

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 7746/DEL/2017 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

ACIT Central Circle-16 New Delhi (APPELLANT)	Vs	Magic Info Solutions P. Ltd. D-13, Defence Colony, New Delhi AAFCM2504F (RESPONDENT)
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Appellant by	Ms. Pramita M. Biswas, CIT DR
Respondent by	Sh. Tarun Kumar Batra, CA

Date of Hearing	28.07.2021
Date of Pronouncement	22.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 29/09/2017 passed by CIT(A)-25, Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

“On the facts and circumstances of the case has the CIT(A) erred in deleting the addition on account of Trade Advances against booking amounting to Rs.30,92,25,084/- without appreciating that assessee miserably failed to offer satisfactory explanation about the nature and source of the amount credited.”

3. Assessee Company is engaged in the business of Construction and development of Land for Commercial and Residential purpose. The assessee filed its return of income on 31.03.2015 declaring total income at Nil. The search and seizure was conducted on Sanya Group of companies on 17.09.2010 which is engaged in various fields ranging from real estate development, automobiles, hospitality and FMCG Goods. The Assessee Company was asked to provide the complete details and supporting documents in respect of refundable business collaboration advance mentioning the name of the person/entity, his PAN, complete postal address with respective phone numbers, bank account statement along with copy of agreement regarding such advances on 05.11.2015 by the Assessing Officer. The assessee vide letter dated 20.11.2015 only provided the name, address, PAN and outstanding amount before the Assessing Officer as observed in the Assessment order. The Assessing Officer issued summons dated 29.02.2016 under Section 131 of the Act to Directors of the assessee company to record their statements. However, none appeared before the Assessing Officer. Therefore, the Assessing Officer made addition of Rs. 33,53,01,983/-. The Assessing Officer further made addition of Rs. 30,92,25,084 on account of trade advances against booking. The Assessing Officer also made disallowance of expenses shown to have been paid as Fee/charges paid Haryana Town and Country Planning and other expenses amounting to Rs. 3,99,42,327/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in deleting the addition on account of Trade Advances against booking amounting to Rs. 30,92,25,084/- without appreciating that the assessee miserably failed to offer satisfactory explanation about the nature and source of the amount credited. The Ld. DR relied upon the assessment order.

6. The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Assessing Officer has made addition under Section 68 of the Income Tax Act, 1961 with respect to advance received by the assessee as a builder from buyers of real estate to whom sale could not be effected during the Financial Year. There is no doubt that provision of Section 68 does not make any distinction between loan as well as trade advance received. The Section is triggered as soon as 'any sum credited' in the books of account of the assessee irrespective of further classification of such credits. In fact, the Assessing Officer asked the assessee to produce such persons who has made deposit for purchase of real estate, but the assessee could not produce the said persons. The CIT(A) without making any efforts to examine the creditors deleted the addition. Therefore, we fail to understand that how the observations made by the Assessing Officer were met by the assessee before the CIT(A). The Assessing Officer has categorically stated in remand report also that the assessee has merely furnished 'list of persons' only. The Assessing Officer has also held that when many persons do not respond to the summons, Revenue can draw adverse inference. The CIT(A) has not taken cognizance of such finding of the Assessing Officer. There is no reason given in the order of the CIT(A) that how the assessee has discharged its initial onus, when the Assessing Officer categorically asked the assessee to produce the buyers instead of appearing before the Assessing Officer. Merely submitting list of persons, without proving creditworthiness and genuineness of the transactions, the CIT(A) has deleted the additions which is not proper. In view of the above facts and in view of the specific submissions of the Ld. AR that all the parties are buyers of real estate from the assessee, we set aside this addition to the file of the Assessing Officer with direction to the assessee to show before the Assessing Officer that the parties mentioned have paid advances against sale of properties and in subsequent years, sales of properties have been made to these parties. The Assessing Officer may examine the details and if in subsequent years, it is found that the assessee has sold the properties to them, naturally dual sum has been credited to the income of the

assessee and addition in this year may be deleted accordingly. In case of any adverse observation, the Assessing Officer may grant opportunity of hearing by following principles of natural justice to the assessee and decide the issue on merits. The Assessee is also at liberty to produce evidences as well as depositors before the Assessing Officer. Ground No. 1 of the Revenue's appeal is partly allowed for statistical purpose.

8. In result, the appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 22nd Day of September, 2021 in presence of both the parties.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 22/09/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI