

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

ITA No. 1449/DEL/2014
[A.Y 2007-08]

The Dy. C.I.T.
Central Circle - 15
New Delhi

Vs.

M/s Paras Build Call Pvt Ltd.
[Now known as Paras Build
Tech Pvt Ltd, 11th Floor
Paras Twin Towers, Tower B
Sector - 54, Gurgaon, Haryana

PAN: AACC 1752D

[Appellant]

[Respondent]

Assessee by : Shri Salil Aggarwal, Sr. Adv,
Shri Madhur Aggarwal, Adv

Revenue by : Shri Gaurav Pundir, Sr. DR

Date of Hearing : 15.07.2021

Date of Pronouncement : 03.08.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
CIT(A)-2, Faridabad dated 26.11.2013 pertaining to A.Y 2007-08.

2. The substantive grievances of the Revenue read as under:

“1. That the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,25,00,000/- made by the Assessing Officer on account of unexplained advance.

2. That the Id. CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 7,60,17,148/- made by the Assessing Officer on account of unaccounted cash receipts on sale of properties.”

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee is engaged in the business of call centre and real estate. For the year under consideration, return declaring an income of Rs.91.28 lakhs was filed on 07.11.2007. Return was selected for scrutiny assessment under CASS and accordingly, statutory notices were issued and served upon the assessee.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has given an advance of Rs.1.25 crores to Shri Anil Hoble. The assessee was asked to explain the purpose of such advance. Vide reply dated 24.12.2009, the assessee stated that the advance was given to Shri Anil Hoble for a project at Goa but the same could not be worked out and finally, the amount was refunded in F.Y. 2009-10. The Assessing Officer was of the opinion that the assessee has not been able to prove that it was an advance given for business purposes and, accordingly, added an amount of Rs. 1.25 crores to the income of the assessee.

6. Before the Id. CIT(A), it was strongly contended that since the assessee has not claimed any deduction from its income, the question of its disallowance does not arise.

7. The Id. CIT(A) found the contention of the assessee to be correct and deleted the addition.

8. In our considered view, an advance is a debit entry in the books of accounts and the same goes with balance sheet of the assessee and not charged to the profit and loss account. Since nothing has been

charged to the profit and loss account, we do not find any logic in the impugned addition and the ld. CIT(A) has rightly deleted it, which calls for no interference. Ground 1 is, accordingly, dismissed.

9. Facts relating to the second ground show that a survey operation was conducted at the premises of the collaborators of the assessee, namely, Shri Jaspal Singh and Shri Kamaljit Singh. Report was received by the Assessing Officer from the office of the JCIT, Range - 6, Mohali. During the course of survey, it was noted that Shri Jaspal Singh and Shri Kamaljit Singh had received an amount of Rs. 20.30 crores from M/s Paras Buildtech [P] Ltd. as part of their revenue share as per the collaboration agreement.

10. In the survey proceedings, one paper was found and impounded which contained month-wise details of cash received by the two brothers from Paras Buildtech India [P] Ltd. Financial year wise break-up of the amount received by the two brothers is as under:

15	980	5500	10500	10290000	98.20	4-70	5390000	4900000
17	1312	3000'	7250	9512000	55-76	39-36	3936000	5576000
18	1310	3770	10230	13401300	133-96		4938700	8462600
*19				0			0	0
20	1884	5500	7000	13188000	128.17	3-71	10362000	2826000
22A&B	936	3060	10200	9547200	92.24	3-23	2864160	6683040
*23				0		-	0	0
24	1116	5000	10050	11215800	110.18	1-9*4	558x1000	5635800
25	2059	4000	10000	20590000	205.90	0.0Q	8236000	12354000
26	1067	6170	10290	10979430	106.16	3-59	6583390	4396040
28	860	7840	9800	8428000	65.00	19.28	6742400	1685600
30	623	5500	11000	6853000	29.25	38.2j)	3426500	3426500
*33				0			0	0
36	894	6000	10500	9387000	54-63	39-24	5364000	4023000
37	982	8960	10960	10762720	103.20	4.40	8798720	1964000
*38				0			0	0
40	934	7600	10860	10143240	98.89	2.51	7098400	3044840
42	734	5500	10500	7707000	75-12	1-95	4037000	3670000
F.F				0			0	0
6	922	6250	6250	5762500	57-63	0.00	5762500	0

7	977	7000	8280	8089560	77-55	3-37	6839000	125056c
9	1 in	5000	6250	11106250	106.62	4-44	8885000	222125c
10'	1777	5000	6250	11106250	106.62	4-44	8885000	222125c
12	1777	5760	9600	17059200	164.01	6-59	10235520	682368c
15	1764	*778 0	9380	16546320	103.77	61.61	13723920	282240c
16	677	5600	8000	5416000	52.26	1.90	3791200	162480c
17	714	5880	8000	5712000	57-12	0.00	4198320	151368c
18	1055	6250	6250	6593750	63-53	2.41	6593750	c
21	1516	6250	6250	9475000	94-75	0.00	9475000	c
22	2599	6360	8500	22091500	220.92	0.00	16529640	556186c
24	1247	4500	7500	9352500	92.98	0.55	5611500	3741000
,26&27	2109	8180	8180	17251620	163.83	8.62	17251620	0
28	1036	2500	6800	7044800	32.17	38.28	2590000	4454800
30	1054	5550	8770	9243580	92.44	0.00	5849700	3393880
*31				0			0	0
32	617	5200	9500	5861500	52.53	6.09	3208400	2653100
33	904	5420	9500	8588000	83-43	2.45	4899680	3688320
S.F				0			0	0
1	397	7500	7500	2977500	28.28	1.50	2977500	0
2	311	3000	7300	2270300	21-37	i-33	933000	1337300
3	273	4280	8550	2334150	23.20	0.14	1168440	1165710
5	1260	6760	7950	10017000	97-38	2.79	8517600	1499400
8	910	5380	7700	7007000	68.17	1.90	4895800	2111200
9	-234	6200	8bob	1872000	17-95	0.77	1450800	421200
10	415	3200	7500	3112500	27.85	3-28	1328000	1784500
*	■ \			b			0	0
Aiichor	37262	1610	3350	124827700	709.92	537-99	59991820	64835880
Pyper	60000	1330	2370	142200000	944.80	476.60	79800000	62400000
Movie	34090	2100	3499	118974100	1116.60	74-57	71589000	47385100
Hotel	64080	3190	3500	224280000	2000.00	242.80	20441520 0	19864800
				0			0	0
							Total cash receipt	345939910

12. From an analysis of the above document, the Assessing Officer formed a belief that M/s Paras Buildtech Pvt Ltd has been receiving only a part payment in cheque from the buyers of the showroom/ commercial sites and remaining part of the sale consideration has been received in cash. Applying the ratio of collaboration agreement, which was 58:42, the Assessing Officer came to the conclusion that M/s Paras Buildtech Pvt Ltd has received Rs. 20,06,45,148/- in cash. Since the assessee was recognising revenue on PoCM basis and 38% of the work has been shown to be completed, the Assessing Officer added 38% of the alleged cash receipts of Rs. 20,06,45,148/- and made an addition of Rs. 7,60,17,156/-.

13. The assessee agitated the addition before the Id. CIT(A) and strongly contended that the entire addition made by the Assessing Officer is on presumptions, surmises and conjectures, without any concrete evidence to show that the assessee has actually received some cash.

14. After considering the facts and submissions, the Id. CIT(A) observed that "I have gone through the assessment order and found that there is no reference in terms of Annexure or page number on this

document. It seems that the Assessing Officer has derived it from somewhere, as this document, per se, is not available.”

15. Referring to the statement of Shri Kamaljit Singh, the Id. CIT(A) found that Shri Kamalji Singh has specifically mentioned in his reply that whatever payment is received from M/s Paras Buildtech Pvt Ltd has been deposited in the bank account and no payment except whatever in the bank account has been received.

16. The Id. CIT(A) further observed that the Assessing Officer has made the addition by taking coded document i.e., loose sheet impounded at page 30 of Annexure A -1 as basis. The Id. CIT(A) further observed as under:

“13.7 One of the pieces of evidence used by the AO was the statement of i Shri Kamaljeet Singh recorded on 12.12.2009 u/s 133A of the IT Act. In this regard, I agree with the submission of the appellant that the AO relied on an answer of Shri - Kamaljeet. Singh as per which cash of not more than. Rs. 1 crore was received from the appellant. However, other questions/ answers were ignored by the Assessing Officer . One such answer of Shri Jaspal Singh was that whatever was received from Paras Build Tech was deposited in their Bank account. On a scrutiny of Bank account of Shri Jaspal Singh, the AO could find cash deposit Rs. 27,8.0-

,000/- unexplained, for which a show cause notice was given to the appellant on 29.12.2009. The appellant was able to provide requisite information/affidavit explaining the aforesaid cash deposits in the bank account. However, the AO totally disregarded the information /evidences provided by the appellant. In addition to the aforesaid facts regarding the evidentiary value of statements of 2 brothers used by the AO while making assessment, there are a number of prominent judicial pronouncements as per which statement recorded during the course of survey operations u/s 133A of the IT Act does not have evidentiary value .In the case of **CIT Vs S. Khader Khan Sons (2008) 300 ITR 157(Mad)** it was held as under:

"Section 133A does not empower any ITO to examine any person on oath. In contradistinction to the power under section 133A, section 132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A is not given an evidentiary value. The statement obtained under section 133A would not automatically bind upon the assessee."

This judgment was later on affirmed by the Hon'ble Supreme Court (352 ITR 480) (SC) 2012

13.8 As regards, scrutiny of Bank account of Shri Jaspal Singh, the assessing officer found that Rs. 2,56,08,650/- was deposited

in cash In the said account. Out of this amount, the assessing Officer vide order sheet entry dated 29.12/2009 acknowledged that only cash deposits to the tune of Rs. 27,80,000/- remained unexplained, for which a show cause notice was given to the appellant. Furthermore, the same was explained by the appellant by filing requisite documents/affidavits, and the AO did-not give any reasons for rejecting the same. Hence, this evidence, could not have been used by the AO."

17. On the issue of loose sheets, observations of the Id. CIT(A) is worth mentioning which is as under:

"13.9 Coming to the loosesheets impounded during the course of survey operations in the premises of Shri Jaspal Singh and Shri Kamaljeet Singh, the- AO used loose sheet no. 30 of Annexure A-I for making the addition. As pointed out by the appellant, documents with such frequent and large / extensive mistakes of facts and figures relating to sold / unsold units, the area sold, the rates agreed to be charged (as per BBAs) could not have been prepared by it. Statements with so many mistakes could not have served any body's purpose. It could not have served the purpose of the appellant because it did not give correct factual picture. It could not have satisfied the land owners also, if they were also entitled for cash element of sale consideration. The mistakes would have appeared more convincing, had this been to the detriment of

land owners but in this case, as per the loose sheets, the mistakes were to the detriment of the appellant. On this issue, I tend to agree with the appellant that the evidences used by the AO to make addition were factually incorrect/ unreliable, not impounded from the appellant's premises, disowned by the appellant and thus cannot be relied upon for the purpose of making any addition.

18. The ld. CIT(A) finally came to the conclusion that the addition of Rs. 7,60,17,148/- made by the Assessing Officer on this issue is unjustified and without any basis and hence stands deleted.

19. Before us, the ld. DR strongly supported the findings of the Assessing Officer and read the relevant observations made by the Assessing Officer.

20. Per contra the ld. AR reiterated what has been stated before the lower authorities.

21. Facts on record show that field enquiries were conducted by the Assessing Officer by issuing notice u/s 133(6) to various buyers. None of the buyers confirmed that they have paid anything to the assessee

over and above the amount stated in the Builder - Buyer Agreement. Field enquiry made by the Assessing Officer is conclusive evidence that no cash was exchanged between the buyer and the seller. The entire addition has been made on the basis of arithmetical calculation found in the loose sheet of paper.

22. In our considered opinion, in such cases, the onus is always on the revenue to bring demonstrative evidences on record to show that cash has changed hands from the buyer to the seller because the sale consideration of the seller is coming from payments made by the buyer and if the buyer categorically stated that they have not paid anything in cash, which enquiry was made by the Assessing Officer himself, the findings of the Id. CIT(A) cannot be faulted with. We, therefore, decline to interfere with the findings of the Id. CIT(A). This ground is also dismissed.

23. In the result the appeal of the Revenue in ITA No. 1449/DEL/2014 is dismissed.

The order is pronounced in the open court on 03.08.2021.

Sd/-

**[MAHAVIR PRASAD]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 03rd August, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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