

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

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

I.T.A. No. 6424/DEL/2016 (A.Y 2008-09)

&

**I.T.A. No. 6425/DEL/2016 (A.Y 2008-09)
(THROUGH VIDEO CONFERENCING)**

DCIT Central Circle-15, Room No. 353, ARA Centre, E-2, Jhandewalan Extension New Delhi (APPELLANT)	Vs	Thapar Homer Ltd. B-10, Shivalik, Malviya Nagar, New Delhi AAECM0840R (RESPONDENT)
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Appellant by	Sh. H. K. Choudhary, CIT(DR)
Respondent by	None

Date of Hearing	02.09.2021
Date of Pronouncement	23.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 09/09/2016 & 28/10/2016 passed by CIT(A)-XXVI, New Delhi for assessment year 2008-09.

2. The grounds of appeal are as under:

I.T.A. No. 6424/DEL/2016 (A.Y 2008-09)

1. *“On the facts & circumstances of the case the CIT(A) has erred in law in holding that the order u/s 27ID passed by the Addl. CIT imposing penalty of*

Rs. 14,85,00,000/- was barred by limitation.

2. On the facts & circumstances of the case the CIT(A) has erred in law in holding that the order u/s 27 ID was barred by limitation without appreciating that the order was passed within 6 months of initiation of proceeding by Addl. CIT, who was the competent authority to levy this penalty.

I.T.A. No. 6425/DEL/2016 (A.Y 2008-09)

1. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 11,56,55,000/- out of total addition of Rs. 13,81,89,000/- made by AO on account of unexplained cash credit u/s 68 of the I.T. Act, 1961, as the assessee had failed to establish the genuineness & creditworthiness of the creditors.

2. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 2,00,00,000/- made by AO on account of unexplained cost of acquisition of flat at Vasant Vihar.

3. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs.1,81,10,441/- made by AO on account of bogus expenditure claimed through dummy companies.

4. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 5,00,00,000/- made by AO on account of unexplained expenditure claimed.

5. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 75,00,000/- made by AO on account of suppression of value of property.

6. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- made by AO on account of suppression of value of property.

7. On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 15,43,05,000/- out of addition of Rs. 16,69,53,000/- made by AO on account of loans taken and interest paid u/s 69C & 68, on the ground that when proceeding u/s 271D & 271E was initiated, no addition

can be made u/s 68 of the Act.

8. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 16,09,007/- out of addition of Rs. 16,72,902/- made by AO on account of interest income.*

9. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 5,00,000/- out of addition of Rs. 10,00,000/- made by AO on account of Malba income.*

10. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 81,516/- made by AO on account of disallowance u/s 35D.*

11. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 1,40,00,000/- made by AO on account of payment to Krishna Theophilus.*

12. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 20,00,000/- made by AO on account of loss on cancellation.*

13. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 55,30,494/- made by AO on account of foreign travel expenses.*

14. *On the facts & circumstances of the case the CIT(A) has erred in deleting the addition of Rs. 30,61,934/- made by AO on account of excess Director's remuneration."*

3. The assessee is engaged in real estate business. M/s Thapar Homes has declared advances received from various parties at Rs. 67,63,16,649/- during the year. The assessee was asked to file confirmation and proof that these advances were subsequently converted into sale. The assessee has furnished a few details in terms of sale deed of subsequent years but has not been able to furnish proof of having made sale in respect of the following parties. The assessee has also not been able to file any confirmation also. Thus the identity, creditworthiness and genuineness of the 29 parties were not proved and these

sums were added under Section 68 as cash credit. In this case, search was conducted at the premises of the assessee on 20.10.2008. Notice u/s 153A was issued on 13/11/2009 requiring the assessee to furnish return of income. In response thereto the assessee furnished return of income on 30/11/2009 declaring income at Rs.1,17,02,870/-. The Notices u/s 142(1) & 143(2) along with questionnaire were issued on 25.10.2010 requiring the assessee to furnish details. In response thereto Shri H.L. Sekhri, C.A appeared on behalf of Assessee Company and filed details asked for from time to time. Books of accounts produced have been examined on test check. The assessee Central Circle-17, New Delhi vide his letter 7/6/2011 reported that the assessee had entered into transactions in contravention of the provisions of Section 269SS of the Act. The Assessing Officer made various additions thereby assessing the income of the assessee at Rs. 45,98,2,2017/-. The ACIT pointed out the diversities of defaults committed u/s 271D & 271E as indicated in the assessment order passed for the Assessment Year 2008-09. The penalty order was passed on 27th December, 2011.

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 vide order dated 28/10/2016, as regards penalty order is concerned, the assessee filed appeal before the CIT(A) and the same is decided on 9th September, 2016 thereby allowing the appeal of the assessee.

6. The Ld. DR submitted that the appeal of the Revenue may be allowed and relied upon the Assessment Order.

7. At the time of hearing on 16/9/2021, the assessee remained absent despite giving notice through Ld. DR. The Department has filed the service of notice report thereby stating therein that no such office existed at the concerned premises. Letter dated 23/7/2021 along with the Inspector Report filed by the Ld. DR is taken on record. On one occasion, one Shri Anoop Kumar, CA, appeared on 17/2/2020, wherein he has sought adjournment on

the personal difficulty of the authorized representative of the assessee but thereafter none appeared despite giving notices. The service report of the notice is filed by the Ld. DR before us is as follows:

26/7/21
28/8/21

**OFFICE OF THE
INCOME TAX OFFICER, WARD-25(1)
ROOM NO.187, C.R.BUILDING, I.P.ESTATE, NEW DELHI-110002.**

F. No. ITO,W-25(1)/ITAT /2021-22/ 18 Dated: 23/7/2021

To
The Sr. Departmental Representative,
G-Bench, ITAT, 7th Floor,
Lok Nayak Bhawan,
New Delhi.

Sir/Madam,

Sub: Service of Notice in the case of M/s Thapar Homes Ltd, AACCT3106F-reg-

Kindly refer to your office letter No. 298 dated 21/6/2021 addressed to DCIT, CC-15, New Delhi for service of notice to the parties. The DCIT,CC-15, New has forwarded your above letter alongwith Notice dated 11/6/21 fixing the case for hearing on 12/7/2021 to this office vide his letter No. 142 dated 8/7/2021 which was received by post in this office on 13/7/2021 (copy enclosed) on the ground that jurisdiction over the subject case lies with this office.

2. On receipt of above letter, Inspector was deputed on 14/7/21 to serve the notice to the assessee. He made the service of notice through affixture, a copy of his report is enclosed herewith for your perusal.

Yours faithfully,
Uma Shankar Gupta
(Uma Shankar Gupta)
Income Tax Officer,
Ward-25(1) N. Delhi

Encl: as above.

Copy to:- The Asstt. Registrar, G-Bench, ITAT
11th Floor, Lok Nayak Bhawan, Khan Market
N. Delhi

o/c

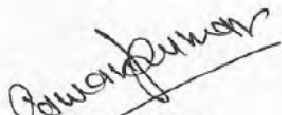
Office of the Commissioner of Income Tax (Asstt.) ITAT Lok Nayak Bhawan, New Delhi 28 JUL 2021 Diary No. 15101

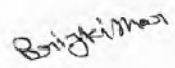
INSPECTOR REPORT

As directed, I visited at the premises of M/s Thapar Homes Ltd, to serve the notice dated 11.06.2021 issued by the Hon'ble ITAT, New Delhi. On reaching the said premises, neighbour told that earlier this company was existing but present whereabouts are not know to them. Therefore, the said notice was affixed at the above mentioned address in the presence of Sh. Pawan Kumar, DEO, Ward-25(1), New Delhi.

I have also visited another address of the assessee i.e. M-78/A, Basement, Malvia Nagar, which was available on ITBA but no such company was found. On enquiring about the said assessee with a neighbour, he told me that the said building is a residential building and no such office exists here.

Submitted for your kind consideration.


Sh. Pawan Kumar
DEO


Brijkishor
(Inspector)
O/o the ITO Ward-25(1)
Dated : 14.07.2021



**OFFICE OF THE
DY. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-15, NEW DELHI
ARA Centre, 245, 2nd Floor, E-2, Jhandewalan Extension,
New Delhi - 110055**

F. No. DCIT/CC-15/ 2020-21/142

Dated: 08/07/2021

To,
The Income Tax Officer,
Ward-25(1), C R Building,
New Delhi

**Sub : Service of Notice issued by the Hon'ble G-Bench of ITAT against the
ITA 6423/D/16 for the AY 2009-10 in the case of M/s Thapar Homes
Ltd. (PAN:AACCT3106F)-reg.**

Please refer to the above mentioned subject.

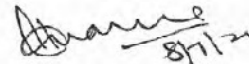
In this connection, this office has received notice to be served upon the assessee issued by Hon'ble G-Bench of ITAT against ITA No.6423/D/2016 for AY 2009-10 in the case of M/s Thapar Homes Ltd.

As per information available on ITBA module, the present jurisdiction of the case of M/s Thapar Homes Ltd. for AY 2009-10 lies with your jurisdiction (copy of jurisdiction enclosed).

In view of above facts, the Notice of Hon'ble G-Bench of ITAT in Original is being forwarded to you for necessary action at your end.

