

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA NO. 2599/DEL/2014
AY 2006-07

DCIT, CC-10, VS. SAAMAG CONSTRUCTION LTD.
NEW DELHI B-67, SARITA VIHAR,
NEW DELHI
(PAN: AAHCS8522R)

ITA NO. 2600/DEL/2014
AY 2007-08

DCIT, CC-10, VS. SAAMAG INFRASTRUCTURE LTD.
NEW DELHI B-67, SARITA VIHAR,
NEW DELHI
(PAN: AAJCS5438A)

ITA NO. 2603/DEL/2014
AY 2007-08

DCIT, CC-10, VS. SAGA DEVELOPERS (P). LTD.
NEW DELHI B-67, SARITA VIHAR,
NEW DELHI
(PAN: AAJCS4932K)

ITA NO. 4058/DEL/2015
AY 2011-12

DCIT, CC-19, VS. SAAMAG DEVELOPERS LTD.
NEW DELHI B-67, SARITA VIHAR,
NEW DELHI
(PAN: AAJCS4952R)
(APPELLANT) **(RESPONDENT)**

Assessee by : Sh. M.P. RASTOGI, ADV.
Department by : Sh. S.S. RANA, CIT(DR)

ORDER

PER H.S. SIDHU, JM

The Revenue have filed these 04 appeals against the respective orders of the Ld. CIT(A), New Delhi in respect of 04 different assesseees pertaining to assessment year 2006-07, 2007-08 & 2011-12. Since the grounds raised in some of the Appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 2599/Del/2014 (AY 2006-07).

2. The following grounds have been raised in ITA No. 2599/Del/2014 (AY 2006-07) in the case of DCIT vs. Saamag Construction Ltd.:-

- “1. That the CIT(A) erred in admitting additional evidence under Rule 46A.
2. That the CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 1,63,41,365/- on account of unexplained expenditure u/s. 69C.
3. That the CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 2,04,01,195/- made by AO u/s. 2(22)(e) of the Income Tax Act, 1961.
- 4(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.
- (b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

3. The following grounds have been raised in ITA No. 2600/Del/2014 (AY 2007-08) in the case of DCIT vs. Saamag Infrastructure Ltd.:-

- “1. That the CIT(A) erred in admitting additional evidence under Rule 46A.
2. That the CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 2,80,31,778/- on account of unexplained expenditure u/s. 69C.
- 4(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.
 - (b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

4. The following grounds have been raised in ITA No. 2603/Del/2014 (AY 2007-08) in the case of DCIT vs. Saga Developers (P) Ltd.:-

- “1. That the CIT(A) erred in admitting additional evidence under Rule 46A.
2. That the CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 26,40,000/- on account of unexplained expenditure u/s. 69C.
3. That the Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 40,23,220/- on account of cash payment for purchase of land.
- 4(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

- (b) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.”

5. The following grounds have been raised in ITA No. 4058/Del/2015 (AY 2011-12) in the case of DCIT vs. Saamag Developers Ltd.:-

- “1. The Ld. CIT(A) has erred in law as well as on facts in holding that the notice u/s. 142(1) was not served upon the appellant within prescribed time limit.
2. The Ld. CIT(A) has erred in law as well as on facts in the quashing the assessment order passed by AO u/s. 143(3) as null and void.
3. (a) The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.

(b)The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

6. The facts in all the appeals are common and identical and ground no. 1, 2 are exactly the same in Appeal No. 2599/DEL/14, 2600/DEL/14 & 2603/DEL/14, hence for the sake of convenience we are dealing with the facts of ITA No. 2599/Del/2014 (AY 2006-07) in the case of DCIT vs. Saamag Construction Ltd.

