

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 4523/DEL/2019 [A.Y 2015-16]

M/s Globus Realcom Pvt Ltd
424-425, 4th Floor,
Suncity Success Tower
Golf Course Extension
Sector 65, Gurgaon

Vs.

The Dy. C.I.T
Circle -10(1)
New Delhi

PAN: AAECG 6708 L
(Applicant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Sr. Adv
Shri Madhur Aggarwal, Adv
Shri Shailesh Gupta, CA.

Department By : Ms. Shweta Yadav, Sr DR

Date of Hearing : 24.11.2022
Date of Pronouncement : 30.11.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
CIT(A)-22, New Delhi dated 26.02.2019 pertaining to Assessment Year
2015-16.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in sustaining a disallowance of Rs. 32,13,686/- made by the Assessing Officer while completing assessment u/s 143(3) of the Act.

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of real estate. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed large sales promotion expenses in its profit and loss account. Therefore, the assessee was asked to produce the details regarding large sales promotion expenses.

4. The assessee did not furnish complete details. Therefore, once again, the assessee was asked to produce entire details with regard to large sales promotion expenses. The assessee was also asked to give details party-wise that per party how many flats were booked and how much payment was made for booking flat with documentary evidences and to justify the claim of such large sales promotion expenses amounting to Rs. 1,03,94,138/-.

5. Specific details sought for related to the following parties:

S. N	Name of the Party	Status	Total Amount of transactions (in Rs.)	Nature of Expense
1.	M/s Wonder Media Inc.	Returned Undelivered	5,48,610/-	Advertising through Hoarding Flex, Leaflet Canopy, etc.
2.	M/s KP Ad Agency	Returned Undelivered	9,65,076/-	Advertising through Hoarding Flex, Leaflet Canopy, etc.
3.	M/s The Transaction Point	Returned Undelivered	6,80,000/-	Commission on Sale of Flat
4.	M/s Mathur Associates the Property Junctions	Returned Undelivered	10,20,000/-	Commission on Sale of Flat
1			32,13,686/-	

6. As is evident from the above chart, letter issued u/s 133(6) of the Act returned unserved. However, later on, confirmations were received from M/s The Transaction Point and M/s Mathur Associates. But the Assessing Officer found that M/s Mathur Associates has confirmed Rs. 12,68,688/- instead of Rs. 10,20,000/- and The Transaction Point confirmed Rs. 7,64,047/- instead of Rs. 6,80,000/-.

7. In respect of other payments, the Assessing Officer was of the view that the assessee could not prove the genuineness of the parties and, therefore, the same remained unverifiable and disallowed Rs. 32,13,686/-.

8. The assessee carried the matter before the ld. CIT(A) but without any success.

9. Before us, the ld. counsel for the assessee drew our attention to the ledger account received from M/s Mathur Associates and The Transaction Point and pointed out that in addition to the commission income, there is an element of Service Tax which has been added to the commission income and which is cause for difference in the amount confirmed by the parties and claimed by the assessee.

10. In respect of commission paid on flats booked, the ld. counsel for the assessee drew our attention to the chart at page 35 of the Paper Book and pointed out that commission paid has been explained in respect of each and every flat booked through the commission agents.

11. In so far as expenditure relating to advertisement is concerned, our attention was drawn to Exhibits at pages 64 and 65 of the Paper Book wherein details of parties to whom advertisement expenses have been paid has been mentioned alongwith the amount of TDS wherever applicable.

12. It is the say of the ld. counsel for the assessee that vide reply dated 08.12.2017, the assessee has very elaborately explained the transaction alongwith supporting details which have been completely ignored by the Assessing Officer while framing the assessment.

13. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

14. We have given thoughtful consideration to the orders of the authorities below and have carefully considered the documents referred to hereinabove. We find force in the contention of the ld. counsel for the assessee. Confirmation of accounts from M/s Mathur Associates and The Transaction Point clearly show that in addition to commission, there is an element of Service Tax mentioned in the account and the allegation of the Assessing Officer that the amount confirmed by the parties differ from the amount claimed by the assessee does not hold any water in as much as the difference is because of the Service Tax.

15. In so far as advertisement expenses are concerned, exhibits clearly explain the transaction wherein complete details have been furnished alongwith TDS details.

16. Once TDS element is reflected in Form No. 26AS, the Assessing Officer cannot allege that the parties are not genuine. Moreover, full details are available on record. Therefore, we do not find any reason in sustaining the disallowance. Findings of the ld. CIT(A) are set aside and the Assessing Officer is directed to delete the impugned disallowance.

17. In the result, the appeal of the assessee in ITA No. 4523/DEL/2019 is allowed.

The order is pronounced in the open court on 30.11.2022.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 30th November, 2022.

VL/

Copy forwarded to:

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	