

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'E', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 5497/Del./2013  
Assessment Year: 2008-09**

D.C.I.T., Central Circle-5 New Delhi  <b>(Appellant)</b>	vs.	M/s. Narsi Iron & Steel Pvt. Ltd. 13 – B, 3 <sup>rd</sup> Floor, Netaji Subhash Marg, Daryaganj, New Delhi. (PAN : AAACN3681P) <b>(Respondent)</b>
---	-----	--

<b>Appellant by</b>	Shri S.S. Rana, CIT/DR
<b>Respondent by</b>	Shri Rajiv Saxena, Advocate and Shri Ajit Kumar Jha, Advocate

<b>Date of Hearing</b>	05.12.2018
<b>Date of Pronouncement</b>	28.01.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

This appeal by the Revenue arises out of the order passed by the CIT(A)-XXXI, New Delhi dated 22.07.2013 in relation to assessment year 2008-09 on the following grounds :

- “1. *The order of Ld. CIT (A) is not correct in law and facts.*
2. *Whether on facts and in law the CIT (A) is right in admitting additional evidence which was not produced before the AO?*
3. *Whether on the facts and in law the CIT (A) is right in deleting the addition of Rs.1,00,45,159/- holding that addition is not based on seized material and ignoring the facts of the assessment order.*
4. *Whether on facts and in law the CIT (A) is right in restricting the disallowance from Rs.34,66,967/- to Rs.5,00,000/-.*

2. Briefly stated the facts relevant to adjudicate the issues involved in this appeal are that a search and seizure operation was carried out at the premises of assessee along with other cases of Rajdarbar Group on 31.07.2008 on the basis of which notice under section 153A of the Act was issued on 13.11.2009 and in response thereto, assessee declared an income of Rs. 0/- by filing return u/s 153A on 14.12.2009. Subsequently, first notice u/s 143 (2) was issued on 04.08.2010 and second notice along with questionnaire was issued on 23.08.2010. Assessee had filed necessary details and documents as required by the AO.

3. AO noticed from the assessment record that during AY 2006-07, assessee had converted the land at Village Govind Pura held as capital asset worth Rs.1,27,33,500/- into stock-in-trade. Conversion has been made @ Rs.1600/- per sq.mtr. and substantial notional profit of Rs.17,57,30,499/- has been included in the computation of cost of conversion. Out of converted land, assessee sold land measuring 6534.20 sq.mtr. during the year. AO, after disbelieving contentions raised by assessee, computed the income of the assessee under the head 'capital gain' as under :-

“(i) The cost of 11779 square meter land as per assessee's books is 1,27,33,500. Therefore, per square meter cost in books comes to Rs. 108 per sq. meter. Against this cost the assessee has adopted the market value of Rs.1600 per square meter while converting the land into stock in trade. During the year 6534.20 square meter of land has been sold. Therefore, the cost of acquisition of this much of land comes to Rs.7,05,693/- (6534.20 x 108). Further the full value of consideration at the time of conversion into stock in trade comes to Rs.1,04,54,720/- (6534.20x1600).

(ii) It is also seen from the details filed by the assessee for the A.Y.2007-08 that such land was purchased in the year 1993-94. Thus, the benefit of

indexation is being allowed to the assessee. The indexed cost of acquisition for the land sold during the year comes to Rs.705693x497/244- = Rs.14,37,415/-

Thus, the long term capital gain chargeable for the A.Y. 2008-09 comes to Rs.90,17,305/- (10454720 - 1437415)."

4. AO also noticed that during the year under assessment, assessee earned a profit of Rs.4,29,974/- from the steel business but has claimed a loss of Rs.74,63,001/- from the real estate business under which project name 'Kusum Vatika' is being developed. From the perusal of profit & loss account from the real estate business of the assessee, it is noticed that assessee purchased some more land for Rs.61,42,420/- and has also debited 'development cost' amounting to Rs.34,66,967/- in its profit & loss account. Assessee was called upon to explain. The AO disallowed the same as no evidence was filed to substantiate the claim. However, AO came to the conclusion that during the year under assessment, the assessee sold 6534.20 sq.mtr. by showing the value at Rs.49,22,000/- i.e. Rs.753.26 per sq.mtr. AO further noticed from the record of the assessee that during AY 2006-07, assessee converted this land into stock-in-trade and at that time, market value was at Rs.1,600/- per sq.mtr. and in the earlier two assessment years i.e. 2006-07 and 2007-08, assessee has sold a part of this land and has earned profit but, during the year under assessment, assessee has shown to have sold land @ Rs.753.26 per sq.mtr. On query, assessee stated that due to a sluggish period for the business of real estate and the rates of the property came down sharply. However, since the failed to furnish any details of the persons to whom the said land was sold, nor could furnish the copies of sale deeds as asked for, the AO finding the explanation given by the assessee not tenable, rejected the trading result of the assessee and computed the profit as under :-

“10. For the purpose of computing the profits, it is estimated that such land was sold at least with the profit margin of 10%. Therefore, the sale price is being taken as Rs. 1760/- per sq. meter. Thus, the sale value of 6534.20 sq. meter of land sold during the year comes to Rs.1,15,00,192/-(6534.20x1760). Thus, the trading account of the assessee is recasted as below:

Opening Stock	20,22,30,824	Sale of Plots	1,15,00,192
Land purchased	61,42,420	Closing stock	19,97,80,303
To Gross Profit	29,07,251		
Total:	<u>Rs.21,12,80,495</u>		<u>21,12,80,495</u>

AO assessed the total income of the assessee at Rs.1,20,29,437/- (Rs.1,00,45,159/- + Rs.90,17,305/- = 1,90,62,464 minus Rs.70,33,027/-)

5. The assessee carried the matter in appeal before the Id. CIT(A), who after considering the submissions of the assessee deleted the trading addition of Rs.1,00,45,159/- and restricted the addition of Rs.34,66,967/- made on account of disallowance of development expenses, to Rs.5,00,000/- vide impugned order. Aggrieved by the impugned order, the Revenue is in appeal before the Tribunal.

6. The Id. DR, reiterated the findings of the AO and submitted that the assessment has been completed u/s. 153A/143(3). The assessee did not file return of income upto the date of search. The time of issuing the notice u/s. 143(2) was also not expired till the date of search. Therefore, the Id. CIT(A) was not justified to observe that the addition in such situation could be made only on the basis of incriminating material found in the course of search. Further more there is material on record to support such a drastic reduction in the selling rate of land. On the next issue, the Id. DR drew our attention to the fact that the CIT (A) has entertained numerous documents in additional

evidence without providing an opportunity of being heard to the revenue. He, therefore, urged that both the issues may be restored to the file of AO for proper verification and examination of evidences so that correct facts can be brought out before finally deciding the issues.

7. The ld. AR relied on the order of ld. CIT(A) and submitted that the AO was not justified in adding the profit @ 10% on the cost of property of Rs.1600/- per sq. mtr. after conversion into stock in trade. No incriminating material was found during the course of search, in absence of which no addition can be made in the hands of the assessee in view of various judicial precedents and the provisions of section 153A of the Act. Regarding addition on account of development expenses, the AO nowhere asked for any supporting bills/ vouchers or any other documents to furnish. Therefore, the impugned order does not call for any interference.

8. We have heard both the parties and have gone through the entire material available on record and orders passed by the revenue authorities below in the light of the facts and circumstances of the case. As far as the first issue pertaining to trading addition is concerned, we think it appropriate to reproduce the findings returned by the ld. CIT(A) on this count, which read as under :

“3.2 Ground No.2

3.2.1 As mentioned in the previous paragraphs, the AO has noted that the appellant had converted capital asset – Land into stock-in-trade in the year 2005-06 and the conversion rate adopted was Rs.1600/- per sq. metre. As against this he found that the sale consideration in respect of part of the land sold during the previous year relevant to current assessment year was only at Rs. 753 per sq. metre. He held that the appellant's trading results are not reliable and he rejected the same. Thereafter he has added Rs. 1,00,45,159/- as trading profit computed at the rate of

10% of the price at which the Land- capital asset was converted into stock-in-trade during the F.Y. 2005-06.

3.2.2 In his submissions the AR has stated that the accounts of the company are duly audited and Company maintains all the bills and vouchers. The AO had merely asked as to' how there was a loss from the real estate business and that the appellant had given the break-up of the trading results vide their reply to AO's letter dated 23.08.2010. The AO did not seek any further information from the appellant and he has proceeded to estimate the profits from the real estate business on the suspicion that the appellants must not have disclosed the correct profits. In this regard he has submitted that all the sales are verifiable, all the purchases are verifiable and that the accounts have been duly audited. In view of the matter, the AO's action in making addition without giving any opportunity during the appeal proceedings was bad in law.

3.2.3 The AR has also stressed that in a search and seizure assessment being framed u/s 153A of I.T. Act, 1961, the AO had a duty to base all his additions or disallowances only on the documents if any seized during the search. In the instant case no incriminating documents were seized to show that the appellant's trading results are not reliable. On the contrary the AO himself has based all his addition on the Balance sheet and P&L Account which were filed along with his return and the details furnished in course of assessment proceedings u/s 153A. This amounts to change of opinion. The AO cannot sit in judgment over on the completed assessments without any fresh evidences recovered during the search. Further the AR also stated that the AO has doubted the loss from the real estate business only on account of the value adopted by the assessee at the time of conversion of capital asset into stock-in-trade. He has pointed out that the cost of land as per assessment records itself was only Rs. 108.10 per sq. metre. The AO has not taken note that the appellant really made almost 750% profit on the land which he acquired few years ago. Thus this is not a case of any suppression of profits from sale of land. Further the AR also drew the attention to the provisions of section 50C where the AO can make addition on suppression of sale only if there is variation in the sale price as compared to the prevailing rates. In the instant case the appellant has always charged the rates prevailing at the given point of time and there was no allegation that land or houses were sold below the circle rates. The AR, therefore, submitted that the action of the AO in rejecting the trading results and computing profits at the rate of 10% on estimate basis was arbitrary and against all the prevailing business practices.

3.2.4 I have considered the submissions of the AR and the assessment order. First of all it is noted that the AO has not relied upon any seized documents for making this addition. He has done an estimated addition under the real estate business on the basis of material on record. He has doubted the trading results only because the rate at which the capital asset was converted into stock-in-trade was much higher than the rate at which the land has been ultimately sold. There cannot be any allegation that the appellant did not make profit on sale of land if one takes note of the actual cost of acquisition of land by the company. Thus the presumption that the

appellant could not have sold land at below the cost price is fraught with mistake as the cost adopted in the instant case by the AO is the rate at which land has been converted into stock in trade in his books of accounts. In reality the company has made almost 800% profit on the sale of land if we adopt the cost of land as on the date of its acquisition. Due to the treatment given to land at the time of its acquisition, the company had to change its nature in F. Y. 2005-06. Part of the profit is now being taxed as capital gain. Considering these factors I do not deem it fit to accept the AO's view on the issue. The addition not based on any seized material and also without bringing hard facts like evidence of suppression of any sales based on the sale deed etc. the addition cannot be sustained. Therefore, the same is deleted.

9. On going through the above findings of the Id. CIT(A) in the light of attending facts of the present case, we find that the assessee did not file any return of income till the date of search nor was the due date of filing the return and issue of notice u/s. 143(2) was expired. The return was filed on 14.12.2009 only in pursuance to notice u/s. 153A declaring zero income. In presence of these facts, the contention of the Id. CIT(A) that the addition made was not based on any incriminating material found in the search is not tenable as per provisions of section 153A read with section 143(3). Moreover, once the assessee failed to furnish any evidence regarding drastic reduction in the rates of land or to furnish the details of persons/copies of sale deeds, to whom the impugned land was sold, the reduced rate of sale declared by the assessee has rightly been disbelieved by the Id. Assessing Officer, irrespective of the percentage of profit earned by the assessee. Therefore, simply because the assessee earned substantial profit as observed by Id. CIT(A), it cannot be said that the land sold at much lower rate of Rs.753.26 per sq. mtr. than the rate of land after conversion from capital asset into stock in trade at Rs.1600 per sq. mtr. It is, however, found that the AO has also not given any justifiable basis for applying profit of 10% on the rate of Rs.1600/- per sq. mtr. In the totality of above facts, we think it appropriate to restore this issue back to the file of AO to decide the same afresh after proper examination and verification of actual rate of land at the time of its sale. The assessee is directed to adduce

cogent evidences to substantiate the selling rates declared by it. Needless to say, proper opportunity of being heard shall be provided to the assessee. Therefore, this ground is allowed for statistical purposes.

10. Adverting to the next issue regarding disallowance of development expenses and additional evidences admitted by the CIT(A), we have examined the impugned order. In this context, the ld. CIT(A) has observed as under :

3.2.5 Further, AO has held that the development cost of Rs.34,66,967/- debited to trading account of the real estate business cannot be allowed, as the appellant did not file complete details along with evidence. At para 7 of his order, the AO has stated that in response to his letter 23.08.2010 the assessee simply submitted that such amount was incurred on electric expenses, Vikas Pradhikaran charges etc. and Rs. 24,66,2063/- was incurred on brick, cement, sand and other building construction expenses. However the assessee failed to produce any evidence in respect of its claims of these development expenses.

3.2.6 The relevant paragraph of the assessment order on the issue is reproduced below:-

" Vide the questionnaire dated 23.08.2010, the assessee was specifically asked to file complete details along with evidences regarding the development cost incurred by it. In response to this, the assessee has simply submitted that such amount was incurred on electric expenses, Vikas Pradhikaran charges. The assessee has further submitted that an amount of Rs.24,66,206/- has been incurred on bricks, cement, sand & other building construction expenses. However, till date, the assessee has not filed even a single evidence in support of its claim of these development expenditure. As per provisions of I.Tax Act, an expenditure can only be allowed if the assessee is able to prove that such expenditure was incurred wholly and exclusively for the purposes of business. In the absence of any evidence, such onus remains undischarged and therefore, this amount of Rs.3466967/- to the income of the assessee. Penalty proceeding u/s 271 (1)(c) are also being initiated for furnishing the Inaccurate particulars of income. "

3.2.7 The AR submitted that the AO did-not ask for- any further details than what was called for by him in questionnaire dated 23.08.2010. He further highlighted that the appellant is maintaining regular books of accounts which are duly audited and all the entries are supported by the Bills and vouchers. The AO only sought details of the development expenses which was duly explained vide their written reply to the questionnaire dated 23.08.2010. In this background the AR submitted ledger A/c and photocopies of the Bills and vouchers of the development cost and sought

admission of the same as additional evidences during the appeal proceedings. These documents were forwarded to the AO on 04.02.2013 seeking report both on merit as well as on admissibility of the same. Till date this office has not received any report from the AO. In this background the assessment records were called for and examined. From the order sheet notings of the assessment folder, there is no indication that the AO insisted on seeing bills and vouchers. However, he has disallowed the entire "development cost" for want of evidences. The action of the AO cannot be upheld. There are no evidences that the AO insisted on seeing bills and vouchers or that he was not satisfied with the reply given by the appellant and that he had called upon the appellant to produce further evidences. In that background the additional evidences (bills, vouchers and ledger A/c) are required to be admitted. The AO has not given his report either on admissibility of these evidences or on their merit. In this background, I have perused the photocopies of the bills and vouchers. These relate to purchase of construction material or expenses relating to labour charges. Most of these expenses are incurred in cash and hence their reliability is low. However, it cannot be denied that the appellant had not incurred any development cost being in construction/real estate business. Considering the totality of facts and circumstances of the case, I hold that ends of justice would be met if Rs.5 Lakh out of Rs. 34,66,967/- is disallowed. Hence addition to the total income is restricted to Rs.5 Lakh only and the balance is deleted."

11. A perusal of the above findings returned by Id. CIT (A) reveals that CIT (A) has entertained copies of various ledgers, different account relating to development cost, bills and vouchers for which he has called remand report from the AO on 04.02.2013 but without issuing any reminder or impressing upon the AO to file the remand report proceeded to decide the matter without providing an opportunity of being heard to the revenue. At the same time, CIT (A) recorded the finding that most of these expenses are incurred in cash and their reliability is low but again proceeded to hold that the ends of justice would be met if Rs.5,00,000/- approximately out of Rs. 34,66,967/- is allowed and restricted the addition to Rs.5,00,000/-and deleted the balance addition of Rs.29,66,967/-. In presence of all these facts coupled with the fact that no bills or vouchers were produced before the AO and the burden was upon the assessee to produce the same in support of its claim, we are of the considered view that this matter too is required to be restored to the file of AO for decision afresh after providing an opportunity of being heard to the assessee.

The assessee is directed to produce all the evidences in support of development expenses before the AO and the AO shall examine the veracity thereof and shall proceed to decide the matter after complete verification. Accordingly, these grounds are also allowed for statistical purposes.

12. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 28.01.2019.

Sd/-

**(Amit Shukla)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 28.01.2019

*\*aks\**

*Copy of order forwarded to:*

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*