7. The brief facts of the case are that a search and seizure operation u/s. 132 of the Income Tax Act, 1961 (in short “Act”) was conducted by the Investigation Wing of the Department on 29.1.2009 in the case of M/s Sammag Group of cases. The assessee company’s business premises at

B-67, Sarita Vihar, New Delhi – 44 was also covered u/s. 132(1) of the Act. Notice u/s. 153A of the Act was issued to the assessee on 10.7.2009. In response to the said notice, return declaring an income of Rs. 6,51,670/- was filed on 19.2.2010. Notices u/s. 143(2) and 142(1) of the Act were issued alongwith a questionnaire dated 31.8.2010. Due to change of incumbency fresh notices u/s. 143(2) and 142(1) were again issued on 20.10.2010 and fixed for hearing on 29.10.2010. In response to various statutory notices, the AR of the Assessee attended the proceedings alongwith representative of the Assessee Company and furnished necessary details, information and documents called from time to time. During the assessment proceedings, AO observed that there was complexity in accounts of the assessee, therefore, after obtaining prior approval of the Commissioner of Income Tax, Central II, New Delhi, directions for special audit u/s. 142(2A) of the Act were issued to the assessee to get his accounts audited from M/s TR Chadha & Co., B-30, Connaught Place, New Delhi. The assessee was asked to furnish such Audit report u/s. 142(2A) within a period of 60 days from the date of receipt of these directions. The assessee has furnished Special Audit Report u/s. 142(1) on 06.6.2011. After perusal of Special Audit Report filed by the assessee, fresh questionnaire alongwith notice u/s. 142(1) were issued to the assessee on 10.6.2011 and case was fixed for 17.6.2011. In response to notices issued, assessee's counsel has attended the assessment proceedings from time to time alongwith 02 employees of the assessee company. After examination of replies/details

and Audit Report filed u/s. 142(2A), the assessment was completed u/s. 153A/143(3) of the Act vide order dated 03.8.2011 at Rs. 4,34,09,680/- and various additions have been made. Against the assessment order, the Assessee appealed before the Ld. CIT(A), who vide his impugned order dated 26.2.2014 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, the Revenue is in appeal before the Tribunal.

8. Ld. CIT(DR) relied upon the order of the Assessing Officer and reiterated the contentions raised in the grounds of appeal raised by the Revenue. In support of his contention, he filed the Written Submission which read as under:-

"With regard to addition u/s 2(22)(e), it is humbly submitted as follows:

1. The onus is upon the assessee that the amount was advanced & subsequently utilized for the purpose of business. This onus has not been discharged. It has not been shown how this amount was utilized in subsequent years With regard to addition u/s 69C, it is humbly submitted as follows:

1. In view of the provisions of section 132(4A) & 292C of I.T. Act, the onus is upon the assessee that the expenditure recorded in the seized papers is reconciled with its books of account. This onus has not been

discharged. The Ld.CIT(A) has merely and incorrectly accepted contention of the assessee that they were merely proposals. Reliance is placed on decisions mentioned below.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to presumption of entries found recorded in books of account seized during search as per sections 132(4A) & 292C of I.T. Act:

1. CIT Vs Sonal Construction [2012-TIOL-851-HC-DEL-IT1 (Delhi) (Copy enclosed)

where Hon'ble Delhi High Court held as follows:

"the Tribunal has also held that the presumption about the genuineness and truth of the contents of the documents seized, as provided in Section 132(4A), was not available to the AO in the assessment proceedings. The judgment of the Supreme Court in the case of P.R. Metrani, no doubt held that the presumption was not available to the AO while completing the assessment and that it was limited to the prior proceedings in connection with the search. However, there was a later statutory amendment; Section 292C was introduced by

the Finance Act, 2007 with retrospective effect from 1.10.1975;

++ the phrase "in any proceeding under this Act" in sub-section (1) to section 292C are important. They permit the AO to invoke the presumption that the seized documents belonged to the person searched, that the contents of the seized documents/books of accounts are true and that the signature of every other part of the books of accounts or documents which purports to be in the handwriting of any particular person are in that person's handwriting etc., even in the assessment proceedings. After the insertion of the section, the judgment of the Supreme Court cited above can no longer be called in aid to hold that the presumption is not available to the AO in making the assessment;

