

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1686/Del./2012
(Assessment Year : 2006-07)**

**ITA No.5710/Del./2013
(Assessment Year : 2006-07)**

M/s. Vishnu Apartments Pvt. Ltd., vs. ACIT,
C/o 4/17B, MGF House, Central Circle 7,
Asaf Ali Road, New Delhi.
New Delhi.

(PAN : AAACV6397E)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri I.P. Bansal, Advocate
Shri Vivek Bansal, Advocate
Ms. Suman Sapra, CA
REVENUE BY : Shri J.K. Mishra, CIT DR**

Date of Hearing : 15.10.2019
Date of Order : 30.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

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2. Appellant, M/s. Vishnu Apartments Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal being ITA No.1686/Del/2012, sought to set aside the impugned order dated 27.01.2012 passed by the Commissioner of Income-tax (Appeals)-I, New Delhi qua the assessment year 2006-07 on the grounds inter alia that:-

“Ground No.1:

The Ld. Commissioner of Income Tax (Appeals) -I, New Delhi (hereinafter referred to as 'CIT(A)') has erred in law and in the fact & circumstances of the case by passing the order dated 27.01.2012 u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act'). The order passed by the CIT(A) is illegal being against the principles of natural justice and against the provisions of the Act.

Ground No.2:

The CIT(A) has erred on facts and circumstances of the case in confirming the addition made by the Assessing Officer (herein after referred to as "AO") amounting to Rs.5,30,38,150 on account of alleged gain arising out of the sale of land without appreciating the facts in proper perspective especially the fact that the land sold out was part of integrated project and the sale consideration amounted to recoveries from the project.

The total income confirmed at Rs. 5,30,91,542 is only on surmises conjectures and should be deleted.”

3. Briefly stated the facts necessary for adjudication of the issue at hand are : The assessee is engaged into the business of construction/ leasing of residential houses, commercial buildings, flats etc. and to act as builders, colonizers and civil and constructional contractors. On the

basis of search and seizure operation conducted under section 132 of the Income-tax Act, 1961 (for short 'the Act'), notice u/s 153A of the Act was issued and in response thereto, assessee preferred to treat the return filed on 17.02.2009 as reply to the notice. Thereafter, the assessee was required to file necessary details in response to the notice u/s 143 (2) and 142(1) along with a questionnaire. Assessee with an opening stock of Rs.12.58 crores during the year under assessment purchased land of Rs.12.13 crores for an integrated project by incurring an amount of Rs.7.51 crores as construction expenses and thereby reduced an amount of Rs.12.66 crores as recoveries from the purchase of total amount shown under the head construction work-in-progress as per following details :-

	<i>Amount (Rs. in lacs)</i>
<i>Opening stock as on 01.04.2006 (commercial complex at Jaipur) Land Cost at Shikhopur (Gurgaon)</i>	<i>1,231.71 26.85</i>
<i>Add :</i>	
<i>Land Purchased at Ullawas, Gurgaon</i>	<i>735.61</i>
<i>Land purchased at Behrampur, Gurgaon Subsequently exchanged in lieu of land at Village Tigra, Maidawas, Gurgaon</i>	<i>477.84</i>
<i>Construction cost incurred at commercial complex at Jaipur</i>	<i>751.65</i>
	<i>3,223.66</i>
<i>Less : Sale consideration for land at Ullawas at Gurgaon</i>	<i>1,266.00</i>
<i>Total</i>	<i>1,957.34</i>

4. Finding the details given by the assessee as to its integrated project as not sustainable on facts and law, Assessing Officer (AO) disallowed adjustment of expenses which were not related to project on the ground that the assessee has sold lands which were lying as stock-in-trade in different places other than the place where the main project was carrying out and thereby made an addition of Rs.5,30,38,150/- (Rs.12,66,00,000/- - Rs.7,35,61,850/- = Rs.5,30,38,150/-).

5. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. At the very outset, Id. AR for the assessee contended that to prove the fact that the project was integrated one, assessee had produced resolution and application form of Jumera Residential Block at Gurgaon which was not considered by the AO nor the same has been considered by Id. CIT (A) which is violation of principles of natural justice.

8. Undisputedly, assessee had one project at Jaipur and four land holdings at Shikhopur, Ullawas, Tigra and Maidawas all in Gurgaon. It

is the case of the assessee that the project at Gurgaon is an extension of the project at Jaipur to give allotment for residential complexes to the buyers of shops in Jaipur project. The issue before the AO to be decided was, “*as to whether the project at Gurgaon is an extension of Metropolitan project at Jaipur*” and this question was decided by the AO in negative and taxed the profits of the sale of land whereas the assessee has reduced the sale consideration of land from work-in-progress and has not offered the profits for taxation.

9. When we examine the contention raised by the Id. AR for the assessee that the evidence brought on record by the assessee that Jumera Residential Block at Gurgaon was part of the integrated project has not been appreciated by the AO as well as Id. CIT (A) particularly the findings returned by the Id. CIT (A) in the impugned order on the issue in question, in para 4.2, it is apparent on record that sufficient opportunity to explain and adduce the evidence in support of its stand has not been given. It is recorded by Id. CIT (A) in the impugned order that the assessee has merely relied upon Board Resolution passed on various dates but Id. CIT (A) declined the contention of the assessee on the ground that the third party evidence to substantiate its contention that both the projects at Gurgaon and Jaipur are integrated one has not been led.

10. We are of the considered view that when assessee has categorically relied upon Board Resolution of the company to prove the

fact that both the project at Gurgaon and Jaipur were integrated projects which certainly gets corroboration from the audited accounts, summarily dismissing the claim of assessee is certainly violation of rules of natural justice.

11. Ld. CIT (A) has not deliberated in any manner as to what would be the outcome of Board Resolutions relied upon by the assessee when examined in the light of the audited accounts. All these Board Resolutions are available at pages 8 to 10 of the paper book and audited financials are available at pages 11 to 20 of the paper book. Ld. CIT (A) was required to get the Board Resolutions examined in the light of the audited financials and the other circumstantial evidence during appellate proceedings but he has dismissed this argument of the assessee by merely recording the findings that no third party evidence has been brought on record by the assessee. All these facts go to prove that the issue is required to be examined afresh by the AO in the light of the Board Resolutions and audited financials of the company and the evidence available on record by providing adequate opportunity of being heard to the assessee. Consequently, impugned order passed by the Id. CIT (A) is set aside and the file is remanded back to the AO to decide afresh after providing adequate opportunity of being heard to the assessee.

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12. Since initiation of penalty u/s 271(1)(c) of the Act is in consequence to the impugned order passed by the Id. CIT (A) now set aside, the penalty appeal u/s 271(1)(c) is also set aside to the AO to proceed in accordance with law after passing fresh assessment order on this issue, after providing adequate opportunity of being heard to the assessee. Consequently, the appeal is allowed for statistical purposes.

13. Resultantly, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in open court on this 30th day of October, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 30th day of October, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**