

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2422/Del/2017
Assessment Year: 2012-13

Daffodil Buildcon Pvt. Ltd.,
303, 3rd Floor, Global Foyer,
Golf Course Road, Sector-43,
Gurgaon.

Vs DCIT,
Circle-7(1),
CR Building, IP Estate,
New Delhi.

PAN: AACCD4642C

ITA No.2927/Del/2017
Assessment Year: 2012-13

DCIT,
Circle-7(1),
CR Building, IP Estate,
New Delhi

Vs. Daffodil Buildcon Pvt. Ltd.,
303, 3rd Floor, Global Foyer,
Golf Course Road, Sector-43,
Gurgaon.

PAN: AACCD4642C

(Appellant)

(Respondent)

Assessee by : Shri Sudesh Garg, Advocate
Revenue by : Shri Jagdish Singh, Sr. DR

Date of Hearing : 09.02.2021
Date of Pronouncement : 17.03.2021

ORDER

PER R.K. PANDA, AM:

These are cross appeals. The first one is filed by the assessee and the second one is filed by the Revenue and are directed against the order dated 9th

February, 2017 of the CIT(A)-3, New Delhi relating to assessment years 2012-13. For the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.2927/Del/2017 (by the Revenue)

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of development of residential plotted colony and commercial construction. It filed its return of income on 15th June, 2013 declaring total income of Rs.8,68,130/-. During the course of assessment proceedings, the AO, on perusal of the balance sheet as on 31.03.2012 and annexure thereto, found that the assessee company, during the year, has issued 2,59,460 shares @ Rs.900/- per share (face value of Rs.10/- + Rs.890/- premium per share) and has raised a total amount of Rs.23,35,14,000/- in the form of share capital and share premium from three entities, the details of which are as under:-

S. No.	Name of Entity	Amount Received (In Rs.)	Details of Amount
1.	M/s global Merchandisers Pvt. Ltd., 12, Ring Road, Lajpat Nagar-IV, New Delhi-24	6,78,54,600	75,394 shares @ Rs.900 per share (Rs.10 face value + Rs.890 share premium on each share) raising Rs.7,53,940/- as Share Capital & Rs.6,71,00,660/- as share premium
2	M/s Kabir Commodities Pvt. Ltd., 5, Central Avenue, 1 st Floor, Maharani Bagh, New Delhi-65	1,24,69,500	13,855 shares @ Rs. 900 per share (Rs. 10 face value + Rs. 890 share premium on each share) raising Rs. 1,38,550/- as Share Capital & Rs. 1,23,30,950/- as Share Premium.
3	M/s D.D. Resort Pvt. Ltd. 12, Ring Road, Lajpat Nagar-IV, New Delhi-24	15,31,89,900	1,70,211 shares @ Rs. 900 per share (Rs. 10 face value + Rs. 890 share premium on each share) raising Rs. 17,02,110/- as Share Capital & Rs. 15,14,87,790/- as Share Premium.

Total	23,35,14,000	2,59,460 shares @ Rs. 900 per share (Rs. 10 face value + Rs. 890 share premium on each share) raising Rs. 25,94,600/- as Share Capital & Rs. 23,09,19,400/- as Share Premium.
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3. From the various details furnished by the assessee, he noted that the above-mentioned shares were issued on account of share application money received from these entities, the details of which are as under:-

