

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

**BEFORE
SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2720/Del/2009
(ASSESSMENT YEAR-2005-06)**

Asst CIT, Circle-7(1), New Delhi	Vs.	M/s. Sweta Estates Pvt. Ltd. Global Business Park Tower-D, 3 rd Floor, M.G. Road, Gurgaon. PAN -AAACS 0564Q
(Appellant)		(Respondent)

Appellant By	Sh.S.S.Rana, CIT-DR
Respondent by	Dr. Rakesh Gupta Adv.& Sh. Samil Agarwal, Adv.
Date of Hearing	17.03.2020
Date of Pronouncement	12.06.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal is preferred by the Department against order dated 23.03.2009 passed by the Ld. Commissioner of Income Tax (Appeals)-X, New Delhi {CIT(A)} for Assessment Year: 2005-06.

2.0 Brief facts of the case are that the assessee is a private limited company engaged in the business of real estate. The return of income was filed declaring a loss of Rs.11,200/-. The case was selected for scrutiny

and the assessment was completed u/s 143(3) of the Income tax Act, 1961 (hereinafter called as 'the Act') vide order dated 28.12.2007. Apart from the other additions made in the assessment order, the Assessing Officer (AO) added an amount of Rs.21,70,34,294/- u/s 68 of the Act as unexplained cash credit. The Assessing Officer was of the view that the assessee had failed to discharge its onus u/s 68 to satisfactorily explain the cash credit reflected in the form of 'advances received against booking of flat/space'. This amount of Rs.21,70,34,294/- represented advance money received towards booking of flats from 447 parties. The Assessing Officer had randomly picked up some of the parties for examination and had called for their confirmations. Since the Assessing Officer was not satisfied with the responses received, the Assessing Officer made the addition of the entire booking amount in respect of all 447 parties aggregating to Rs.21,70,34,294/-.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority. The Ld. CIT (A) called for the remand report from the Assessing Officer and the Assessing Officer vide letter dated 11.02.2009 confirmed that the confirmations had been received. The grievance of the Assessing

Officer was that the copies of the bank account of the applicants who had the booked the flats and paid the advances were not filed and, therefore, the confirmations could not be cross tallied. The Ld. CIT (A), after considering the explanation of the assessee as well as remand report by the Assessing Officer, deleted the entire addition of Rs.21,70,34,294/-.

2.2 Aggrieved with this order of the Ld. CIT (A), the Department filed appeal before this Tribunal. The Tribunal vide order dated 30.11.2010 remanded the matter back to the Assessing Officer for fresh adjudication on the ground that the Ld. CIT (A) had deleted the addition by recording a negative finding.

2.3 Thereafter, the assessee approached the Hon'ble High Court of Delhi by filing the appeal u/s 260A of the Act against the order of the Tribunal. The Hon'ble Delhi High Court in ITA No.870/2011, vide order dated 16.08.2011, held as under:

"We find force in the aforesaid submissions of the learned counsel for the assessee. In fact, the Tribunal has discussed the matter on the basis of the exercise done by the AO while carrying out the assessment. What is not appreciated by the Tribunal is that before the CIT (A), documents were filed on which remand

report was obtained, this related to all 447 flats and not in respect of 37 persons. Therefore, the position had completely changed, insofar as material on record is concerned, at the appellate stage before the CIT (A). The Tribunal is not correct while holding that the CIT (A) deleted the addition by negative finding. We are not commenting upon the order of the CIT (A) is sustainable or not, insofar as merits are concerned. What we emphasize is that it was not a case where the matter was required to be remitted back to the AO for fresh adjudication. The entire and complete material which was relied upon by the assessee was before the Tribunal. In the remand report, the AO had specifically stated that the confirmations given by the persons, who had purportedly booked the flats and the payments shown by the assessee in its account, could not be verified because of nonproduction of the bank statements of those applicants, who had booked the flats. Whether non-production of the bank statements of the said applicants would lead to any adverse inference, etc. is the matter which is to be judged by the Tribunal on merits. ”

2.4 Apart from this, the Assessing Officer had also made a disallowance of interest of Rs.63,08,097/- and Rs.2,23,787/- paid to Bank on account of interest free loan of Rs.28 crore granted to sister companies. The Ld. CIT (A) had deleted this addition and the same was challenged by the Department before the ITAT but the ITAT decided this issue in favour of the assessee. Aggrieved, with this finding of the ITAT, the Department approached the Hon'ble Delhi High Court challenging the deletion and the

Hon'ble Delhi High Court in the Department's appeal No.894/2011 vide order dated 14.05.2012 held as under:

“In view of the aforesaid position, noticing the arguments, which were advanced by the Revenue and the reasons given by the Tribunal, we deem it appropriate to remit the matter to the Tribunal for deeper scrutiny and examination. The Tribunal will re-examine the issue and record factual finding and apply the legal ratio explained in S.A. Builders Ltd. (supra). Accordingly, we answer the aforesaid question of law in favor of the Revenue with an order of remit. The Tribunal will examine the merits without being influenced by the observations made above. The appeal is accordingly disposed of. No costs.”

2.5 Thus, now these two issues are again to be heard by the Tribunal as per the directions of the Hon'ble Delhi High Court in the above two orders in assessee's appeal and Department's appeal as aforementioned.

3.0 At the outset, both the parties submitted that two issues in dispute needed a fresh and thorough examination and scrutiny and it would be in fitness of things if both the issues are remitted to the file of the Assessing Officer for such purpose. Both the parties submitted and agreed that the examination and the verification of the 447 parties would

necessarily have to be carried out at the level of the Assessing Officer. On a query from the Bench, the Ld. Authorized Representative gave an undertaking and assured the Bench that the assessee would fully cooperate in getting the advances verified before the Assessing Officer. Similarly, with respect to the interest disallowance both the parties submitted and agreed with this issue also needs detailed enquiry and examination and that the Assessing Officer would be the best person to carry out such exercise. On this issue also, the Ld. Authorized Representative assured the Bench that the assessee would fully cooperate in getting issue resolve before the Assessing Officer.

3.1 Therefore, in view of the consent of both the parties, we remit both the issues to the Assessing Officer for fresh verification, examination and adjudication as per law after giving proper opportunity to the assessee to present its case. We also direct the assessee to extend full co-operation to the Assessing Officer and submit the relevant documents and details in this regard when called upon to do so.

4.0 In the final result, the appeal of the Department stands allowed for statistical purposes.

Order pronounced on 12/06/2020.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Dated:12/06/2020

PK/Ps

Copy forwarded to:

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

Sd/-

(SUDHANSHU SRIVASTAVA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI