

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI NARENDRAKUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 7138/DEL/2018 [A.Y. 2013-14]

The Dy. C.I.T
Circle - 1(2)
New Delhi

Vs.

M/s Advance India Projects Pvt Ltd
232 - B, Fourth Floor,
Okhla Industrial Estate, Phase - III
New Delhi

PAN : AACCA 9859 J

ITA No. 7130/DEL/2018 [A.Y. 2013-14]

M/s Advance India Projects Pvt Ltd
232 - B, Fourth Floor
Okhla Industrial Estate, Phase - III
New Delhi

Vs.

The Dy. C.I.T
Circle - 1(2)
New Delhi

PAN : AACCA 9859 J

(Applicant)

(Respondent)

Assessee By : Shri Salil Agarwal, CA
Shri Shailesh Gupta CA

Department By : Shri Zahid Parvez, Sr. DR

Date of Hearing : 26.05.2022
Date of Pronouncement : 26.05.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two cross appeals by the Revenue and the assessee are preferred against the order of the Id. CIT(A) - 32, New Delhi dated 30.08.2018 pertaining to Assessment Year 2013-14.

2. Since both these appeals were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. The grievances of the revenue read as under:

1. Whether in the facts and circumstances of the case, the Ld. CIT(A) erred in admitting additional evidence under Rule 46A of the Income Tax Rules when the appellant's case is not covered in any of the exception clause as envisaged under Rule 46(1) of the I T Rules, 1962
2. Whether in the facts and circumstances of the case the Ld CIT(A) has erred in not recording his reasons for admission of additional evidences as per mandate of Rule 46A(2) of the I T Rules, 1962.
3. Whether in the facts and circumstances of the case the Ld CIT(A) has erred in admitting the additional evidence without affording opportunity to the AO as mandated under Rule 46A(1) and (2) of the I T Rules, which makes the order of the Ld. CIT(A) perverse.

4. Whether in the facts and circumstances of the case the Ld CIT(A) has erred in deleting the addition of Rs. 8,56,25,768/- on account of Undisclosed FAR.
 5. Whether in the facts and circumstances of the case the Ld CIT(A) has deleted the addition on account of Undisclosed FAR relying upon the Agreement dated 29.03.2013 between M/s Rapid Infracon Pvt. Ltd. and M/s Advance India Projects Ltd. but as per this Agreement total EDC, IDC and labour cess payable by Rapid and AIPL in the ration of 2.13 : 2.60.
 6. It is requested that the order of the Assessing Officer may kindly be restored and that of the Id. CIT(A) be quashed."
4. The representatives of both the sides were heard at length, the case records carefully perused.
5. At the very outset, we have to state that Ground Nos. 1, 2 and 3 are misplaced, as there were no additional evidences considered by the Id. CIT(A).

6. Facts on record show that the Assessing Officer sought clarification from the assessee in respect of development rights of 2,60,000 sq ft sold in respect of land situated at Gurgaon for a consideration of Rs. 65 crores to one M/s Pavi Buildwell Pvt Ltd.

7. The assessee furnished necessary details and vide letter dated 23.03.2016 addressed to the DCIT, Circle -1(2),New Delhi, not only the assessee explained the transaction, but also filed supporting evidences to substantiate its claim.

8. On the basis of these very documents/agreements, the Id. CIT(A) considered the disallowance made by the Assessing Officer and after being convinced, deleted the addition of Rs. 8,56,25,768/-.

9. Therefore, in our considered opinion, there were no additional evidences which have been accepted by the Id. CIT(A) in violation of section 46A of the Act.

10. Coming to the merits of the addition, observations of the Assessing Officer read as under:

"Alongwith the submission M/s.Pavi Buildwell Pvt. Ltd., has furnished copy of ledger account of the assessee Company in their books of accounts of financial year 2012-2013 and 2013-2014 apart from Audited Set of Balance Sheet as on 31.03,2013. On perusal of the submission and documents mainly Audited Balance Sheet and copy of ledger account, it has been observed that M/s. Pavi Buildwell Pvt. Ltd., booked the purchase of Development Rights Sector-70A, Gurgaon, Haryana, in their books of accounts for Rs.73,56,25,768/-, and balance of Rs. 13,56,25,768/-, was shown as outstanding credit balance in the name of the assessee Company in their books of accounts as on 31.03.2013, whereas the assessee Company has disclosed / declared the sale proceed of Rs.65.00 Cr. and shown balance of Rs.5.00 Cr. as receivable as on 31.03.2013, from M/s. Pavi Buildwell Pvt, Ltd., which clearly indicate that assessee Company not disclosed the sale of Development Rights to the tune of Rs.8,56,25,768/- and viz-a-viz declared less amount of investment [receivable from the said party] to the same extend. About the said difference assessee vide letter dated 23.03,2016, informed that Company incurred expenses under the head EDC and IDC of Rs.8,56,25,768/- and same has not been shown as part of purchase cost, but has been shown under the head Loan & Advances. In support of the same assessee furnish a ledger account, besides the same no other evidence has been furnish .as a supporting evidence of payment of EDC / IDC Charges. Further for verification of purchase transaction of Development Rights notice issued U/s. 133(6) of IT. Act'1961, dated 04.03.2016 was issued to

M/s.Rapid Infracon Pvt. Ltd. In response to the said notice the said party has not furnish any evidence which can established that a sum of Rs.8,56,25,768/-, has been paid by the assessee Company to M/s. Rapid Infracon Pvt. Ltd., towards EDC / IDC Charges. In view of the same and keeping in the view the available information / documents I am making addition of Rs.8,56,25,768/- in the hands of the assessee as left out sale proceeding of Development Rights [i.e. Rs.73,56,25,768/- - Rs.65,00,00,000/-] for the year under consideration."

11. Before the Id. CIT(A), the assessee once again submitted the agreement which was duly considered by the Id. CIT(A). As per the said agreement, total consideration payable by M/s Pavi Buildwell Pvt Ltd comprised of two elements, namely:

- (i) Rs. 65 crores towards transfer of development rights;
- (iii) Rs. 8,56,25,768/- towards proportionate external development charges/internal development charges and labor cess

12. As per the agreement, Rs. 60 crores was paid by M/s Pavi Buildwell Pvt Ltd during the period 13.02.2013 to 19.03.2013. Therefore, an amount of Rs. 5 crores was shown payable by M/s Pavi Buildwell Pvt Ltd

to the assessee as on 31.03.2013 as against the transfer of development rights. It is further mentioned that an amount of Rs. 8,56,25,768/- was also payable by M/s Pavi Buildwell Pvt Ltd to the assessee as against proportionate external development charges/internal development charges and labor cess.

13. Rs. 65 crores has been shown as income by the assessee in his Profit and Loss Account. It has also been mentioned in the Annual Accounts that the assessee purchased development rights from M/s Rapid Infracon Pvt Ltd for a total consideration of Rs. 56.40 crores which comprised of Rs. 47.84 crores towards acquisition of development rights and Rs. 8.56 crores towards reimbursement of external development /internal development charges/labor cess.

14. This amount was paid to M/s Rapid Infracon Pvt Ltd. in F.Y. 2013-14 which is nothing but reimbursement of expenses, which amount has not been routed through profit and loss account. This amount has not been claimed as against sale of development rights and, therefore, the said amount is not receipt of the assessee.

15. On these undisputed facts, additions have been deleted by the ld. CIT(A) and no infirmity or error has been pointed out in the facts mentioned hereinabove. We, therefore, do not find any reason to interfere with the findings of the ld. CIT(A).

16. In the result, the appeal of the Revenue is dismissed.

17. Coming to the assessee's appeal, first grievance relates to the addition of Rs. 3,42,242/-.

18. On perusal of the accounts during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the auditor had reported profit chargeable to tax u/s 41(1) of the Act amounting to Rs. 34,242/-. On verification of computation of income, the Assessing Officer noticed that the said amount was not added to the income of the assessee and accordingly, made the addition which was confirmed by the ld. CIT(A).

19. Before us, the ld. counsel for the assessee drew our attention to the statement of accounts and pointed out that the said amount has been

shown under the head “Other Income” under the sub-head “Miscellaneous Income” and the Assessing Officer has wrongly made the addition.

20. We find force in the contention of the ld. counsel for the assessee. Under Note 21, Miscellaneous Income of Rs. 1,56,235/- has been shown which has been further bifurcated at page 49 of the paper book and sundry balances written off has been at Rs. 37,039/- which has further been bifurcated at page 50 of the paper book wherein credit of Rs. 34,255.20 has been shown.

21. We are of the considered view that the assessee has shown the amount as part of its income. Therefore, further addition by the Assessing Officer would amount to double addition. We, therefore, direct the Assessing Officer to delete the addition of Rs. 34,242/-. Ground No. 2 is, accordingly, allowed.

22. Ground No. 3 relates to disallowance of foreign travelling expenses of Rs. 5,79,271/-.

23. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed foreign travelling expenses of Rs. 12,13,023/-.

24. The assessee explained that the sum has been incurred for undertaking foreign tours to explore investment opportunities and have been incurred wholly and exclusively for business purposes.

25. The assessee's explanation did not find any favour with the Assessing Officer who made addition of Rs. 12,13,023/-.

26. The assessee agitated the matter before the Id. CIT(A) who, after perusing the details submitted by the assessee, was convinced with the claim of expenditure to the extent of Rs. 6,33,752/- and restricted the disallowance to Rs. 5,79,271/-.

27. Before us, the Id. counsel for the assessee vehemently stated that all that the Assessing Officer has to examine is as to whether the expenditure has been incurred for the purposes of business or not. It is the say of the Id. counsel for the assessee that the Assessing Officer

cannot examine whether incurring of such expenses is generated in the business to the assessee or not.

28. The ld. DR strongly supported the findings of the ld. CIT(A).

29. We have carefully perused the assessment order. We are of the considered view that the Assessing Officer, while examining the expenditure claimed by the assessee can only examine as to whether the same has been incurred for the purpose of business as per the evidences brought on record.

30. In our humble opinion, expenditure has to be incurred for the purpose of business. No evidence has been brought to our notice and the evidences brought on record has already been considered by the ld. CIT(A) who gave part relief. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 3 is dismissed.

31. Ground No. 4 relates to adhoc disallowance on account of vehicle running and maintenance expenses amounting to Rs. 9,02,822/-.

32. The assessee is a private limited company and, therefore, in our considered opinion, there cannot be any question of any personal element in so far as legal person is concerned. For this proposition, we draw support from the decision of the Hon'ble High Court of Gujarat in 253 ITR 749.

33. As mentioned elsewhere, all that the Assessing Officer has to verify is as to whether the expenditure has been incurred for the business and since the expenditure has been incurred for the purpose of business, the same has to be allowed.

34. We, accordingly, direct the Assessing Officer to delete the adhoc disallowance of Rs. 9,02,822/-.

35. In the result, the appeal of the Revenue in ITA No. 7138/DEL/2018 is dismissed whereas the appeal of the assessee in ITA No. 7130/DEL/2018 is partly allowed.

The order is pronounced in the open court on 26.05.2022 in the presence of both the rival representatives.

Sd/-

[N.K. CHOUDHRY]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th May, 2022.

VL/

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	
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	