S. No.	Name and address of the company	Opening Balance (In Rs.)	Amount received during the year (In Rs.)	Share issued /Amount repaid	Closing Balance as on 31.03.2012 (In Rs.)
1	M/s Global Merchandisers Pvt. Ltd., 12, Ring Road, Lajpat Nagar-IV, New Delhi-24	6,58,85,000	1,75,00,000	Rs. 6,78,54,600/- on account of 75,394 shares issued @ Rs. 900 per share (Rs. 10 face value + Rs. 890 share premium on each share + Repayment of Rs. 1,55,30,400/-	Nil
2	M/s Kabir Commodities Pvt. Ltd., 5, Central Avenue, 1 st Floor, Maharani Bagh, New Delhi-65	14,98,00,000	1,66,40,000	Rs. 1,24,69,500/- on account of 13,855 shares issued @ Rs. 900 per share (Rs. 10 face value + Rs. 890 share premium on each share) + Repayment of Rs. 9,69,35,00,000/-	5,70,35,500
3	M/s D.D. Resort Pvt. Ltd., 12, Ring Road, Lajpat Nagar-IV, New Delhi-24	13,71,25,000	1,60,80,000	Rs. 15,31,89,900/- on account of 1,70,211 shares @ Rs. 900 per share (Rs. 10 face value + Rs. 890 share premium on each share) + Repayment of Rs. 15,100/-	Nil
Total amount received during the year				Rs. 5,02,20,000/-	

4. The AO asked the assessee to furnish the complete details of share capital, share premium, share application money and unsecured loan received during the year to prove the identity and credit worthiness of persons and genuineness of the transactions in terms of the provisions of Section 68 of the Income Tax Act, 1961. The assessee was also required to ensure personal deposition of directors of the above named three companies. Although the assessee furnished the details such as copies of income-tax returns, confirmations and copy of financial statements of the three creditor companies, however, the assessee failed to ensure the personal deposition of the directors of the aforesaid companies. From the various details furnished by the assessee, the AO noted that *prima facie*, the companies, namely, M/s Global Merchandisers Pvt. Ltd., M/s Kabir Commodities Pvt. Ltd. appeared not to be genuine parties and the genuineness of the transactions entered with them is also doubtful. He noted that the revenue operations are negligible but they have raised huge share capital/share premium. The funds of these companies have been further invested in other companies as share capital/share premium, the assessee being one of such companies. According to the AO, raising of share capital through charging of unrealistic and unjustified share premium is a key ingredient of accommodation entry operations. He further noted from the copies of their bank statements furnished that majority of debit/credit entries of identical or equal amounts appears to be on account of round tripping of money before passing on to beneficiaries like the assessee. He, therefore, inferred that the

assessee has taken credit entries of Rs.3,41,40,000/- from these two companies, the details of which are as under:

1.	M/s Global Merchandisers Pvt. Ltd.	Share Application Money received during F.Y. 2011-12	Rs. 1,75,00,000
2.	M/s Kabir Commodities Pvt. Ltd.	Share Application Money received during F.Y. 2011-12	Rs. 1,66,40,000
Total amount credited from these two companies			Rs. 3,41,40,000 /-

5. Since, according to the AO, the assessee failed to his satisfaction regarding the identity and credit worthiness of the above two companies and genuineness of the transaction, therefore, following the decisions of the Honøble Delhi High Court in the case of CIT vs. Titan Securities Ltd. in ITA No.263/2012 and in CIT vs. Nova Promoters & Finlease (P) Ltd., reported in 342 ITR 169, the AO made an addition of Rs.3,41,40,000/- to the total income of the assessee by invoking the provisions of section 68 of the IT Act.

6. Before the CIT(A), it was submitted that the investor companies are the group companies and have common directors or their family members. The investing companies have been assessed u/s 143(3) of the Act. There is no evidence whatsoever that the investing companies were controlled by any entry operator. There is no evidence or allegation that cash was deposited in investing companies or even downstream of investing companies and source of investing companies is suspect. This is a case where funds have moved within the group and there is no fresh inflow of funds from outside the group. It was submitted that in one of the entities, i.e., M/s Global Merchandisers Pvt. Ltd., there is a net

inflow of Rs.21,69,600/- yet the AO had made cash credit addition of Rs.1,75,00,000/-. Similarly, in the case of the other entity, there was negative infusion of Rs.8,02,95,000/- yet the AO made an addition of Rs.1,66,40,000/-. It was argued that complete set of documents which are required to prove the genuineness of transaction was provided to the AO. It was submitted that the AO has wholly acted on baseless assumptions and suspicion. Relying on various decisions, it was argued that the assessee has fully discharged the onus cast on it by proving the identity and credit worthiness of the investing companies and the genuineness of the transaction. It was accordingly argued that the addition made by the AO being not in consonance with law and fact should be deleted.

7. Based on the arguments advanced by the assessee, the Id.CIT(A) deleted the addition of Rs.3,41,00,000/- made by the AO u/s 68 of the Act by observing as under:-

3.1 Having gone through the submissions of the appellant, order of the assessment made by the Assessing Officer and the material evidences placed on the record, it emerges from the facts that the appellant has received share application money from M/s Global Merchandisers (P) Ltd. and M/s Kabir Commodities (P)Ltd. It is evident from the case records that the appellant has filed the copies of the final accounts i.e. balance sheet and profit and loss account of the subscribers during the assessment proceedings. The company has received a sum of Rs.1,75,00,000/- from M/s Global Merchandisers (P)Ltd. It is clear from the balance sheet of the subscriber that the company is having a balance sheet of Rs.151 crores. The company has purchased shares of other companies as stock in trade as well as for the investment purposes. The non current investments have decreased from Rs.22.9 crores to Rs.12.4 crores whereas the loans and advances have increased from Rs.39.3 to 63.5 crores. The inventory of the investments have decreased from 82.2 crores to 75.2 crores. It is clear from the information as discussed above that the company was having a liquidity during the year and the share application

money has been subscribed from the funds available with the company which have been generated from the sale of investments.

3.2 Further, the company has received the share application money of Rs. 1,66,40,000/- from M/s Kabir Commodities (P)Ltd. The size of the balance sheet of the company during the year under consideration is Rs.90 crores. The company has achieved the turn over to the extent of Rs.108.9 crores. The company has purchased the shares of other companies as stock in trade as far as for the investment purposes. The non current investments have decreased from Rs.32.8 to Rs.12.2 crores whereas the loans and advances have increased from Rs.58.4 to Rs.63.5 crores. The subscription to the share application money of Rs. 1,66,40,000/- has been made from the funds generated through the sale of investment during the year.

3.3 The Assessing Officer has not brought any evidence on the record that both the subscribers are not having the creditworthiness to subscribe to the share capital of the company. There is nothing on the record to hold that the transactions made by the companies are not genuine. In view of the facts discussed above, it is clear that both the companies are having the creditworthiness to subscribe to the share application. The addition of Rs.3,41,00,000/- made by the Assessing Officer under section 68 of the Act is therefore, deleted and the Assessing Officer is directed to modify the order of assessment accordingly.ö

8. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

ö1. Ld.CIT(A) erred in law and on facts of the case in deleting the addition of Rs.3,41,40,000/- made by the AO u/s 68 of the Income Tax Act.

2. The appellant craves leave to modify, add or forego any ground (s) of appeal at any time before or during the hearing of this appeal.ö

9. The ld. DR, heavily relied on the order of the AO. He submitted that the ld.CIT(A) without any justification has deleted the addition which should be reversed and that the order of the AO be restored.

10. The ld. Counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). Referring to the copy of the assessment order passed u/s

147/143(3) for the assessment year 2011-12, order dated 24th December, 2018, the ld. Counsel submitted that the case of the assessee for the A.Y. 2011-12 was reopened by issue of notice u/s 148 dated 29th March, 2018 on the ground that the assessee has received share application money during the year under consideration on unjustified premium. The case of the assessee was reopened after the order for A.Y. 2012-13 was passed. He submitted that the AO, in the order passed u/s 147/143(3) has accepted the share application money and share premium received by the assessee. Even for A.Y. 2013-14, there is no addition and the returned income of Rs.12,42,470/- has been accepted in the order passed u/s 143(3) of the Act. Since the assessee has received the share application and share premium from the group companies who are assessed u/s 143(3) of the Act, therefore, there is no justification on the part of the AO to make the addition and the ld.CIT(A) was fully justified in deleting the addition. He also drew the attention of the Bench to the following statements made before the CIT(A):-

“From the details as pointed out above it can be seen that there are receipts as well as repayments. Even if the deposits are treated as non- genuine in that case also the net of receipts and payment can only be added. In the case of M/s Global Merchandisers Pvt. Ltd. the receipts are to the extent of Rs. 1,75,00,000/- where as the repayments have been made to the extent of Rs. 1,53,30,400/-. That means the net of the two i.e. receipt and payment remains to the extent of Rs. 21,69,600/-. Even if it is accepted for the sake of the argument that nothing is genuine then only the balance figure can only be added i.e. the addition could be only to the extent of Rs. 21,69,600/-.

3.5 In the case of M/s Kabir Commodities Pvt. Ltd. the receipts are to the extent of Rs. 1,66,40,000/- where as the repayments have been made to the extent of Rs.9,69,35,000/-. That means the net of the two i.e. receipt and payment comes to a negative figure being Rs. 8,02,95,000/-. Even if it is accepted for the sake of the argument that nothing is genuine, then only the balance figure can be added i.e. nothing remains for addition.

It is also pertinent to point out that the amounts have been received and repaid throughout the year. Even the outstanding amount has remained in the case of M/s Kabir Commodities Pvt. Ltd. Both the companies are working at the same place as that of the appellant company i.e. 70, Nehru Nagar, Agra.

3.6 From M/s Global Merchandisers Pvt. Ltd. a sum of Rs. 1,75,00,000/- was received during the year through banking channels. Complete copy of account duly certified by the said party along with bank statement, Balance sheet & ITR were filed during the course of assessment proceedings. For the year under consideration, the company has balance sheet of the size of Rs. 151 crores. Also the total Turn Over of the business is to the extent of Rs. 7,21,25,000/-. Complete evidence proving (i) identity, (ii) credit worthiness and (iii) genuineness of transactions was filed during the course of assessment proceedings vide submission dated 09.03.2015 which is placed in the paper book at í . Page No____.

3.7 From M/s Kabir Commodities Pvt. Lid. a sum of Rs. 1,66,40,000/- was received during the year through banking channels. Complete copy of account duly certified by the said party along with bank statement, Balance sheet & ITR were filed during the course of assessment proceedings. For the year under consideration, the company has balance sheet of the size of Rs. 90 crores. Complete evidence proving (i) identity, (ii) credit worthiness and (iii) genuineness of transactions was filed during the course of assessment proceedings vide submission dated 09.03.2015 which is placed in the paper book atí í Page No____.

3.8 It is also to be submitted that the name of company namely M/s Kabir Commodities Pvt. Ltd., was changed to M/s Raj Darbar Commodities Pvt. Ltd. (copy certifying change of name is part of the paper book on Page no. ô). Further an amount of Rs. 2,49,55,000/- was received from the same company and also the payment of Rs. 4,05,10,000/- was made in the immediately succeeding year i.e. AY 2013-14. Copy of ledger account of M/s Kabir Commodities Pvt. Ltd. in the books of appellant is part of the paper book on page ô . On the basis of evidence filed in AY 2013-14, the genuineness has been accepted by the AO and no addition on this account is made. Copy of the assessment order of the appellant for the AY 2013-14 is made part of the paper book on page noí . Copy of the assessment order of M/s Rajdarbar Commodities Pvt. Ltd. for the AY 2013- 14 is made part of the paper book on page no.____ö

11. The ld. Counsel also drew the attention of the Bench to the various submissions made before the CIT(A) and submitted that this is a case based on

facts and the various decisions relied on by the AO are not applicable to the facts of the present case. The Id. Counsel for the assessee drew the attention of the Bench to the submissions made before the CIT(A) giving details of directors of the assessee company as well as the investor companies and submitted that either the directors of the assessee company or their family members are also directors of the investing companies from whom share capital is received.

12. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee in the impugned assessment year has received 2,59,360 shares @ Rs.900/- per share (i.e., Rs.10 face value + Rs.890/- premium per share) and has received a total amount of Rs.23,35,14,000/- in the form of share capital and share premium from three entities, namely, M/s Global Merchandisers Pvt. Ltd., M/s Kabir Commodities Pvt. Ltd., and M/s DD Resorts Pvt. Ltd. After considering the opening balance of share application money and the amount received during the year, the AO accepted the share capital and share premium received from M/s DD Resort Pvt. Ltd. and made an addition of Rs.3,41,40,000/- being the amount received during the year from M/s Global Merchandisers Pvt. Ltd. (Rs.175 lakhs) and M/s Kabir Commodities Pvt. Ltd. (Rs.1,66,40,000/-) as unexplained share capital/share premium u/s 68 of the IT Act, 1961. The basis of addition made by the AO is that the assessee failed to produce the

directors/principal officers of the above companies and failed to prove to his satisfaction regarding the identity and credit worthiness of the above companies and the genuineness of the transaction. According to the AO, the investor companies are not genuine companies and the transactions entered with them is doubtful since their revenue operations are negligible whereas they have raised huge share capital/share premium. The funds of these companies have been invested in other companies as share capital/share premium and the assessee being one of such companies. The bank statements furnished show that major debit/credit entries of identical or equivalent amounts appear to be on account of round tripping of money before passing on to beneficiaries like the assessee. It is also his objection that receipt of share capital through charging of unrealistic and unjustified share premium is a key ingredient of accommodation entry operations. We find, the Id.CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs.

13. We do not find any infirmity in the order of the CIT(A) in deleting the addition. Perusal of the details submitted in the paper book as well as in the submissions made before the CIT(A) reveals that in the case of M/s Global Merchandisers Pvt. Ltd., the receipts are to the extent of Rs.175 lakhs whereas the repayments have been made to the extent of Rs.1,53,30,400/-. Therefore, there is net receipt of Rs.21,69,600/- only. From the various details furnished by the assessee, we find, the amount of Rs.175 lakhs was received from M/s global

Merchandisers Pvt. Ltd. through banking channels and the company, during the impugned assessment year has a balance sheet of the size of Rs.151 crores. The total turnover of the said investor is Rs.7,21,25,000/-. Similarly, in the case of M/s Kabir Commodities Pvt. Ltd., the amount has been received through banking channels and the company has a balance sheet of the size of Rs.90 crores. From the various details furnished by the assessee, we further find an amount of Rs.2,49,55,000/- was received from the same company and also the payment of Rs.4,05,10,000/- made to the said company in the immediately succeeding assessment year, i.e., 2013-14 and the AO in the order passed u/s 143(3) has accepted such receipts and payments.

14. From the various details furnished by the assessee, we further find that the investing companies are group companies and have common directors or their family members. Both the investing companies have been assessed u/s 143(3) of the Act, a fact stated before the lower authorities and not controverted by the Revenue. There is no evidence whatsoever that the investing companies were controlled by any entry operator. Further, there is no evidence or allegation that cash was deposited in the investing companies or even downstream of investing companies and source of investing companies is suspect. We find merit in the argument of the Id. Counsel that this is a case where the funds have moved within the group and there is no fresh inflow of funds from outside the group. Since the AO, in the orders passed u/s 143(3) of the Act in the immediately succeeding

assessment year, which was reopened subsequent to the assessment for the impugned assessment year on the allegation that the assessee has received huge share capital and share premium, has accepted such share capital and share premium and the assessee has successfully demonstrated the identity and credit worthiness of the investor companies and genuineness of the transaction, therefore, we do not find any infirmity in the detailed and the reasoned order of the CIT(A) deleting the addition made by the AO u/s 68 of the Act. The order of the CIT(A) on this issue is accordingly upheld and the grounds raised by the Revenue are dismissed.

ITA No.2422/Del/2017 (By the assessee)

15. The grounds raised by the assessee are as under:-

01. The learned CIT (Appeals), erred in law and on facts by confirming the disallowance of Rs. 83,36,756/- made by the AO debited to the profit and loss account on account of provision for site development expenses against sale of plots ignoring the critical fact that sales were credited to P&L account even without actual realization of full sales amount on the basis of consistent method of accounting followed by the appellant.

2. The learned CIT (Appeals), erred in law and on facts in summarily confirming the aforesaid disallowance of Rs. 83,36,756/- without taking into consideration detailed submissions on facts and law made by the appellant and without dealing with them.

3. The learned CIT (Appeals), erred in law and on facts by confirming disallowance of premium paid on re-purchase amounting to Rs. 21,00,000/- without taking into consideration detailed submissions on facts and law made by the appellant and without dealing with them.

4. The appellant craves for liberty to add fresh ground(s) of appeal and And also to amend, alter and modify any of the grounds of appeal.ö

16. Facts of the case, in brief, are that during the course of assessment proceedings, the AO asked the assessee to justify the expenses with documentary evidence. However, according to the AO, the assessee could not justify the following expenses:-

- a) Premium on repurchase - Rs. 21,00,000/-. No details and justification has been filed in this regard. As the expense claimed on account of premium paid for repurchase of the booked plot is unsubstantiated, the same is disallowed.
- b) Provision for site development expenses against sold plots - Rs. 83,36,756/-. Since no specific justification with regard to the aforesaid expenses was filed and this is only provision which was supposed to be added back in the computation of income, the same expense amounting to Rs. 83,36,756/- is disallowed.

16.1. He, therefore, made addition of Rs.1,04,36,756/- to the total income of the assessee.

17. In appeal, the Id.CIT(A) confirmed both the additions by observing as under:-

õ4. The ground no.3 of the appeal has been raised by the appellant regarding the addition of Rs.83,36,756/- on account of site development expenses debited to the accounts against the plots sold by the company. The submissions filed by the appellant in this regard have been considered and kept on the record. The Assessing Officer has made the categorical finding of fact in the order of assessment that the appellant has made the provisions for the site development expenses of Rs.83,36,756/- against the plot sold by the company. It has been further held by the Assessing Officer that no specific justification with regard to the aforesaid expenses was filed and only the provisions were created for the aforesaid expenses in the accounts. No evidence has been filed by the appellant during the appellate proceedings to rebut the finding of fact noted by the Assessing Officer. In view of the above, the addition of Rs.83,36,756/- made by the Assessing Officer is sustained.

5. The ground no.4 has been raised regarding the further addition of Rs.21 lakhs which has been claimed as expenditure being the premium on the

repurchase of the property. The Assessing Officer has noted the finding of fact that no details have been filed regarding the payment of the premium paid for the repurchase of the property and the issue remained unsubstantiated during the assessment proceedings. The appellant has not filed any further evidence during the appellate proceedings to rebut the finding of fact noted by the Assessing Officer. In view of the fact on the record, the disallowance made by the Assessing Officer is sustained.ö

18. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

19. Grounds of appeal No.1 and 2 of the assessee relate to the order of the CIT(A) in sustaining the addition of Rs.83,36,756/- on account of site development expenses debited to the P&L Account, whereas ground of appeal No.3 relates to disallowance of Rs.21,00,000/- being premium on repurchase of plots.

19.1 The ld. Counsel for the assessee submitted that no opportunity of being heard was allowed by the AO regarding disallowance of Rs.83,36,756/- being provision for site development expenses and the disallowance of Rs.21 lakhs being premium on re-purchase. So far as the premium on re-purchase of Rs.21 lakhs debited to the P&L Account is concerned, he submitted that such premium became payable on account of re-purchase of plots already booked by three persons the details of which are as under:-

01. Global Merchandisers Pvt. Ltd.	-	Rs.16,00,000/-
2. Sh. Devi Das Garg	-	Rs.2,50,000/-
3. Smt. Kusum Lata	-	<u>Rs.2,50,000/-</u>
Total	-	Rs.21,00,000/-ö

20. He submitted that the above three persons had booked plots in the projects being developed by the assessee. They requested to cancel the booking as there was an upside on the resale. The persons who have booked the plots have been paid the premium on booking to the extent of Rs.21 lakhs. He submitted that in the case of M/s Global Merchandisers Pvt. Ltd., the payment of Rs.3 lakhs was received on 16th June, 2011 whereas on re-purchase of the said plot, premium of Rs.16 lakhs was credited to his account and the entire amount of Rs.19 lakhs was paid by way of two cheques, i.e., Rs.9 lakhs on 18th February, 2013 and Rs.10 lakhs on 4th March, 2013. Similarly, in the case of Shri Devi Das Garg, the assessee has received an amount of Rs.1 lakh on 05.04.2011 and on re-purchase of the said plot, premium of Rs.2,50,000/- was credited to his account and he was paid Rs.3,50,000/- by way of cheque. In the case of Kusum Lata, the booking amount of Rs.1 lakh was received on 10th June, 2011 and on re-purchase of the said plot, premium of Rs.2,50,000/- was credited to her account and she was paid altogether an amount of Rs.3,50,000/- by way of cheque. He submitted that taxing the amount of Rs.21 lakhs in the hands of the assessee amounts to double addition, i.e., once in the hands of the assessee and again in the hands of the three persons who have received the premium and offered the same for taxation. He submitted that although all these details were given to the CIT(A), however, he has not passed a speaking order on this issue.

20.1 So far as the disallowance on account of provision for site development amounting to Rs.83,36,756/- is concerned, the Id. Counsel drew the attention of the Bench to the notes to accounts which read as under:-

"g) *Details of Income determination are under:*

<i>Particulars</i>	<i>Amount (Rs.) As At 2011</i>	<i>Amount (Rs.) As At 2012</i>
<i>Total Advances received</i>	<i>140111847.50</i>	<i>152826890.00</i>
<i>Sales (Based 55% & above advances received against plot booking)</i>	<i>100042931.00</i>	<i>213848053.00</i>
<i>Sundry Debtors</i>	<i>1605255.00</i>	<i>23779246.50</i>
<i>Advances received for 55% and above</i>	<i>83990381.00</i>	<i>149999890.00</i>
<i>Advances from customers (Based on less than 55% advances received against plot booking)</i>	<i>56121466.50</i>	<i>2827000.00</i>

h) Development expenses are the expenses which will be incurred by the company on the development of the site in terms of the roads, infrastructure laying of pipelines for sewage system, laying of the poles of electricity and gas pipeline etc. The estimated provisions has been made in terms of the present estimates made by the term of architects and the profitability of the project has been worked out after making provisions of the estimates and the promises made with investors. The escalation in terms of the cost and estimate has not been worked out in view of the fickle inflation which is very unpredictable as such those high escalations has been taken care of in the estimates and therefore the future projects of the profit may vary in terms of actual realization by the company."

21. He submitted that the entire sale price receivable has been booked as income wherever 55% or above of the sale price is received. In the relevant financial year advances received to the extent of Rs.14,99,99,890/- are relatable to the customers from whom sale price over 55% has been received. In these cases, sales has been booked to the Profit & Loss Account to the extent of Rs.21,38,48,053/-. He submitted that the various details furnished before the AO as well as before the CIT(A) would show that the expenses debited have actually merged with the work-in-progress and the closing stock. He submitted that once it is accepted that the entire sale price of plots booked where the booking amount

received is 55% or more, then, on the same analogy, the corresponding expenses had to be debited to the Profit & Loss Account and are required to be allowed as such. The Id. Counsel for the assessee also drew the attention of the Bench to the Notes to Accounts forming part of the audited accounts, copy of which is placed at page 238 of the paper book and which read as under:-

- 4) Additional information pursuant to the provisions of para 3, 4C and 4D of part II of Schedule VI to the Companies Act, 1956, has been disclosed as under:

Project in process

Project at Hisar (Project -1):

PARTICULARS	AREA (Acre)	CURRENT YEAR (Rs.)	AREA (Acre)	PREVIOUS YEAR (Rs.)
Opening Stock	65.662	20,05,44,762.45	65.662	18,84,60,988.96
Administrative Expenses/prior period	---	5,551,678.52	---	645,879.00
Development Expenses	---	231,661,028.41	---	1,03,34,069.37
Financial Exp	---	147,536.39	---	14,678.88
Government Charges	---	220,166,000.00	---	9,82,500.00
Depreciation		19,149.94		---
Preliminary Expenses, Deferred Tax Asset W/Off	---	26,947.40	---	106,646.24
Total cost to date	65.662	658,117,103.11	65.662	20,05,44,762.45
Less: Transferred against sold plots		92,006,880.00		---
Inventory to be carried to Balance sheet		566,110,223.11		20,05,44,762.45

Note: During the current year, all the expenses incurred has been added to the cost of the project as the same is incidental to the project work going on. Total cost to be incurred against sold projects comes to Rs. 92,006,880.00/-, out of which, Rs. 62,273,776.18/- (10% of cost incurred till date) have already been incurred and balance Rs. 29,733,103.82/- has been provided as provision for development expenses to be incurred on laying of roads, sewage, fencing, street lights etc. (details as per note no. 6 below).

22. He submitted that the order of the Id.CIT(A) is not at all a speaking order. He has not considered the details furnished before him, therefore, both the additions made by the AO should be deleted.

23. The Id. DR, on the other hand, heavily relied on the order of the AO and the CIT(A).

24. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find, the AO in the instant case made an addition of Rs.21 lakhs on account of premium on re-purchase of plots and addition of Rs.83,36,756/- on account of provision for site development expenses against sale of plots on the ground that the assessee failed to justify the above mentioned expenses to his satisfaction. We find, the Id.CIT(A) sustained both the additions, the reasons of which have already been reproduced in the preceding paragraphs. So far as the premium of re-purchase is concerned, it is the submission of the Id. Counsel that three of the customers have cancelled their bookings and since the market price was higher during the relevant period, they were paid certain extra amount as premium and the assessee thereafter sold the plots at a higher price. There is no loss to the revenue since those plots were sold at higher price and taxing the amount again will amount to double addition, i.e., once in the hands of the assessee and again in the hands of the investors who had cancelled their bookings and obtained the premium. We find, the lower authorities have not considered the

various details furnished by the assessee in the paper book. Once the plots are sold at a higher price than the price at which these were sold earlier before cancellation along with the premium on cancellation, there should not be any addition since the assessee is paying tax on higher amount. Considering the totality of the facts and in the interest of justice, we deem it proper to restore the issue of premium on re-purchase of plots to the file of the AO with a direction to verify the details of sale of the above three plots and delete the addition once it is proved that the plots are sold at higher price than the price at which these were sold earlier along with premium on cancellation.

25. So far as the provision for site development expenses against sale of plots at Rs.83,36,756/- is concerned, here also we find the order of the CIT(A) is a cryptic one. He has not at all considered the various details furnished by the assessee before him including the notes to accounts in the audited balance sheet. Since the AO in the instant case has made the addition on account of non-furnishing of details and the Id.CIT(A) has not at all considered the various submissions made before him and has passed a cryptic order, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue of provision for site development expenses to the file of AO with a direction to give one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The grounds of appeal No.1-3 are accordingly allowed for statistical purposes.

26. Ground No.4 being general in nature is dismissed.

27. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 17.03.2021.

Sd-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: March, 2021.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi