

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

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.207/Del/2020
(ASSESSMENT YEAR 2010-11)**

M/s New Height Buildcon Pvt. Ltd. 6, Devika Tower Upper Ground Floor Nehru Place New Delhi-110 019 PAN-AABCN 4737B		ACIT, OSD, Circle-18(1), New Delhi
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Shri Anuj Garg, Senior Departmental Representative

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-37, New Delhi [Ld. CIT(A)", for short], dated 30.10.2019 for Assessment Year 2010-11. Grounds taken in this appeal of Assessee are as under

"1. That the notice issued u/s 147/148 was issued /served after the period of limitation & the proceedings are vitiated for this reason.

2. *That the assessment order passed u/s 147/143(3) was passed after the period of limitation & the order is non-est in law for this reason.*

3. *That the CIT(A) erred in not quashing the assessment. The proceedings u/s 147/148 were bad in law as:*

- (a) *That there was no independent application of mind by the AO.*
- (b) *That the AO simply acted upon borrowed material & moreover such material was not supplied to the assessee.*
- (c) *That the AO did not have "reason to believe" to reopen the case.*
- (d) *That "reason to believe" of escapement of income were not applied to the assessee.*
- (e) *That the AO simply wanted to make more investigation.*
- (f) *That the AO acted mechanically & did not give a full opportunity to the assessee.*
- (g) *That there was "no nexus" between the primary facts & belief.*
- (h) *That "objections filed" before the AO were not disposed off by him before proceeding to assess the assessee.*

4. *That the CIT (A) did not give a full opportunity to the appellant & passed the order mechanically.*

5. *That no opportunity was given to the assessee of cross examination.*

6. *That relevant material was ignored & the assessment is based on irrelevant material/considerations.*

7. *The Ld. A O has never provided the investigation material on the basis of which addition of Rs. 9.22 crore has been made and also not given any opportunity to cross examine the party, the statement of which was recorded by Investigation Wing.*

8. *That on the facts and circumstances of the case the Ld. CIT(A) has erred in not treating reassessment proceedings u/s 147 of the I T Act, as invalid, bad in law, unjust and contrary to the facts and law.*

9. *That on the facts and circumstances of the case the Ld. CIT(A) has not considered the facts that notice u/s 147/148 was serviced after the period of limitation and the proceedings initiated on this ground is wrong and bad in law.*

10. *That the Ld. CIT(A) has not considered the various information and record made available hence addition made by Ld. CIT(A) is wrong and bad in law.*

11. *That the Ld. CIT(A) has confirmed the addition of Rs. 23.05 lacs without considering the facts and addition made on the basis of surmises and conjecture only without evidencing the payment.*

12. *That notice u/s 148 was issued based on borrowed material without independent application of his own mind by the Ld. A.O. & this vitiates the action taken.*

13. *That the Ld. CIT(A) wrongly confirmed the addition of Rs. 5,65,170/- without assigning any reason whereas addition was made on notional basis. Hence addition made is wrong and bad in law.*

14. *The appeal craves leave to amend or delete any of the above ground of appeal.”*

(B) In the course of appellate proceedings in Income Tax Appellate Tribunal (“ITAT”, for short) the Learned Authorized Representative (“Ld. AR”, for short) for the assessee through a written letter dated 08.05.2022 informed that the assessee had opted for Vivad se Vishwas Scheme, 2020 (“VSVS”, for short) and that the Designated Authority has already issued Form-5 under VSVS. A copy of Form-5 issued by the Designated Authority was also enclosed with the aforesaid letter. At the time of hearing, the Learned Senior Departmental Representative for Revenue submitted that the appeal has become infructuous in view of the assessee opting for VSVS; and that the appeal may be dismissed as

withdrawn. After due consideration and in view of the foregoing, we are of the opinion that this appeal has become infructuous on account of aforesaid VSVS, and that this appeal may be treated as withdrawn on account of the aforesaid VSVS. Accordingly, this appeal having become infructuous, is treated as withdrawn and is hereby dismissed.

(B.1) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under this appeal before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of this appeal in accordance with law.

(C) In the result, this appeal is dismissed.

This order was already pronounced orally on 27th June, 2022 in Open Court, in the presence of Senior Departmental Representative for Revenue, after conclusion of the hearing. Now this order in writing is signed today on 30/06/2022.

Sd/-

(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 30/06/2022

Pk

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW, DELHI