++ the Tribunal has reasoned that the seized papers are loose papers and not books of accounts. We are unable to appreciate the significance or sequitur of the statement made by the Tribunal. It is not necessary that the seized documents should be in the form of proper books of accounts so that they can be relied upon for the purpose of making additions. They could be in any form, including loose papers on which notings or

scribblings have been made. While commenting on the seized documents, the Tribunal contradicted itself by first observing that it cannot be stated that the figures in the papers were the actual investment or the actual sale proceeds and thereafter, in the very next sentence, stating that the seized documents "did give out certain figures regarding the four projects that the assessee had undertaken in the course of his business. " If the seized papers did in fact contain figures relating to the four projects which were admittedly undertaken by the assessee, we do not see how the Tribunal could hold that the Revenue could not rely on the correlation between the position shown by the seized documents and what has been recorded by the assessee in its books of account. The Tribunal does not dispute that there existed a correlation; but it yet held that the correlation alone was not sufficient to make the impugned additions. This observation was sought to be supported by some reasons;

++ an examination of those reasons shows that they are far from convincing. The Tribunal held on the basis of the judgment of the Supreme Court in the case of P.R. Metrani that the presumption about the truth and genuineness of the contents of the seized documents

and its handwriting was not available to the AO in the course of the assessment proceedings. This position has now been nullified by the retrospective amendment. Even otherwise, there is no merit in the conclusion of the Tribunal that the correlation between the seized material and the books of account, on which reliance was placed by the AO, was not sufficient for the purpose of making the additions;"

2- *CIT Vs Naresh Kumar Aggarwala [2011] 9 taxmann.com 249 (Delhi)/[2011] 198 Taxman 194 (Delhi/[2011] 331 ITR 510 (Delhi) (Copy Enclosed)*

where Hon'ble Delhi High Court held that there was a presumption raised under section 132(4A) on seizure of fax message and it was upon assessee to rebut that presumption by offering a plausible explanation.

3- *Mahabir Prasad Runqta Vs CIT [2014] 43 taxmann.com 328 (Jharkhand)/r20141 266 CTR 175 (Jharkhand) (Copy Enclosed)*

where Hon'ble Jharkhand High Court held that loose sheets seized during search sometimes contain valuable information and thus those are to be regarded as 1 documents' within meaning of section 158B(b). There is presumption raised under section 132(4A) regarding

documents seized and in light of such presumption, assessee ought to have produced other documents to disprove entries made in loose sheets.

4. *Bhagheeratha Engineering Ltd Vs ACIT T20171 79 taxmann.com 325 (Kerala)/f20151 379 ITR 244 (Kerala)/r20161 282 CTR 209 (Kerala) (Copy Enclosed)*

where Hon'ble Kerala High Court held that in view of introduction of section 158BH presumption under section 132(4A) regarding ownership of seized assets was not limited to proceedings for search and seizure under section 132, and was also available for framing regular assessment.

5 *Ashok Kumar Vs CAT T20161 69 taxmann.com 129 (Patna) /[2016] 239 Taxman At (Patna[2016] 386 ITR 342 (Patna)/r20161 290 CTR 450 (Patna) (Copy Enclosed)*

where Hon'ble Patna High Court held that where Assessing Officer passed income escaping assessment on basis of a loose sheet found in premises of father of assessee, action of Assessing Officer was justified being based on relevant material and, merely, because he used wrong presumption in assessment order it would not change nature of order.

6 Baldev Raj Vs CIT r2010l 2 taxmann.com 335 (Punjab & Haryana) Enclosed)

Assessee submitted that presumption under section 132(4A) of the Act was rebuttable and the assessee led evidence to rebut the said presumption. There is no dispute about the proposition that presumption can be rebutted nor the Tribunal has held to the contrary. The Tribunal has held that the assessee failed to rebut the presumption, which is purely a finding of fact. Hon'ble Punjab & Haryana High Court held that no substantial question of law arises from the impugned order.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to acceptance of additional evidence in violation of Rule 46A of I.T. Rules:

1. CIT vs. Manish p.nid Well (P.) Ltd [16 taxmann.com 27, 204 Taxman 106, 245 CTR 397 (Copy enclosed) where Hon'ble Delhi High Court held where additional evidence was admitted and accepted as genuine at first appellate stage without Assessing Officer furnishing his comments and without verification, requirement of rule 46A(3) were not satisfied.

2. *CIT vs. Jansampark Advertising & Marketing (P.) Ltd* (56 taxmann.com 286, 231 Taxman 384. 375 ITR 373) (Copy Enclosed) where Hon'ble Delhi High Court held that in case of unaccounted entries found in books of account of assessee, though it is obligation of Assessing Officer to conduct proper scrutiny of material, in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry shifts to Commissioner (Appeals) and Tribunal and they cannot simply delete addition made by Assessing Officer on ground of lack of inquiry

3- *ACIT VS Mohar Sinah* (16 taxmann.com 37. 49 SOT 129. 137 TTJ 654) (Copy Enclosed)

where Hon'ble Jodhpur High Court held that where assessee filed an application under rule 46A, Commissioner (Appeals) must dispose of the application by way of a reasoned order and thereafter proceed to dispose of appeal on merits

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to deemed dividend u/s 2(22)(e) of I.T.Act:

1 *Miss P. Sarada Vs CIT* [96 Taxman 11, 229 ITR 444. 144 CTR 2091 (Copy Enclosed)

where Hon'ble Supreme Court held that advances made by company to assessee would have to be treated as deemed dividends paid on dates when withdrawals were allowed to be made and subsequent adjustment of account made on very last day of accounting year would not alter position that assessee received notional dividends on various dates.

CIT Vs Miss P. Sarada T21 Taxman 941 (Copy Enclosed)

where Hon'ble Madras High Court held that Amount of impugned excess withdrawals, even though adjusted against credit balance before close of year, was assessable as deemed dividend in assessee's hands in terms of section 2(22)(e)

2- Puneet Bhagat v. ITO [157 ITD 353)

Where Hon'ble ITAT Delhi held that deemed dividend- Loans and advances to share holders- Loans received by the company would be treated as deemed dividend in hands of P and S in proportion to their shareholdings.

3. Sunil Kapoor Vs CIT T20151 63 taxmann.com 97 (Madras)/r20151 235 Taxman 279 (Madras)

where Hon'ble Madras High Court held that where assessee, holding 60 per cent shares of a company,

took personal loan from accumulated surplus of said company, said amount would be treated as deemed dividend under section 2(22)(e), after reducing therefrom amount repaid by assessee during year

4. *Shashi Pal Aarwal Vs CIT T20151 54 taxmann.com 289 (Allahabad)/r2015] 229 Taxman 307 (Allahabad)/r2015I 370 ITR 720 (Allahabad)*

where Hon'ble Allahabad High Court held that where lending of money was not part of business of lending companies, loan/advance given to assessee-shareholder would be treated as deemed dividend under section 2(22)(e)

5. *CIT v Sunil Chopra r20111 12 taxmann.com 496 (Delhi)/[2011] 201 Taxman 316 (Delhi) [2011] 242 CTR 498 (Delhi)*

Tribunal deleted addition accepting assessee's contention that said advances were received against sale of property under terms of agreement dated 18-9-2003 and, therefore, money was taken by assessee in line of his business of real estate. Hon'ble Delhi High Court held that there was great perversity and infirmity in findings and observations of Tribunal and, therefore, impugned order was to be set aside.

9. On the other hand, Ld. Counsel for the assessee relied upon the order of the Id. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference on our part.

10. We have heard both the parties and perused the records especially the orders of the revenue authorities as well as the Written Submission filed by the Id. CIT(A) and the case laws cited by him therein.

10.1 As regards ground no. 1 involved in Appeal No. 2599/Del/14, 2600/Del/14 & 2603/Del/14 is concerned which is relating to admission of additional evidence under Rule 46A, we note that during the appellate proceedings the Assessee moved an application dated 13.12.2012 for admission of additional evidence under Rule 46 on the issues of relating to the additions made by the AO u/s. 69C and 40A(3) of the Act and Ld. CIT(A) forwarded the same to the AO for his examination and his report on the same was received vide letter dated 25.9.2013 and copy of the remand report was provided to the assessee for rejoinder and in response to the same, the Assessee filed its rejoinder on 12.12.2013. We further note that as the documents in the form of affidavits furnished by the assessee as additional evidences are vital and go to the root of the matter, hence, the same were rightly admitted by the Ld. CIT(A) under Rule 46A to decide the issue on merit. We further note that Ld. CIT(A) has relied upon the decision in the case of CIT vs. Virgin Securities Credit P. Ltd. (2011) 332 ITR 396 (Del.) wherein, the jurisdictional High Court has held that, evidence which is crucial in disposing the case can be

