

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'B': NEW DELHI)  
(Through Video Conference)**

**BEFORE SHRI K.N. CHARY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2591/Del/2018  
(Assessment Year: 2011-12)**

Dy. Commissioner of Income Tax, Central Circle, Noida.	Vs.	M/s Eminent Infradevelopers Pvt. Ltd., A-1/112, Safdarjung Enclave, New Delhi.
<b>PAN No: AABCE3103E</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No:- 2592/Del/2018  
(Assessment Year: 2012-13)**

Dy. Commissioner of Income Tax, Central Circle, Noida.	Vs.	M/s Eminent Infradevelopers Pvt. Ltd., A-1/112, Safdarjung Enclave, New Delhi.
<b>PAN No: AABCE3103E</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No:- 2593/Del/2018  
(Assessment Year: 2013-14)**

Dy. Commissioner of Income Tax, Central Circle, Noida.	Vs.	M/s Eminent Infradevelopers Pvt. Ltd., A-1/112, Safdarjung Enclave, New Delhi.
<b>PAN No: AABCE3103E</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue By** : Ms. Nidhi Srivastava, CIT(DR)  
**Assessee By** : Shri Sanjay Kumar, FCA  
Shri Akarsh Garg, Adv.

**Per Anadee Nath Misshra, AM**

**(A)** The aforementioned appeals by Revenue are hereby disposed off through this Consolidated Order for the sake of convenience and brevity. Grounds taken in these Appeals are as under:

**ITA No.- 2591/Del/2018**

- "1. *Whether on the facts and in the circumstances of the case & in law, CIT (A) erred in deleting the addition after applying the net profit rate 8% Prescribed u/s 44AD Without appreciating that the assessee being in the business of real estate developer with turnover of more than 40 Lacs was not eligible for taxation as per rates prescribed u/s 44AD.*
2. *Whether on the facts and in the circumstances of the case & law, CIT (A) after having accepted that due to non production of project wise expenses, revenue recognition W.I.P., bills/ vouchers, copies of agreements, etc, the books of appellant cannot be relied, erred in deleting the addition on grounds that AO has not cited any comparable cases having such high profits. The Ld. CIT (A) failed to appreciate that when assessee's books were already held unreliable, the AO was left with no choice to estimate profit, which in the opinion of AO was fair & reasonable having regards to nature of business turnover & the fact that one of directors had already admitted huge undisclosed income during the course of search.*
3. *Whether on the facts and in the circumstances of the case & in law, CIT (A) failed to appreciate that action of the assessee by not producing the relevant details/ evidences on one hand and disputing the best judgment assessment by AO on the other hand, was akin to taking advantage of its own wrong, a principal which has been recognized in various judicial forum also.*
4. *That the order of the Ld. CIT (A) being erroneous deserves to be vacated and the order the A.O may be restored.*

5. *That the appellant craves leave to add of amend any one or more of ground of appeal as stated above as and when needed for doing so may arise."*

**ITA No.- 2592/Del/2018**

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*revenue recognition W.I.P., bills/ vouchers, copies of agreements, etc, the books of appellant cannot be relied, erred in deleting the addition on grounds that AO has not cited any comparable cases having such high profits. The Ld. CIT (A) failed to appreciate that when assessee's books were already held unreliable, the AO was left with no choice to estimate profit, which in the opinion of AO was fair & reasonable having regards to nature of business turnover & the fact that one of directors had already admitted huge undisclosed income during the course of search.*

3. *Whether on the facts and in the circumstances of the case & in law, CIT (A) failed to appreciate that action of the assessee by not producing the relevant details/ evidences on one hand and disputing the best judgment assessment by AO on the other hand, was akin to taking advantage of its own wrong, a principal which has been recognized in various judicial forum also.*
4. *That the order of the Ld. CIT (A) being erroneous deserves to be vacated and the order the A.O may be restored.*
5. *That the appellant craves leave to add of amend any one or more of ground of appeal as stated above as and when needed for doing so may arise."*

**(B)** Vide separate Assessment Orders each dated 28.10.2016 passed by Assessing Officer under Section 153A read with Section 144 of Income Tax Act, 1961 ("I.T. Act", for short) for Assessment Years 2011-12, 2012-13 and 2013-14, the Income of the Assessed was assessed at Rs. 2,53,46,926/-, and Rs. 5,86,40,100/- and Rs. 6,00,06,235/- respectively. The income of the assessee was assessed by the Assessing Officer on the basis of estimation of net profit @ 15% of the respective gross turnover for the three Assessment Years. The Assessee filed appeal against the Assessment Orders before the Ld. CIT(A). A consolidated appellate order dated 25.01.2018 was passed by the Ld. CIT(A) for these three years, besides for Assessment Years 2008-09 and 2010-11. In the aforesaid impugned appellate order dated 25.01.2018 passed by Ld. CIT(A), the Assessing Officer was directed to estimate the net profit of the assessee

@ 8% of the gross turnover as against @ 15% adopted by the Assessing Officer. Revenue as well as the Assessee filed appeals against the aforesaid impugned consolidated appellate order dated 25.01.2018 of Ld. CIT(A). The Assessee's appeals for Assessment Years 2011-12, 2012-13 and 2013-14 came up before the Co-ordinate Bench of Income Tax Appellate Tribunal ("ITAT", for short), Delhi in ITA Nos. 1768, 1769 & 1770/Del/2018 respectively for Assessment Years 2011-12, 2012-13 and 2013-14 respectively. In addition, the assessee's appeals for Assessment Year 2008-09 and Assessment Year 2010-11 also came up before Co-ordinate Bench of ITAT, Delhi in ITA Nos.-1766, 1767/Del/2018 respectively for Assessment Years 2008-09 and 2010-11 respectively. A consolidated order dated 30.07.2021 was passed by Co-ordinate Bench of ITAT, Delhi in assessee's appeals for Assessment Years 2008-09, 2010-11, 2011-12, 2012-13 & 2013-14 in ITA Nos.- 1766, 1767, 1768, 1769 & 1770/Del/2018 respectively. In the aforesaid consolidated order dated 30.07.2021 passed by Co-ordinate Bench of ITAT, Delhi it was held that the Assessment Orders were barred by limitation; and the aforesaid impugned consolidated appellate order dated 25.01.2018 passed by Ld. CIT(A) was set aside. The relevant portion of the aforesaid consolidated order dated 30.07.2021 of Co-ordinate Bench of ITAT, Delhi is reproduced as under:

*"5. We have heard the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also gone through the various decisions cited before us. We find the A.O. in the instant case has communicated to the assessee vide letter Dated 22.03.2016 [Pages 84-89 of the paper book] regarding approval given by Pr.CIT, Central, Kanpur for getting its accounts audited by M/s D.S. Sinha & Co, Kanpur within 90 days from the service of the notice. Subsequently, the A.O. vide letter Dated 29.03.2016 [Page91 of the paper book] communicated to the assessee to get its accounts audited by M/s. D.C. Shukla & Co. of Kanpur as*

*nominated by the PCIT and stated that the earlier name of M/s. D.S. Sinha & Co. was inadvertently mentioned. Although the assessee has filed a writ petition before the Hon'ble Allahabad High Court against the direction of Pr. CIT, Central, Kanpur under section 142(2A) of the I.T. Act, 1961 and had communicated the same to the Auditor with a request to withhold the audit till the decision of the Court, however, it is also brought on record by A.O. himself in para-7 of his order that the decision of the Court is still awaited and there is no information from the side of the assessee regarding any stay on the pending assessment by the Hon'ble High Court. Under these circumstances, we find merit in the submission of the Learned Counsel for the Assessee that as per the provisions of Section 142(2A) of the I.T. Act, 1961, the time period of 90 days plus further extension of 60 days expired on 21.08.2016. Whereas, the A.O. in the instant case has passed the assessment order on 28.10.2016 and, therefore, the order passed by the A.O. is barred by limitation.*

*5.1. So far as the finding given by the Ld. CIT(A) that in view of provisions of Section 153B read with Explanation- (b) the time period starting with the date of filing of the writ petition and ending on the date of disposal of the writ petition is to be excluded is concerned, we do not find any merit in the same. Admittedly, the assessment proceedings have not been stayed by an order or injunction of any Court which fact was also brought on record by the A.O. himself at para-7 of the assessment order. Further, although such direction was challenged before the Hon'ble High Court, however, no order setting aside such direction has been received by Pr. CIT or CIT which is to be excluded. Therefore, the Ld. CIT(A) has gone wrong by invoking the provisions of Explanation-(b) to Section-153B. We, therefore, set aside the order of the Ld. CIT(A) and quash the assessment order passed by the A.O. being barred by limitation. Since the assessee succeeds on this legal ground, the other grounds challenging the validity of additions in the absence of any incriminating material is not being adjudicated being academic in nature. Appeal filed by the assessee is allowed.*

*6. In the result, ITA.No.1766/Del./2018 of the Assessee is allowed*

*ITA.Nos.1767, 1768, 1769 & 1770/Del./2018 : [Assessee]  
Assessment Years 2010-11, 2011-12, 2012-2013 & 2013-2014*

*7. Identical grounds have been raised by the assessee in all the above appeals. Since the Ld. CIT(A) has passed common order upholding the validity of the assessment passed beyond the period of limitation as per the provisions of Section 142(2A) and since we have already held in the preceding paragraph that such order passed by the A.O. is barred by limitation, therefore, following our observations in ITA.No.1766/Del./2018 for the A.Y. 2008- 2009, the grounds raised by the Assessee on this issue are also allowed in its favour. Accordingly, all the appeals of the Assessee for the A.Ys.2010-11 to 2013-2014 are allowed.*

*8. In the result, ITA.Nos.1767, 1768, 1769 & 1770/ Del./2018 of the Assessee are allowed."*

(C) The present appeals before us are filed by Revenue against the aforesaid impugned appellate order dated 25.01.2018 of the Ld. CIT(A), for Assessment Years 2011-12, 2012-13 & 2013-14. In the course of appellate proceedings, the learned Authorized Representative ("Ld. AR", for short) of the assessee filed a synopsis, alongwith the aforesaid consolidated order dated 30.07.2021 of Co-ordinate Bench of ITAT, Delhi. The relevant portion of the synopsis is reproduced as under:

"2. In this relation, it is submitted that being aggrieved by the aforesaid consolidated order of learned CIT(A) dt. **12.04.2018**, assessee also filed appeals being ITA Nos. 1756, 1767, 1768, 1769 and 1770/Del/2018 for assessment years 2008-09, 2010-11, 2011-12, 2012-13 and 2013-14 respectively, wherein the said consolidated order of learned CIT(A) dt. **12.04.2018** has been set aside and all the assessment orders passed by the Assessing Officer have been quashed being barred by limitation **vide order dated 30.07.2021 of Hon'ble 'B' Bench, Delhi**. For instant reference, the relevant finding as appearing in **para 5.1, 6, 7 & 8** are reproduced hereunder;

"5.1 So far as the finding given by the Ld. CIT(A) that in view of provisions of Section 153B read with Explanation-(b) the time period starting with the date of disposal of the writ petition and ending on the date of disposal of the writ petition is to be excluded is concerned, we do not find the merit in the same. Admittedly, the assessment proceedings have not been stayed by an order or injunction of any Court which fact was also brought on record by the A.O. himself at para-7 of the assessment order. Further, although such direction was challenged before the Hon'ble High Court, however, no order setting aside such direction has been received by Pr. CIT or CIT which is to be excluded. Therefore, the Ld. CIT(A) has gone wrong by invoking the provisions of Explanation-(b) to Section -153(B). **We, therefore, set aside the order of the Ld. CIT(A) and quash the assessment order passed by the A.O. being barred by limitation.** Since the assessee succeeds on this legal ground, the other grounds challenging the validity of additions in the absence of any incriminating material is not being adjudicated being academic in nature. Appeal filed by the assessee is allowed.

6. In the result, ITA No. 1766/Del/2018 of the Assessee is allowed.

ITA.Nos. 1767,1768, 1769 & 1770/Del/2018: [Assessee]  
Assessment Years 2010-11, 2011-12, 2012-13 & 2013-14

7. Identical grounds have been raised by the assessee in all the

*above appeals. Since the Ld. CIT(A) has passed common order upholding the validity of the assessment passed beyond the period of limitation as per the provisions of Section 142(2A) and since we have already held in the preceding paragraph that such order passed by the A.O. is barred by limitation, therefore, following our observations in ITA.No.1766/Del./2018 for the A.Y. 2008-09, the grounds raised by the Assessee on this issue are also allowed in its favour. Accordingly, all the appeals of the Assessee for the A.Ys.2010-11 to 2013-14 are allowed.*

*8. In the result, ITA.Nos. 1767, 1768, 1769 & 1770/Del./2018 of the Assessee are allowed.”  
Copy of order as a whole is annexed herewith.*

*3. Accordingly, as the consolidated order of CIT(A) (as impugned by the Revenue in present appeals) had been set aside and the order passed by the Assessing Officer have been quashed. Hence, the present appeal of the revenue deserves to be dismissed.”*

**(C.1)** At the time of hearing before us, at the outset, the Ld. AR of the assessee submitted that these appeals filed by Revenue are not maintainable in view of the fact that the relevant Assessment Orders, being barred by limitation, have already been quashed, vide aforesaid consolidated order dated 30.07.2021 of Co-ordinate Bench of ITAT, Delhi. He further submitted that the impugned consolidated order of the Ld. CIT(A) have also been set aside, vide aforesaid consolidated order dated 30.07.2021 of Co-ordinate Bench of ITAT, Delhi on the ground that the corresponding Assessment Orders were barred by limitation. Thus, the Ld. AR of the assessee submitted, the present appeals of Revenue deserved to be dismissed. He placed his reliance on the aforesaid synopsis, the relevant portion of the synopsis has already been reproduced earlier in this order in foregoing paragraph **(C)**. The learned Commissioner of Income Tax (Departmental Representative) [“Ld. CIT(DR)”, for short] for Revenue placed reliance on the orders of the Assessing Officer and the Ld. CIT(A).

**(D)** We have heard both sides and perused the materials available on record. There is no dispute on the fact that the Co-ordinate Bench of ITAT, Delhi, vide aforesaid consolidated order dated 30.07.2021 has already held that the corresponding Assessment Orders are barred by limitation. There is also no dispute that the Co-ordinate Bench of ITAT, Delhi has already set aside the impugned appellate order dated 25.01.2018 of the Ld. CIT(A), in paragraph 5.1 read with paragraph 7 of the aforesaid consolidated order dated 30.07.2021. As a result of the aforesaid consolidated order dated 30.07.2021 of Co-ordinate Bench of ITAT, Delhi; as far as the present appeals before us are concurred, the corresponding Assessment Orders, each dated 28.10.2016; as well as impugned consolidated appellate order dated 25.01.2018 of Ld. CIT(A) have no existence at present. Thus, the present appeals before us have no legs to stand; and are not maintainable presently. In view of the foregoing; and in respectful deference to aforesaid consolidated order dated 30.07.2021 passed by Co-ordinate Bench of ITAT, Delhi; we are constrained to dismiss the present appeals before us filed by Revenue, on the ground that these are not maintainable at present, having no legs to stand.

**(E)** In the result, all the three appeals of Revenue are dismissed.

Order was orally pronounced in Open Court on 13/09/2021 after conclusion of hearing, in the presence of representative of both sides. Now this written order is signed today on 14/09/21.

**Sd/-**  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Dated: 14/09/21

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Pooja/-

Copy forwarded to:

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

ASSISTANT 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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	