

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

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

ITA No.127/DEL/2016
Assessment Year: 2010-11

ACIT Central Circle-26, Room No.323, 3rd Floor, ARA Centre, Jhandewalan Exten, New Delhi (APPELLANT)	Vs	Sheetal International Pvt. Ltd. G-81/A, 2nd Floor, Vijay Chowk, Laxmi Nagar, New Delhi PAN No. AAACS3368N (RESPONDENT)
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Appellant by	Ms. Rinku Singh, Sr. DR
Respondent by	None

Date of hearing:	01/07/2019
Date of Pronouncement:	02/07/2019

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-1, New Delhi dated 16.10.2015 pertaining to A. Y. 2010-11.

2. The substantive grievance of the revenue read :-

1 On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,28,28,990/- made by the AO on account of excess claim of deduction/exemption u/s 86 without appreciating the fact that the M/s Mayfield Projects (AOP) has mentioned in its return of Income and Tax Audit Report (Form No. 3CD) for the A. Y. 2010-11 that assessee company is having share of 42.284%.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law

and on facts in deleting the addition of Rs. 1,28,28,990/- by holding that the assessee has mentioned only one profit sharing ratios in the e-filed return as the system accepts only one ratio without appreciating the fact that even in the Tax Audit Report (Form No. 3CD) of M/s Mayfield Projects only one profit sharing ratios is mentioned.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,28,28,990/- without considering or rebutting the judgements given by his predecessor in the case of assessee for the A.Y. 2006-07 to 2009- 10 on identical issue, wherein the Ld. CIT(A) had rejected the claim of the assessee regarding having two different profit sharing ratios for two different projects, despite the fact that it was mentioned in the assessment order.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.4,84,000/- without appreciating the fact that the onus was on the assessee to establish that the above expenses were incurred wholly and exclusively for the purpose of business u/s 37(1) which the assessee failed to establish.

3. The elements in ground No.1 to 3 relate to the same issue.

4. The assessee is a member of AOP i.e. M/s. Mayfield Projects. While scrutinizing the return of income the Assessing Officer noticed that the assessee has claimed exemption of its income u/s. 86 of the Act from the AOP to the tune of Rs.21639161/-. The Assessing Officer noticed that the assessee is having share from AOP @ 42.284% whereas the profits declared from the AOP was on a higher side. The assessee was asked to explain the same. In its reply the assessee explained that the AOP is having two type of land in respect of two projects and the share agreement is different for both the projects. It was further explained that the AOP has distributed amongst the members their respective shares of profit in the ratio mentioned in the AOP agreement for both the projects.

5. The reply of the assessee did not find any favour with the Assessing Officer who was of the firm belief that the profit share of the assessee has been determined @ 42.284% and has attained

finality in previous assessment years i.e. A.Y.2006-07 to 2009-10. The Assessing Officer accordingly treated the share of assessee at Rs.93,98,797/- and the amount of Rs.12,82,990/- was treated as income from other sources.

6. The assessee strongly agitated the matter before the CIT(A) and filed copy of revenue distribution account of M/s. Mayfield Projects explaining the revenue sharing ratio of the different members of M/s. Mayfield Projects in the two projects as under :-

S.No	Name of members of AOP	For Land measuring 307.950 acre	For Land measuring 23.896 acre
1	Sheetal International Pvt. Ltd	42.284%	48.803%
2	North Star Apartment Pvt. Ltd	8.246%	NIL
3	Ajay Impex Pvt. Ltd	5.112%	NIL
4	Satsudha Investment Pvt. Ltd	15.002%	17.515%
5	New India City Developers Pvt. Ltd	29.356%	33.682%
	TOTAL	100%	100%

7. It was explained that the shares of the members of the AOP was based on the addendum to agreement for joint development agreement. It was explained that the assessee was having share of revenue at the rate of 42.284% in one of the project and 48.803% in section project. It was further explained that in the assessment of the AOP the share of the assessee has been accepted at the rate of 42.284% and 48.803% for both the projects. The assessee also filed a statement of revenue distribution by the AOP to substantiate its claim of having

received share of revenue from both the projects at Rs.21639161/-. The assessee strongly contended that the share profit of Rs.21639161/- is eligible for exemption u/s. 86 of the Act.

8. After considering the facts and the submissions and after going through the assessment of the AOP and considering the statement of revenue distribution the CIT(A) observed that the share of revenue of members determined by AOP cannot be disturbed by the Assessing Officer in individual assessment of the AOP member without bringing any advance material on record. The CIT(A) concluded by holding that as per the revenue distribution certificate issued by the AOP the share of the revenue of the assessee for the year under consideration comes to Rs.21639161/- and the same is eligible for exemption u/s 86 of the Act.

9. Aggrieved by this the revenue is before us.

10. The DR read the operative part of the assessment order and placed strong reliance on the findings of the Assessing Officer.

11. Since, none appeared on behalf of the assessee and having heard the DR, we have carefully perused the orders of the authorities below. There is no dispute that the AOP was having two projects on land measuring 307.950 acres and 23.896 acres. It is also not in dispute that the assessee was having revenue share at the rate of 42.284% in the project on land measuring 307.950 acres and 48,803% in the land measuring 23.896 acres. The statement of revenue distribution by the AOP M/s. Mayfield Project is as under :-

Profit Sharing Ratio (307,950 Acres)		0.42284		0.29356		0.15002		0.08246		0.05112	
Profit Sharing Ratio (23,896 Acres)		0.48803		0.33882		0.17315		-		-	
Total Land	39,580,000										
Particulars	Total Amount	Sheetal International Pvt Ltd	(%)	New India City Developers P Ltd	(%)	Satsudha Investment P Ltd	(%)	North Star Apartments P Ltd	(%)	A jay Impex Pvt Ltd	(%)
Sales (307,950 Acres)											
Plotted Land	27,312,538	11,548,834	42.284	8,017,869	29.356	4,097,427	15.002	2,252,192	8.246	1,396,217	5.112
Institutional Land	21,231,808	8,977,658	42.284	6,232,810	29.356	3,185,196	15.002	1,750,775	8.246	1,085,370	5.112
Sales (23,896 Acres)											
Plotted Land	59,141,514	28,862,833	48.803	20,038,328	33.882	10,240,353	17.315	-		-	
Other Income	43,243,494	18,285,079	42.284	12,694,560	29.356	6,487,389	15.002	3,565,859	8.246	2,210,607	5.112
Total Sales	150,929,354	67,674,403		46,983,566				7,568,825		4,692,194	
EXPENSES INCURRED BY MAYFIELD PROJECTS											
IDC Cost	45,187,681	21,214,311		14,728,223		7,526,649		1,060,843		657,656	
Admin Cost	10,889,108	5,059,752		3,512,782		1,795,165		321,870		199,539	
						9,321,813					
EXPENSES INCURRED BY MEMBERS OF AOP											
Land Cost	14,091,062	4,553,701		6,146,062		3,091,453		170,121		129,725	

EDC Cost	33,025,909	13,851,342		11,872,270		6,160,281		633,868		508,148	
HUDA Cost	15,924,552	1,356,136		11,131,756		3,082,130		212,386		142,144	
Infra. Dev Charges	9,583,254	*		5,116,532		4,466,722		-		-	
Total Cost	128,701,567	46,035,242		52,507,624		26,122,399		2,399,089		1,637,212	
Profit/Loss	22,227,787	21,639,162		(5,524,058)		(2,112,034)		5,169,737		3,054,982	

12. The CIT(A) has given a categorically finding that as per the assessment order in the case of AOP the share of the assessee has been accepted @ 42,284% and 48.803% for both the projects. The CIT(A) also categorically held that the assessment order as well as the order of the CIT(A) in the case of AOP has been considered by him and the revenue sharing ratio for both the projects have been accepted.

13. A perusal of the revenue distribution by the AOP clearly show that the share of revenue of the assessee from both the projects is Rs.21639161/-. Since this share has been distributed by the AOP which has been accepted in the assessment of the AOP the assessee is eligible for exemption u/s. 86 of the Act in respect of this share of profit of Rs.21639161/-.

14. Considering the facts in totality we do not find any reason to interfere with the findings of the CIT(A).

15. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 02.07.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:- 02.07.2019

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	01.07.2019
Date on which the typed draft is placed before the dictating Member	01.07.2019
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	
Date on which the final order is uploaded on the website of ITAT	02.07.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	