Yours faithfully,

Encl: - as above

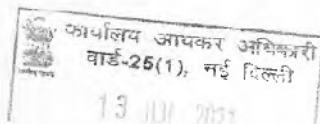


(Pankaj Khanna)

Dy. Commissioner of Income Tax
(Central Circle-15, Delhi)

Copy to:-

1. The Sr. Dr., G-Bench, ITAT, 7th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003 for kind information.



Dy. Commissioner of Income Tax
(Central Circle-15, Delhi)

7. We have heard Ld. DR and perused all the material available on record. As regards to Ground No. 1 relating to addition of Rs. 13,81,89,000/- made on account of unexplained cash credit u/s 68 of the Income Tax Act, 1961, as the assessee failed to establish the genuineness and creditworthiness of the creditors, the CIT(A) has stated in para 13 of the order that since the assessee has filed relevant documents the additions needs to be deleted. In fact, mere confirmation and bank statement of those parties regarding whom the so called details were filed by the assessee was simply accepted by the CIT(A). But the element of genuineness of the transactions as well as the creditworthiness of the parties were not at all discussed or verified by the CIT(A). In fact, no details to that extent was filed by the assessee before the Assessing Officer. Therefore, we set aside the order of the CIT(A) in respect of Ground No. 1 and allow Ground No. 1 of the revenue.

8. As regards to Ground No. 2 relating to addition of Rs. 2,00,00,000 on account of unexplained cost of acquisition of flat at Vasant Vihar, the CIT(A) has given a detailed finding. The CIT(A) has taken into account the supplementary collaboration agreement entered into by the assessee with JIT family Trust on 27.05.2008 and payments were made in F.Y. 2007-08 as well as 2008-09. The same was debited as part of the cost of the project in FY 2008-09. There is no dispute of these facts, thus, the CIT(A) has rightly deleted this addition. Ground No. 2 is dismissed.

9. As regards Ground No. 3 relating to addition of Rs. 1,81,10,441/- on account of bogus expenditure claimed through dummy companies, the CIT(A) has observed that the figures mentioned in the seized trial balance represented accumulated balance as on 31.03.2007 and the same is identical to that of Profit and loss account of audited balance sheet as on 31.03.2007. Thus, addition made by the Assessing Officer is not correct and the CIT(A) rightly deleted this addition. Ground No. 3 is dismissed.

10. As regards to Ground No. 4 relating to addition of Rs. 5,00,00,000/- on account of unexplained expenditure claimed, the CIT(A) has given a finding that books of accounts were accepted by the Assessing Officer and the expenditures are related to the construction activity and material supplied for the same. Thus, the CIT(A) has rightly deleted the addition. Ground No. 4 is dismissed.

11. As regards to Ground No. 5 relating to addition of Rs. 75,00,000 on account of suppression of value of property, the CIT(A) has observed that the cash in excess of the sale consideration received by the assessee is not from any suppression of value of property. In fact, the Assessing Officer has also not doubted the transactions. Therefore, the CIT(A) has rightly deleted this addition. Ground No. 5 is dismissed.

12. As regards to Ground No. 6 relating to addition of Rs. 2,00,00,000 on account of suppression of value of property, the assessee has clearly pointed out that the in the seized documents the sale consideration is eventually is higher than the market price. The details were given by the Assessee. Therefore, Ground No. 6 is dismissed.

13. As regards to Ground No. 7 on account of addition of Rs. 15,43,05,000 out of addition of Rs. 16,69,53,000/- on account of loans taken and interest paid u/s 69C & 68 on the ground that when proceedings u/s 271D & 271E was initiated no addition can be made u/s 68 of the Act, the CIT(A) has given a detailed finding and there is no need to interfere with the same. Ground No. 7 is dismissed.

14. As regards to Ground No. 8 relating to addition on account of interest income, the CIT(A) has given a proper finding and there is no need to interfere with the same. Ground No. 8 is dismissed.

15. As regards to Ground Nos. 9, 10, 11, 12, 13, 14 the CIT(A) has taken cognizance of the evidences brought upon by the assessee. The order of the

CIT(A) is elaborate and there is no need to interfere with the same. Ground Nos. 9,10,11,12, 13, 14 are dismissed.

16. Thus, ITA No. 6425/Del/2016 is partly allowed.

17. As regards penalty order, the CIT(A) has deleted the penalty on the ground that penalty imposed u/s 271D had to be done before 30/6/2011 and not 31/12/2011. Therefore, the penalty order was beyond the period of limitation as specified u/s 275(1)(c) of the Act. As regards penalty u/s 271E, the CIT(A) followed the decision of the Hon'ble Rajasthan High Court in case of CIT Vs. Hisar & Brothers 291 ITR 242 Rajasthan, which was confirmed by the Hon'ble Apex Court and deleted the said addition. The findings of the CIT(A) does not require any interference. Hence, ITA No. 6424/Del/2016 is dismissed.

18. In result, the appeal of the Revenue being is ITA No. 6425/Del/2016 is partly allowed and ITA No. 6424/Del/2016 is dismissed.

Order pronounced in the Open Court on this 23rd Day of November, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 23/11/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