admitted. Since the documents filed by the assessee as additional evidences are of the nature that may advance the interest of justice and vital to decide the issue under consideration, the same need to be admitted and considered on merits. Hence, the documents filed as additional evidence in the course of appeal proceedings were rightly admitted for consideration and adjudication of the issues under consideration by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 in Appeal No. 2599/DEL/14, 2600/DEL/14 & 2603/DEL/14. The case laws cited by the Ld. CIT(DR) are distinguished on facts.

10.2 As regards ground no. 2 involved in Appeal No. 2599/DEL/14, 2600/DEL/14 & 2603/DEL/14 is concerned, we note that the AO has merely relied on the observation of the Special Audit Report and made the addition in dispute. We find that the Special Audit Report simply based on the observations regarding the applicability of section 69C on the seized material without verifying the actual contents thereof and in turn the AO relied on observation of the Special Auditor to hold that the amounts mentioned in the Report of the Special Auditor are covered by section 69C of the I.T. Act, 1961. It has been submitted by the AR of the assessee that there was nothing on the seized records indicate as to which years these expenditures which were mentioned on the seized material were incurred. It is contended that while taxing any sum of money, necessary to identify the relevant assessment year, which has to

be based on evidence on record. the AR of the assessee argued that there was notings on the seized material to indicate the year in which the sums of money identified by the Audit has been expended. Therefore, it has been argued that the addition made on the said conclusion which is based on surmise and conjectures is not justified and deserve to be deleted. It is noted that the assessee has incurred expenditure which was not recorded in the books of accounts and the AO is duty bound to examine all these aspects before reaching the conclusion, which he failed to do so. It is also noted that the transactions mentioned on the seized documents were only proposals sent by broker for the land deal for approval of the management and on the basis of such rough proposals no adverse conclusion should have been drawn by the AO. Considering the above, Ld. CIT(A) has rightly held that AO was not justified in making the impugned addition merely on the basis of the observations of the Auditors without going into the veracity of the same, hence, the addition of Rs. 1,63,41,365/- made by the AO u/s. 69C was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the ground no. 2 in Appeal No. 2599/DEL/14, 2600/DEL/14 & 2603/DEL/14. The case laws cited by the Ld. CIT(DR) are distinguished on facts.

10.3 As regards ground no. 3 involved in Appeal No. 2599/Del/14 is concerned, which is relating to deletion of addition of Rs. 2,04,01,195/- made by the AO u/s.2(22)(e) of the Act, we note that during the appellate

proceedings before the Ld. CIT(A), assessee filed a copy of order dated 22.3.2013 in assessee's own case passed by the earlier Ld. CIT(A) in Appeal No. 37/11-12/-(A)32 for the AY 2007-08 wherein on identical facts, as in the assessment year under consideration, the earlier Ld. CIT(A) had deleted the addition of Rs. 44,74,198/- made by the AO u/s. 2(22)(e) of the Act by holding as under:-

"5.13 I have considered the findings recorded by the Ld. AO as per the assessment order, the submissions made by the Id. AR and the facts of the case on record. The Assessing Officer has made additions in the hands of the lending companies on the basis that the monies have been given as loans to the Group Companies in which there are common shareholders. While calculating the accumulated profits, the Assessing Officer has added the amount of addition made in the Assessment Order to the figure of the profit available as per the books of account. The Id. AR argued that the appellant is a lender and not the borrower, therefore the addition u/s 2(22)(e) made on protective basis is not called for in this case. The appellant further contended that the judgment of Hon'ble Supreme Court in the case of P.K. Badam vs. CIT (supra) has been applied entirely erroneously and even as per the said judgment itself, the accumulated profit does not mean assessable or

taxable profit liable to be taxed as income and will not include any addition effected by the Assessing Officer in determining the total income. In this regard, the appellant has also made the working of accumulated profits for the entire Group, based on the judgment of Hon'ble Supreme Court in the case of P.K. Badiam vs. CIT (supra). (Copy attached as per Annexure 'A').

5.14 On being asked during the appellate proceedings as to why the accumulated profit is to be adjusted / reduced against the additions made u/s 2(22)(e) in the earlier years, the appellant relied upon the judgments of Hon'ble Supreme Court in the case of CIT vs. Narasimhan (Deed.) and Others [1999] 238 ITR 327 (SC) and that of Hon ble Chennai Bench of IT AT in the case of Aswani Enterprises vs. ACIT [2009] 121 TTJ (Chennai) (supra).

5.15 As mentioned earlier, the addition in the instant case were made in the hands of the lender, whereas section 2(22)(e) does not contemplate the same, rather it provides for the addition in the hands of the borrowers. Under section 2(22)(e), there is no distinction between a loan given for the business purpose or otherwise. Moreover, the appellant has not

brought on record any cogent evidence in support of its contention that the amounts advanced were for business purpose. The so called master land development agreement amongst the various group companies was not produced either before the Id. AO or before the special auditors Hence the same cannot be relied upon. Therefore, in my considered opinion, the invocation of the provisions of section 2(22)(e) has rightly been made by the Assessing Officer. However as per the provisions of section 2(22)(e), the additions are required to be made in the hands of the borrowers/shareholders instead of the lender, hence I am unable uphold the action of the Id. AO making an addition of Rs.44,74,198/- in this case. With the above observations, the addition of Rs.44,74,198/- is directed to be deleted and accordingly, the ground no. 8 of the appeal is allowed in favour of the appellant.”

10.3.1 After perusing the aforesaid findings of the Ld. CIT(A) for the assessment year 2007-08 in assessee's own case, we find that since the facts involved in the assessee's present case are identical to the facts of the above case in respect of assessment year 2007-08 in assessee's own case, hence, following the above order of the earlier Ld. CIT(A) of the assessment year 2007-08 in the case of M/s Samag Construction Ltd., a company of Saamag Group, Ld. CIT(A) has rightly deleted the addition of

Rs. 2,04,01,195/- made by the AO u/s. 2(22)(e) of the I.T. Act, 1961 in the case of the assessee, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issues in dispute and reject the ground raised by the Revenue. The case laws cited by the Ld. CIT(A) in his findings, as aforesaid, are directly applicable in the case of the assessee. However, the case laws cited by the Ld. CIT(DR) are distinguished on facts.

10.4 As regards ground no. 3 involved in Appeal No. 2603/Del/14 relating to deletion of addition of Rs. 40,23,220/- on account of cash payment for purchase of land is concerned, we note that the addition in dispute was made on the basis of the observations of the Auditor made in his Report u/s. 142(2A), which were based on the document seized during the course of search proceedings. We further note that the AO observed that the reply of the assessee has been considered, which, for the same reasons as given for making the addition of Rs. 26,40,000/- u/s. 69C, was not found to be acceptable and, therefore, the impugned addition of Rs. 40,23,220/- was made u/s. 69C. Since we have already confirmed the findings of the Ld. CIT(A) of deleting the addition of Rs. 26,40,000/- vide para no. 10.2 of this order, hence, the addition in dispute is not tenable, because the same was made on surmises and conjectures on the basis of a document seized during the course of search which was nothing but was a dumb paper on which rough notings have been recorded which is normal in the real estate business. However, the amounts mentioned on the seized document was unexplained expenditure

without analyzing and verifying the contents thereof was not justified, hence, the addition made by the AO was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and accordingly, reject the ground raised by the Revenue.

11. In the result, the Appeal No. 2599/DEL/14 (AY 2006-07), 2600/DEL/14 (AY 2007-08) & 2603/DEL/14 (AY 2007-08) of the Revenue stand dismissed.

ITA NO. 4058/DEL/2015 (AY 2011-12)

12. The brief facts of the case are that the assessee company is engaged in the business of real estate development i.e. acquisition of land, development thereof, construction of residential apartments, commercial complexes etc. The assessee filed its return of income on 30.9.2011 declaring a loss of RS. 8,11,002, which was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). The case of the assessee was taken up for scrutiny and statutory notices u/s. 143(2) and 142(1) were issued. In response to the same, the AR of the assessee attended the assessment proceedings and furnished necessary details, information and documents as called for by the AO from time to time. Thereupon, the assessment in this case was completed in terms of an order u/s. 143(3) dated 03.3.3014 at a total income of Rs. 1,68,80,020/-, as against the returned loss of Rs. 8,11,002/- wherein the AO made an addition of Rs. 1,76,91,022/- in the income of the assessee u/s. 2(22)(e)

of the I.T. Act, 1961 on protective basis. Aggrieved by the assessment order dated 03.03.2014, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 09.03.2015 has allowed the appeal of the Assessee. Against the impugned order dated 09.3.2015, the Revenue is in appeal before us.

13. Ld. CIT(DR) relied upon the order of the Assessing Officer and stated that Ld. CIT(A) has erred in law as well as on facts in holding that the notice u/s. 142(1) of the Act was not served upon the assessee within the prescribed time limit. He submitted that the assessee vide letter dated 30.7.2013 and 11.11.2013 submitted that the notice u/s. 143(2) of the Act was not received by the company within the time specified in the Income Tax Act for service of notice. In this regard, it was informed to the assessee that the notice u/s. 143(2) of the Act in this case for the assessment year 2011-12 was issued on 25.9.2012 i.e. within six months from the end of financial year in which return was furnished and duly dispatched and served upon the assessee through speed post.

14. On the other hand, Ld. Counsel for the assessee relied upon the order of the Id. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference on our part.

15. We have heard both the parties and perused the records especially the orders of the revenue authorities. We find that as pr the provisions of section 143(2) of the Act, statutory notice u/s. 143(2) of the Act is

required to be served on the assessee within 6 months from the end of the financial year in which the return for the assessment year under consideration was furnished and it is not only required to be issued within 6 months from the end of the financial year in which the return for the assessment year in dispute was furnished. It means that the onus to prove the service of notice within the statutory period was on the AO and not upon the assessee. In the instant case on considering the facts of the case, the AO failed to discharge the onus of proving the service of notice upon the assessee u/s. 143(2) of the Act within the statutory period of limitation. We note that in the case of the assessee a speed post booking list is lying in the assessment record indicating the issuance of notice to the assessee but there was no evidence on record to show that either the same was received back by the AO or the same was served upon the assessee on or after the prescribed time limit. Thus, in this case, the notice u/s. 143(2) of the Act was not proved to have been served upon the assessee on or before 30.9.2012. Therefore, Ld. CIT(A) by following the various case laws relied upon by the assessee including the decision of the Hon'ble Supreme Court of India in the case of Y. Narayana Chetty vs. ITO reported in 31 ITR 388 (SC) has held that a notice prescribed in section 143(2) of the Act is not merely a procedural requirement. Such notice will have to be served on the assessee within the state date. If no notice is issued or if notice is issued but not served on the assessee within the state time, then the validity of the proceedings taken by the AO would be illegal and void, has rightly held that since there was no service of

notice u/s. 143(2) of the Act within statutory time limit in this case, the proceedings initiated thereafter were null and void as it was assumption of jurisdiction without following the procedures laid in the Act and accordingly, quashed the assessment order passed by the Assessing Officer in this case as null and void, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Revenue. In the result, the Revenue's appeal stand dismissed.

16. In the result, all the 04 Appeals i.e. ITA Nos. 2599/DEL/14 (AY 2006-07) (DCIT VS. SAAMAG CONSTRUCTION LTD.); 2600/DEL/14 (AY 2007-08) (DCIT VS. SAAMAG INFRASTRUCTURE LTD.; 2603/DEL/14 (AY 2007-08) (DCIT VS. SAGA DEVELOPERS (P) LTD.) AND 4058/DEL/2015 (AY 2011-12) (DCIT VS. SAAMAG DEVELOPERS LTD. filed by the Revenue stand dismissed.

Order pronounced on 08/07/2019.

Sd/-

Sd/-

[B.R.R. KUMAR]
ACCOUNTANT MEMBER
SR BHATNAGAR

[H.S. SIDHU]
JUDICIAL MEMBER

Date: 08/07/2019

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches