

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 6219/Del/2014 : Asstt. Year : 2010-11

M/s G. D. Builders, 201A, Apra Plazam, Plot No. 29, Community Centre, Rani Bagh, Pitampura, Delhi-110034	Vs	Asstt. Commissioner of Income Tax, Circle-38(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAFG2009B		

Assessee by : Sh. Rajiv Saxena, Counsel

Revenue by : Sh. R. K. Gupta, Sr. DR

Date of Hearing: 03.08.2020

Date of Pronouncement: 31.08.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT-XXVIII, New Delhi dated 10.09.2014.

2. Following grounds have been raised by the assessee:

"1. That the Id. CIT (A) has grossly erred in law and on facts in upholding the disallowance of Rs.19,05,926/- u/s 36(1)(vii) of the Act. The Id. CIT (A) has arbitrarily brushed the submissions made and evidence furnished by the assessee.

1.1 The finding that the amounts written off were not balances of debtors but constituted the security deposit given to the contractees, which have not been refunded and were not bad debts as defined u/s 36(1)(vii) of the Act, is wholly incorrect and is based on totally misconceived facts.

2. That the further finding of the Id. CIT (A) that inspite of repeating opportunity, the assessee has failed to prove that the amount claimed as bad debts have swelled the profit of any year preceding to the year in question, is wholly incorrect and has been arrived at firstly without appreciating the facts and submission made and in any case without granting a fair and reasonable opportunity. The Id. CIT (A) has disregarded the facts that the amount claimed as bad debts was part of sale proceeds of the relevant year. In respect whereof the profit have duly been declared by the assessee.

3. That the Id. CIT (A) has erred in upholding the addition of Rs.1,02,331/- made by the AO on account of shattering charges of A.Y. 2010-11 paid to M/s Preet Shuttering Store on which allegedly no TDS has been deducted. The Id. CIT (A) has arbitrarily ignored the facts that assessee had deducted TDS while making payment to the aforesaid party as well as a copy of Form 16A in respect thereof filed by the assessee. Merely on the ground that AO has made the disallowance on the basis that no TDS was deducted.

4. That the Id. CIT (A) has erred in law and on facts in upholding the levy of interest u/s 234B and 234C."

Disallowance of Rs.19 lacs u/s 36(1)(vii):

3. The assessee debited Rs.19.05 lacs on account of bad debts which was disallowed by the Assessing Officer on the grounds that the amount of bad debt claimed must have been included in the income of the assessee in the earlier years. The AO held that the assessee could not prove that the amount of debt has been taken into account while computing taxable income in any previous year.

4. The Id. CIT (A) confirmed the addition made by the AO.

5. Heard the arguments of both the parties and perused the material available on record.

6. We find that the bad debts claimed out of the contract receipt are as under:

1. Aman Resorts Pvt. Ltd. – Rs.15,29,518/-
2. Ansal Housing & Construction Ltd. – Rs.2,01,203/-
3. MCD Staff Quarter – Rs.2,00,000/-

7. We find from the record before us, that the bad debts arose out of the contracts awarded in the assessment year 2005-06 and executed over a period of three years in the case of Aman Resorts Pvt. Ltd. In the case of Ansal Housing & Construction Ltd., the contract was awarded in the assessment year 2000-01 and executed upto assessment year 2003-04. Similarly, the contract was allotted in the assessment year 1994-95 by the MCD and the work was completed in the assessment year 2000-01.

8. We have gone through the accounts of the relevant years filed before us with regard to the considering the amount of contracts received in the relevant years and find that the total contract receipt are part of the turnover of the assessee during the relevant years. Since, the bad debts of the amount which could not be recovered from the contractee and since the entire contract amount has been offered to tax, we hereby hold that the assessee is allowed to claim the debts unrecoverable under the head "bad debts".

Disallowance of Shuttering Expenses of Rs.1.02,331/-:

9. The assessee has made payment to one entity namely, M/s Preet Shuttering Store towards shuttering expenses. The AO disallowed an amount of Rs.1,02,331/- as no TDS was deducted

on the amounts paid. It was argued that the TDS has been duly deducted on the entire amounts paid to M/s Preet Shuttering Store. He argued that on the amount pertaining to only one bill no. 06 dated 30.04.2009 has not been deducted initially, however if the entire transactions from M/s Preet Shuttering Store are considered, it can be found that the TDS has been deducted in entirety. He further argued that the payee has already furnished the return by taking into account the sums and paid the taxes thereon. It was argued that the assessee is willing to furnish the certificate to that extent from the payee to the AO. Hence, keeping in view the facts canvassed by the assessee, the matter is remanded back to the AO to give the benefit of deduction of TDS on production of certificate from M/s Preet Shuttering Store or furnishing of reconciliation of the TDS on the payments made to M/s Preet Shuttering Store by the assessee.

10. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 31/08/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 31/08/2020

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR