

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI  
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.5266/Del/2014  
Assessment Year: 2011-12

DCIT,  
Central Circle-7,  
New Delhi.

Vs. Amrapali Eden Park  
Developers Pvt. Ltd.,  
C-56/40, Sector-62,  
Noida.

PAN: AAHCA6217B

CO No.133/Del/2015  
(ITA No.5266/Del/2014)  
Assessment Year: 2011-12

Amrapali Eden Park Developers Pvt.  
Ltd.,  
C-56/40, Sector-62,  
Noida.

Vs. DCIT,  
Central Circle-7,  
New Delhi.

PAN: AAHCA6217B

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Ishtiyaque Ahmed, CIT, DR
Date of Hearing	:	28.07.2022
Date of Pronouncement	:	25.08.2022

ORDER

PER C.M. GARG, JM:

This appeal and the Cross Objection filed by the Revenue and the assessee, respectively, are directed against the order dated 11.07.2014 of the CIT(A)-1, New Delhi, relating to Assessment Year 2011-12.

2. The grounds of appeal raised by the Revenue read as under:-

*“1. The order of ld.CIT(A) is not correct in law and facts.*

*2. On the facts and circumstances of the case the ld. CIT(A) has erred in deleting the addition of disallowance of Rs.2,00,07,633/- made by the Assessing Officer on account of ‘Bogus Purchase’ which were capitalized.*

*3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

3. The ground of Cross Objection taken by the assessee reads as under:-

*“1. On the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue/service of notices by the Assessing Officer is not in accordance with the provisions of law and accordingly the assessment order passed is liable to be quashed.*

*The appellant craves leave to add, alter, modify or delete one or more ground before or at the time of hearing of appeal.”*

4. None appeared on behalf of the assessee despite of service of notice. Since we find that this matter could be disposed in the absence of representation from the assessee’s side, we proceeded to adjudicate the matter after hearing the ld. Sr. DR.

5. The ld. Sr. DR submitted that the AO has made additions with right observations and findings. He drew our attention to para 5.6 to 5.8 of the assessment order and submitted that the transactions of purchase of building materials/steels alleged to be sourced from the parties remained unverified and treated as ‘bogus and unexplained expenditure.’ The ld. Sr. DR submitted that

the purchases from all four parties were rightly treated as 'bogus.' The Id.CIT(A) is not correct and justified in granting relief to the assessee, therefore, the order of the Id.CIT(A) may kindly be set aside by restoring that of the AO.

6. We have carefully considered the arguments of the Id. Sr. DR and perused the material available on record. We find, the Id. CIT(A) has rightly considered the submissions of the assessee before him and deleted the additions on reasonable ground, and, therefore, the order of the Id.CIT(A) deserves to be affirmed. On careful perusal of the assessment order, we find the AO made the following observations and findings:-

*“5.6 The assessee vide order sheet entry dated 07.03.2013 was apprised as to the enquiries conducted in terms of issue of summon u/s. 131 and physical enquiry conducted by the Inspector which reveals that these parties are not genuine business entity but mainly entry providers indulging in issue of bills but not effecting true sales. Therefore, A.R. of the assessee was finally asked to produce the above parties along with books of accounts & ITR to prove the genuineness of the party and the transactions and failure to which the purchase transactions will be treated as bogus. The case was adjourned to 11.03.2013. However, none attended nor any party was produce to prove the genuineness of the transaction of purchase of material from the above mentioned parties. This shows that the assessee has nothing to produce and offered to substantiate the genuineness of the transaction of purchase of goods.*

*5.7 In view of the above facts, the identity & existence of the above mentioned parties and genuineness of transactions of purchases of raw material by the assessee remained un-verifiable, as:*

*a) The existence of the parties on the given business as well as residential addresses were not verifiable.*

- b) *The location of the premises from which business is purport to be carried is such from which operation of business alleged to be carried out is not possible.*
- c) *The level of transactions routed through the bank account of these parties are such voluminous and big, which person of status of these parties in no manner can match.*
- d) *Money routed through the bank accounts are at first stage transferred to other accounts and at second stage these are withdrawn mostly in cash, which is repatriated to the beneficiary i.e. the assessee company and its associates in cash.*
- e) *Moreover, failure on the part of the assessee to produce such parties inspite of the repeated opportunity given to them conclusively prove that no such party actual exist which can stand and own-up the transactions alleged to be routed through their bank accounts and issue of purchase bills.*

*5.8 Therefore, the transactions of purchase of building materials/steels alleged to be sourced from these parties are remained unverified and treaded as "Bogus & Unexplained Expenditure". Accordingly, the purchases claimed by the assessee from M/s. Shiv Sales Corporation total amounting to Rs. 58,40,153/-, M/s. Om Enterprises amounting to Rs.46,40,000/-, M/s. Paras Enterprises amounting to Rs. 53,67,480/- & M/s. Balaji Enterprises amounting to Rs.41,60,000/- are not genuine and to be treated as "Bogus". Therefore, the purchase expenses to the extent of Rs.2,00,07,633/- is added to the income of the assessee on account of "Bogus Purchases"”*

7. The Id.CIT(A) granted relief with the following observations:-

*“5.1 In the sixth ground of appeal, the appellant has objected to the treatment of purchases of Rs.2,00,07,633/- as bogus and its reduction from the closing work in progress. The submissions made by the appellant in this regard are as under:*

*“3. Ground No. 6 (disallowance on A/c of alleged bogus purchases Rs.20007633/-)*

*The disallowance of Rs.20007633/- made by the A.O. as alleged bogus purchases is totally erroneous. The A.O. has made the addition of purchases in respect of following parties:-*

S.No.	Name of the Party	Amount (in Rs.)
1	Shiv Sales Corporation	5840153
2	Om Enterprises	4640000
3	Paras Enterprises	5367480
4	Balaji Enterprises	4160000
	Total	20007633

*In respect of the above parties, during the course of assessment proceeding, the assessee vide letter dt.22.02.2013 submitted before the A.O. the necessary documentary evidences establishing the genuineness of the purchases. The documentary evidences furnished before the A.O. included copy of account of parties, purchase bills, freight bills, Dharam Kanta receipts etc. The A.O. in para5.4&5.5 of his order has admitted the fact that the aforesaid documentary evidences were furnished. The assessing officer has not pointed out any discrepancy in the aforesaid documentary evidences. In spite of this, the A.O. has made the disallowance of purchases to the extent of Rs.20007633/-. The action of Ld. A.O. is totally arbitrary. It appears as if the A.O. was predetermined to make the addition just for the sake of making some addition. The assessing officer has referred to search and seizure operation carried out in the case of Ultra Home Construction Pvt. Ltd. and the statement of Sh. Anil Kumar Sharma recorded at the time of search. In this regard at the out set it is submitted that neither any incriminating document belonging to the appellant company has been found during search nor any statement was recorded relating to the company . Out of the above parties, all the parties except Shiv Sales Corporation are the same in respect of whom disallowance was made in the case of Ultra Home Construction Pvt.Ltd. for the A.Y. 2011-12 and the*

*same has been deleted vide CIT(A) order dated 17.01.2014 in ITA No. 108/2013-14. The reason for making the disallowance in respect of Shiv Sales Corporation is also the same as in case of other parties. Therefore the issue in the present appeal stands covered in favour of the appellant. The disallowance made is also beyond the provisions of section 153C read with section 143(3) of the Income Tax Act, 1961.*

*5.2 I have considered the assessment order, submissions made and documents available on record. The matter was not required to be looked into at the stage of assessment for this AY 2010-11, as the disallowance of the expenditure claimed by the appellant does not have any implication on its income which has been accounted for as work in progress. In this circumstance, I deem it fit to direct the AO to make available all adverse material and to allow necessary opportunity to the appellant to explain / rebut the evidence. This may be undertaken during the assessment proceedings for AYs 2012-13 and subsequent years, when the said expenditure embedded in the work in progress will be considered for computing the income of the appellant as per the POC method, and take action according to the law. For the present, the action of the AO in excluding the said expenditure from the work in progress is cancelled.”*

8. From a careful consideration of the above orders of the authorities below, we observe that the ld.CIT(A) has rightly observed that the disallowance of expenditure claimed by the assessee does not have any implications on its income which has been accounted for as work-in-progress. By observing so, he deleted the addition made by the AO. However, at the same time, we further observe that the AO in para 5 of the assessment order had observed that the assessee has claimed expenditure on account of purchase from certain parties who are involved in merely issue of purchase bills and effecting payments through banking channels for commission and not actually supported with the

physical transfer of goods. Furthermore, from para 5.2 of first appellate order, we observe that the Id.CIT(A) concluded the issue in favour of the assessee by observing and directing the AO to make available all adverse material and to allow opportunity to the assessee to explain/rebut the evidence and this may be undertaken during AY 2012-13 and subsequent years when the said expenditures embedded in the work-in-progress will be considered for computing the income of the assessee as per POC method and also directed the AO to take action as per law. The CIT(A) passed impugned order on 11.07.2014, much water have flown till today including conclusion of assessment proceedings for the several assessment years to AY 2011-12, including AY 2012-13 and outcome of these orders has to be taken care by the authorities below in view of controversy arose during AY 2011-12. Therefore, we find it appropriate and necessary to restore the issue to the file of the CIT(A) to consider the adjudication of the issue in AY 2012-13 and relevant subsequent assessment years and, thereafter re-adjudicate the issue after allowing due opportunity of hearing to the assessee. The Cross Objection of the assessee being supportive of the order of the Id.CIT(A) is also restored to the file of the CIT(A).

9. In the result, the appeal filed by the Revenue as well as the CO filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.08.2022.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 25<sup>th</sup> August, 2022.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi