

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 6536/DEL/2016 (A.Y 2012-13)

Deoria Realty Pvt. Ltd. 6, Community Centre, Saket, Delhi AACCD4222A (APPELLANT)	Vs	DCIT Circle-7(1) New Delhi (RESPONDENT)
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Appellant by	Ms. Kanika Jain, Adv
Respondent by	Ms. Ashima Neb, Sr. DR

Date of Hearing	10.01.2019
Date of Pronouncement	24.01.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 13/10/2016 passed by CIT(A)-3, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

- 1) *“That order made u/s 250 of the Income Tax Act dated 13/10/2016 by the learned CIT (Appeals)-37 is unjust and unfair as order was passed ex-parte without giving sufficient opportunity to the assessee/appellant of being heard.*
- 2) *That by passing the Order ex-parte the Id CIT (Appeals)-37 confirmed the order of DCIT a Circle 7(1) in toto which is bad in law.*
- 3) *That the additions made by the Id AO amounting to Rs. 1,67,68,950/- on account of undisclosed sales is totally wrong and uncalled for as the entire sales had already been booked in the books of the parent company under the*

terms of agreement. Taxing the same income twice is totally unfair and is against all the principles of equity and natural justice.

The Id AO not only erred as above but further erred in taxing the whole sales consideration instead of the income element therein. In other words the full sales value of the properties are taxed without even deducting the cost of the properties there from.

4) *The imposition of penalty u/s 27 IB of the Act for non audit of accounts u/s 44AB of the Income Tax Act is unjust as the entire sales had already been booked in the parent company as stated above.*

5) *The rejection of books of accounts u/s 145(3) of the Income Tax Act is totally unfair, unjust and without any basis.”*

3. During the year under consideration, the assessee is engaged in the business of real estate activities. Vide letter dated 23.12.2014, the assessee furnished copy of ledger account of land cost (Kochi), wherein opening balance as on 01.04.2011 is shown at Rs. 8,60,69,245/- and closing balance as on 31.03.2014 is shown at Rs.7,00,83,575/-. Opening balance of legal and other miscellaneous charges as on 01.04.2011 was shown at Rs.3,13,100/- and closing balance as on 31.03.2014 was shown at Rs.2,54,948. Account of Stamp duty and registration charges, opening balance as on 01.04.2011 was shown at Rs.69,62,651 /- and closing balance as on 31.03.2014 was shown at Rs.56,69,475/-.The Assessing Officer observed that there is an apparent difference as per the details furnished by the assesses, and as per the audited balance sheet and Income tax Return furnished by the assessee. The Assessing Officer rejected the books of accounts of the assessee. The Assessing Officer made addition on account of undisclosed sales amounting to Rs.1,67,68,950/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) dismissed the appeal of the assessee ex-parte.

5. The Ld. AR submitted that Ground No. 1 & 2 are not pressed. Hence, we

are dismissing Ground Nos. 1 & 2.

6. As regards Ground No.3, the Ld. AR submitted that in the subsequent assessment year no addition was made on account of this addition. The Ld. AR submitted that the development agreement was produced before the Assessing Officer as well as CIT (A) and tax should be determined in the hands of holding company and no addition on this account be made to the income of the assessee.

7. The Ld. DR submitted that the title remains with the assessee company and development agreements does not show that the title was passed to holding company. Therefore, the Assessing Officer rightly rejected the books of accounts. The Ld. DR relied upon the order of the CIT(A) and the Assessment Order.

8. We have heard both the parties and perused the material available on record. From the assessment order, there is no plausible reason given by the Assessing Officer while rejecting the books of accounts as per the provisions of Income Tax Act, 1961. The CIT(A) also passed an ex-parte order. Therefore, it will be appropriate to remand back this matter to the file of the Assessing Officer. Needless to say, the assessee be given proper opportunity of hearing by following principals of natural justice.

9. In result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 24th JANUARY, 2019.

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 24/01/2019
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	21.01.2019
Date on which the typed draft is placed before the dictating Member	21.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	25 .01.2019
Date on which the final order is uploaded on the website of ITAT	25 .01.2019
Date on which the file goes to the Bench Clerk	25 .01.2019
Date on which the file goes to the Head Clerk	