

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 9872/Del/2019
Asstt. Year: 2015-16

ACIT, Circle-25(2) New Delhi.	Vs.	Trehan Promoters and Builders Pvt. Ltd. E-26, Panchsheel Park, New Delhi – 110 001 PAN AAAC3577A
(Appellant)		(Respondent)

CO No. 9/Del/2020
Arising out of ITA 9872/Del/2019
Asstt. Year: 2015-16

Trehan Promoters and Builders Pvt. Ltd. E-26, Panchsheel Park, New Delhi – 110 001 PAN AAAC3577A	Vs.	ACIT, Circle-25(2) New Delhi.
(Appellant)		(Respondent)
Assessee by:	Shri R.S. Ahuja, CA	
Department by :	Shri Vivek Vardhan, JCIT	
Date of Hearing	11.10.2022	
Date of pronouncement	19 .10.2022	

ORDER

PER YOGESH KUMAR U.S., JM

The aforesaid appeal has been filed by the revenue for the assessment year 2015-16 against order dated 22.10.2019 and cross objection has been filed by the assessee for the assessment year 2015-16, passed by Ld. CIT(Appeals) -9 New Delhi.

2. We will first take the revenue's appeal for the assessment year 2015-16 wherein revenue has raised following grounds :-

1. *"On the facts and circumstances of the case, the Id. CIT(A) erred in deleting the addition of- Rs.4,40,57,000/- made on account of Suppression of closing stock.*

2. *"On the facts and circumstances of the case, the Id. CIT(A) erred in deleting the disallowance of Rs. 7,09,000/- made u/s 37 of the I.T Act, 1961."*

3. Brief facts of the case are that assessee was engaged in the business of purchase, construction, development and sale of commercial IT space at Gurgaon, Haryana. The assessee company filed its return declaring total income of Rs. 98,15,610/- for the assessment year 2015-16, the case was selected for scrutiny, accordingly statutory notices were issued. Further the assessment proceedings have been initiated and the representative of the assessee has participated in the assessment proceedings. An assessment order came to be passed on 28.12.2017 by making addition of Rs. 4,40,57,000/- being suppression of closing stock and a sum of Rs. 11,66,454/- has been disallowed under section 37 of the Act.

4. As against the assessment order dated 28.12.2017, the assessee has preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 22.10.2019, deleted the addition of Rs. 4,40,57,000/- on account of suppression of stock and also deleted the disallowance of Rs. 7,09,000/- out of the total addition of Rs. 11,66,454/- made by the A.O u/s 37 of the Act. As against the said deletions the revenue has preferred the appeal in ITA No. 9872/Del/2019 on the grounds mentioned above and the assessee has preferred the Cross Objection No. 9/Del/2020 by challenging the order of the CIT(A) in sustaining the partial addition is concerned.

5. Ld. DR submitted that the Ld. CIT(A) has committed an error in deleting the additions made on account of suppression of closing stock and also erred in deleting the disallowance made u/s 37 of the Act and relied on the assessment order.

6. Per contra the Ld. Counsel for the assessee submitted that the Ld. Assessing Officer had erroneously made addition of Rs. 4,40,57,000/- without appreciating the fact that 'non saleable area' which are in the nature of necessary requirements for real estate projects for smooth operation of the same, assigned valuation to the same, which has been rightly deleted by the Ld. CIT(A) after considering the facts in detail. The Ld. Counsel for the assessee has relied on the order of the Ld. CIT (A) in so far as deleting the said addition is concerned and prayed for dismissal of the appeal filed by the Revenue.

7. We have heard the parties perused the material on record and gave our thoughtful consideration.

8. The Ld. A.O. while making the addition on account of suppression of stock, observed that assessee had a closing stock of space of semi finished land as also a package of land tagged as 'non saleable area' for common facilities which quantified to 37.75 sq ft of area. Therefore the Ld. Assessing Officer is of the opinion that such non saleable area should have been assigned some valuation of its own and hence rejected the books of books of accounts under Se 145(3) of the Act and made addition of Rs. 4,40,57,000/-.

9. The Ld. CIT(A) has considered the issue as to whether or not there is to be a valuation assignable to the closing stock of non saleable area and if so whether the same has been assigned by the assessee or not?. The Ld. CIT(A) after considering the non salable area which comprising of pump room, generator room, chiller plant room etc. which are necessary requirements for a real estate projects since the same are essential to facilitate the smooth operations and accessibility of the saleable area deleting the addition.

10. In our considered opinion, the approach of the Ld. CIT(A) is neither erroneous nor contrary to any of the provision of law. The 'non saleable area' are necessary requirements for a real estate projects, without such facilities/compositions the smooth operation cannot be conducted. As per the certificate of architect, tax audit reports details of stock the computation of income and the assessment order in the previous year prior to the year under consideration that the assessee has duly demonstrated the consistency in its accounting practice and its acceptance by the Assessing Officer as well. The Ld. CIT(A) has considered all the above facts and came to a just decision in deleting the addition which requires no interference at our hands. **Accordingly, the Ground No. 1 of the Revenue is dismissed.**

11. In so far as deleting the disallowance of Rs. 7,09,000/- is concerned, the assessee had debited license renewal fee of Rs. 13,34,000/- in its expenses which was disallowed by the A.O by working out the rightful license of the said area at Rs. 6.25 lakhs in respect of Iris Project. On the other hand, the Ld. CIT(A) has deleted the addition by observing that the A.O had not taken into consideration that the 50% of the License fee received reimbursement from other party to whom it had sold the 50% land with 50% FSI way back in 2005. Further found that the assessee had merely claimed 6,67,000/- as its expense, while other half expense had been received as reimbursement from M/s Weldon Technologies Park Development. The Ld. CIT(A) has also arrived to the conclusion to delve the addition by going through the breakup of direct expenses containing group Misc. work(OE) with copy of the ledger account license renewal fee along with the bank statement showing the credit reimbursement received. In our opinion, the said finding of the fact with cogent evidence and the decision made thereupon by the CIT(A) requires no interference and we are of the view that the order of the CIT(A) in deleting the above disallowance of Rs. 7,09,000/- made u/s 37 of the Act by the A.O. requires no interference. Thus, we do not find merit in Ground No. 2 of the Revenue, **accordingly the ground No. 2 of the revenue is dismissed.**

12. In the result, the appeal in ITA No. 9872/Del/2019 filed by the revenue is dismissed.

Cross Objection No. 9/Del/2020

13. In the cross objection the assessee has raised following grounds:-

1. *“That learned AO and CIT(A) erred in treating the rent Rs. 3,62,200/- and maintenance charges of Rs. 95,254/- paid for Appellant’s Bangalore office to look after its business/operation/assets in Bangalore, as capital expenditure whereas these expenses are of revenue nature and allowable under section 37 of the IT Act as per well-established principles in this regard. Moreover the same has been consistently been accepted as revenue expenses in assessments made u/s 143(3) of the Act, for preceding years.-1,48,421/-”*

Additional ground

1. *That the Ld. A.O and CIT(A) erred in making additions on grounds which were beyond the scope of reasons given under limited scrutiny selection of cases under CASS. No permission was taken by the Pr. CIT/DIT concerned to convert this case to complete scrutiny.”*

14. The Ld. Counsel for the assessee submitted that the Ld. AO and Ld. CIT(A) had committed an error in treating the rent of Rs. 3,62,200/- and maintenance charges of Rs. 95,254/- paid for Assessee’s Bangalore office to look after its business/operation/assets in Bangalore as capital expenditure whereas those expenses are of revenue in nature and allowable under section 37 of the Act. Ld. Counsel for the assessee further submitted that the preceding years while making the assessment under section 143(3) of the Act, the said expenditure has been accepted as revenue in nature and same has been allowed under section 37 of the Act. Further, emphasizing on the additional grounds, the Ld. AR submitted that the assessment which was picked up as a limited scrutiny matter, but the assessment order has been

passed contrary to the notice issued by the Assessing Officer, therefore, the entire addition made by the A.O. and which was sustained by the CIT(A) requires to be set aside.

15. Per contra, the Ld. DR has relied on the order of the Ld. CIT(A) and submitted that the order of the Ld. CIT(A) requires no interference.

16. We have heard the parties perused the material on record and gave our thoughtful consideration.

17. It is found that in response to the letter of the assessee requesting for certified copy of the reasons of limited scrutiny for the Year 2015-16, the commissioner of income tax, along with a covering letter dated 15/01/2018, provided the 'reasons' so asked by the assessee which is reproduced by the assessee at paper book at Page 42 and 43. As per the said documents reasons of limited scrutiny are as under:-

*'Large other expenses claimed in the Profit & Loss a/c
Mismatch in amount paid to related persons u/s 40A92)(b)
reported in Audit Report and ITR
Sale of property reported in Form 260B
Purchase of property reported in Form 260B'*

18. The assessment of the assessee company was selected for limited scrutiny for the reasons mentioned above, the Ld. Assessing Officer moved further to verify closing stocks of the assessee company along with other expense heads debited in the revenue account and ultimately made addition/disallowances which are not part of the reasons mentioned in the limited scrutiny. The said action of the Ld. A.O is contrary to the procedure prescribed by the CBDT Instruction No. 20/2015 dated 29/12/2015 which reads as follows:-

“3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year – one is ‘Limited Scrutiny’ and other is Complete Scrutiny’. The assessee concerned have duly been intimated about their cases falling either in ‘Limited Scrutiny’ or ‘Complete Scrutiny’ through notices issued under section 143(2) of the Income-tax Act, 1961 (‘Act’). The procedure for handling ‘Limited Scrutiny’ cases shall be as under:

a. In ‘Limited Scrutiny ‘ cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under section 142(1) of the Act in ‘Limited Scrutiny’ cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the ‘Limited Scrutiny ‘ issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in ‘ Limited Scrutiny’ cases, if it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary limit shall be Rs. ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for ‘Complete Scrutiny ‘ with the approval of the Pr. CIT/CIT concerned. However, such an approval shall be accorded by the by the Pr. CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating ‘Complete Scrutiny’ in that particular case. Such cases shall be monitored by the Range Head concerned. The procedure indicated at points (a), (b) and (c) above shall no longer remain binding in such cases. (For the present purpose, ‘Metro charges’ would mean Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).”

19. It is well settled law that if a case is taken for limited scrutiny by the A.O., he cannot exceed the jurisdiction beyond the one which he has carved out himself in the notice issued for limited scrutiny. In the present case, the Ld. Assessing Officer has travelled beyond his jurisdiction and made addition on the issues which are not part of the reasons for limited scrutiny. Therefore, both the A.O. and Ld. CIT(A) has committed an error in making

the addition/disallowance and sustaining the same which requires to be set aside. Accordingly, the Additional Ground mentioned in the C.O. filed by the assessee is allowed, the addition sustained by the Ld. CIT(A) is hereby deleted. In view of allowing the additional ground the main ground of C.O No. 9/Del/2020 is dismissed for having become in-fructuous.

20. In the result, C.O No. 9/Del/2020 filed by the Assessee is allowed.

Order pronounced in the open Court on 19.10.2022

Sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 19 /10/2022

Veena/R.N, Sr. PS

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi