

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA.No.6245/Del./2014
Assessment Year 2010-2011

The Income Tax Officer, Ward-13(2), Room No.225, C.R. Building, New Delhi.	vs.	M/s. New India City Developers Pvt. Ltd., B-44, 2 nd Floor, Jangpura, New Delhi – 110 014. PAN AAACK0016B
(Appellant)		(Respondent)

For Revenue :	Ms. Paramita M. Biswas, CIT-DR
For Assessee :	-None-

Date of Hearing :	29.09.2021
Date of Pronouncement :	29.09.2021

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the order dated 01.08.2014 of the Ld. CIT(A)-XII, New Delhi, relating to the A.Y. 2010-2011.

2. This appeal was fixed for a number of times and due to non-appearance from the side of the assessee, notices were directed to be served upon the assessee

through the Ld. D.R. On the last occasion also i.e., on 03.08.2021 since nobody had appeared on behalf of the assessee, the Bench again directed that notice be served through the Ld. D.R. fixing the case for hearing on 28.09.2021. The Ld. D.R. filed report of the A.O. stating that notice was sent through email and was also served through affixture on the premises since there was nobody available at the premises to receive the notice. Since there is no response from the side of the assessee despite service of notice on various occasions, therefore, we deem it proper to decide the issues raised in the grounds of appeal on the basis of material available on record and after hearing the Ld. D.R.

3. Facts of the case, in brief are that search and seizure operation was carried-out at the various premises of M/s Today Homes and Infrastructure Pvt. Ltd and its group concerns and associated persons on 26.11.2009 which concluded on 25.01.2010. The assessee is one of the associated/group concerns of Today group of cases. The A.O. issued notice under section 142(1) of the Income Tax

Act, 1961 on 26.07.2011 directing the assessee to file its return of income on or before 12.08.2011. However, there was no compliance to the said notice. Thereafter, notice under section 142(1) of the Act was issued, along with the detailed questionnaire dated 17.08.2011 for compliance on 29.08.2011. Although this notice was duly served upon the assessee through speed post, however, the assessee vide letter dated 18.08.2011 submitted that the return filed on 18.08.2011 at a loss of Rs.2,51,531/- may be treated as return filed in response to notice under section 142(1) of the I.T. Act, 1961. The A.O. subsequently issued notice under section 143(2) of the Act and the A.R. of the Assessee appeared before the A.O. from time to time and filed certain details.

3.1. During the course of assessment proceedings, the A.O. noted that the assessee is engaged in the business of real estate and for the impugned assessment year has shown liabilities of Rs.65,22,47,835/- on account of advance against capital investments and project finance agreement as on 31.03.2010. The A.O, therefore, asked the

assessee to prove the identity and creditworthiness of the creditors as well as the genuineness of the transactions in respect of various amounts received by it in the form of advance against capital investments and project finance agreement by providing the confirmed copy of accounts; copy of return of income and copy of the bank statement of the creditor for the F.Y. 2009-10 reflecting the said transactions.

3.2. Although the assessee filed certain details, however, the A.O. was not satisfied with the submissions made by the assessee. He noted that assessee has not furnished any details whatsoever in respect of amount of Rs.1,65,00,000/- received by it from M/s Jiavasa Mercantile Pvt. Ltd [in short "M/s. JMPL"] on 10.03.2010 and amounts of Rs.5,00,000/- and Rs.8,00,000/- received by it from M/s Mountain Land Developers Pvt. Ltd [in short "M/s. MLDPL"] on 05.11.2011 and 10.11.2010 respectively. The total amounts to Rs.1,78,00,000/-. The assessee did not furnish the Ledger account of M/s. JMPL and M/s MLDPL in its books of accounts nor filed confirmation from the above two

parties from whom it had received various amounts on account of advance against capital investments and project finance agreement. Since the assessee according to the A.O. could not establish the identity and creditworthiness of the above two parties in respect of the amount of Rs.1,78,00,000/-, the A.O, relying on various decisions, made addition of the same to the total income of the assessee under section 68 of the I.T. Act, 1961. Similarly, in absence of furnishing of any documentary evidence in respect of addition to fixed assets from F.Y. 2004-05 to 2008-09, the A.O. re-computed the depreciation and disallowed an amount of Rs.3,05,313/-. The A.O. also made an addition of Rs.21,000/- under section 40A(3) of the I.T. Act, 1961. Thus, the A.O. determined the total income of the assessee at Rs.1,78,74,780/- as against the returned loss of Rs.2,51,531/-.

3.3. In appeal, the Ld. CIT(A) after considering the submission of the assessee, deleted the addition made by the A.O. by observing as under :

FINDING

1. All grounds are together :

1. I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.
2. The Assessing Officer has disallowed the depreciation from F.Y.2004-05 onwards till F.Y.2009-10 on the premise that no documentary evidence was provided in respect of addition to fixed assets made during F.Y.2004-05. However he has disregarded that there were no additions and increase in fixed assets was on account of merger of various companies and thereby all the fixed assets were recorded as consolidated together. The Assessing Officer has disallowed the depreciation during F.Y.2004-05 and based on that disallowance calculated the revised depreciation for the following years. In view of the reasons stated supra the above addition deserves to be deleted.

3. *The disallowance of Rs.21,000/- u/s 40A(3) has been made in respect of purchase of photocopier, which has been capitalized under fixed assets. Since, the expenditure is not revenue in nature and not debited to the profit & loss account, the disallowance deserves to be deleted.*
4. *The AR of the appellant submitted signed confirmations, PAN details, copies of the bank statements to substantiate the genuineness of the transaction and credit worthiness of the creditors which is admitted as additional evidence.*
5. *Keeping in view the facts and circumstances of the case it is seen that the Assessing Officer has not produced any adverse material, to repudiate the veracity and genuineness of the transaction, therefore the onus cast on the assessee u/s 68 stands discharged. In view of this discussion, the addition of Rs.1,78,00,000/- credited in books of account in the form of advance against capital investment and project finance agreement, as*

undisclosed income u/s 68 of the Act deserves to be deleted.

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

1. *On the facts and in the circumstance of the case, the Ld. CIT(A) erred in deleting the addition made u/s 68 of the Act on account of undisclosed income of advance against capital investment and project finance agreement amounting to Rs.1,78,00,000/- by accepting all the submissions of the assessee and ignored the facts & findings mentioned by the A.O. in his assessment order as well as remand report.*
- 1.1. *On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in deleting the above addition by relying upon the copy of Confirmation and Bank Statement filed by the appellant during the appellate proceedings and also erred in*

ignoring the fact that even at the appellate stage, assessee was unable to file Copy of ITR, Complete Balance Sheet etc. to substantiate its claim.

- 1.2. On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in deleting the above addition by ignoring the judicial pronouncement that the onus is on the assessee to establish that the amount credited in its account is properly sourced.*
- 2. On the facts and under the circumstances of the case, the Ld CIT(A) has erred in deleting the addition made on account of disallowance of excess depreciation claimed during AY 2010-11 amounting to Rs.3,05,313/- by ignoring the fact that the assessee has not supported with documentary evidences on its contention that the fixed assets were on account of merger of various companies and so fixed assets were recorded as consolidated together.*

3. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.*

5. The Ld. D.R. referring the assessment order submitted that the A.O. has thoroughly discussed the issue and made the addition since the assessee could not substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the persons who had given such huge advance to the assessee. Similarly, the assessee also could not substantiate the claim of higher depreciation by furnishing the details of additions made by it to its fixed assets in the preceding assessment years as required by the A.O. She submitted that the Ld. CIT(A) without giving any opportunity to the A.O. to rebut the admissibility of the additional evidences filed before him and in a very cryptic order has deleted the addition which is not justified under the facts and circumstances of the case. She accordingly submitted that the order of the Ld. CIT(A) be set aside and the order of the A.O. be upheld.

5.1. In her alternative contention, she submitted that the matter may be restored to the file of the Ld. CIT(A) for adjudication afresh.

6. I have heard the Ld. D.R. and perused the orders of the A.O. and the Ld. CIT(A). I find the A.O. in the instant case made an addition of Rs.1,78,00,000/- under section 68 of the I.T. Act being advance against capital investment and project finance agreement in respect of two parties namely M/s. JMPL and M/s. MLDPL on the ground that assessee could not substantiate with evidence to the satisfaction of the A.O. regarding the identity and creditworthiness of the above two parties and the genuineness of the transaction. Similarly, the A.O. disallowed excess depreciation of Rs.3,05,313/- on the ground that assessee failed to furnish the additions made to the fixed assets in the preceding assessment years. I find despite non-submission of the copy of income tax return and balance-sheet particulars of the lending companies, the Ld. CIT(A), on the basis of mere bank statement has deleted the addition. Similarly, she deleted disallowance of excess depreciation of Rs.3,05,313/-

without supporting documentary evidences to substantiate the additions to the fixed assets in the preceding assessment years as required by the A.O. I find the order of the Ld. CIT(A) is a cryptic one and does not address the various issues raised by the A.O. especially the identity and creditworthiness of the above two parties who had given such huge advances to the assessee company. Similarly, the assessee cannot escape from its onus by not furnishing the details of addition to the fixed assets in the preceding assessment years when the A.O. has specifically asked for the same to verify the claim of excess depreciation. Since the order of the Ld. CIT(A) is not based on facts as coming out from the assessment order and is a cryptic one, therefore, considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to decide the issue afresh by passing a speaking order dealing with all the allegations raised by the A.O. in the assessment order. Needless to say, the Ld. CIT(A) shall give due opportunity of being heard to the assessee and decide

the issue as per fact and Law. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court at the time of hearing itself i.e., on 29.09.2021.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 29th September, 2021

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.