view the overall facts and circumstances of the case the addition made is hereby ordered to be deleted.

16. In the result appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 24/07/2018

AG

Copy to:

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