

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 315/Kol/2022

Assessment Year: 2017-18

Deep Holdings Pvt. Ltd. 105/1A, Bidhan Nagar Road Kolkata - 700067 PAN : ABCD0183D	Vs	PCIT, (Central) Kolkata -2
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.M. Surana, Advocate
Revenue by :	Shri Biswanath Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 24/11/2022

घोषणा की तारीख/Date of Pronouncement : 09/01/2023

**आदेश/ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal is directed at the instance of the assessee against the order of the Learned Principal Commissioner of Income Tax, Kolkata- 2, Kolkata (hereinafter the “ld. Pr. CIT”) dated 29/03/2022, passed u/s 263 of the Income Tax Act, 1961 (“the Act’), for Assessment Year 2017-18, whereby the ld. Pr. CIT has set aside the assessment order passed by the Assessing Officer and directed the Assessing Officer to pass a fresh assessment order.

2. The ld. Pr. CIT held that the assessment order passed by the Assessing Officer was erroneous and prejudicial to the interest of the revenue as he had a difference of opinion with the Assessing Officer regarding the calculation of profit on sale of flats by the assessee, on estimate basis.

3. Brief facts of the case are that a survey action was carried out at the premises of the assessee and certain incriminating documents were found during the survey action from which certain undisclosed cash receipts were detected. Thereafter, the Assessing Officer showcaused the assessee as to why the undisclosed cash receipts as found during the survey action be not

treated as undisclosed income of the assessee. The assessee filed reply and explanation to the queries raised by the Assessing Officer, whereupon, the Assessing Officer after examination and verification of the documents observed that in the impounded documents and the report of survey, there were some figures which have been considered at multiple times and that the report of the survey party was full of mathematical errors. The Assessing Officer noted that there was only one project in question i.e., M.G. Tower and all the buyers of the flats, who were named in the documents were same and which was duly confirmed with in the appraisal report. That, there was mention by the DDIT, himself, that there might be repetitive counting of same numbers. The Assessing Officer noted that there were too many repetition of the same amount. After analyzing the documents and considering the submissions of the assessee and analysis of the hard disk, the Assessing Officer noted that though, the assessee had disclosed certain unaccounted income in the income disclosure scheme (IDS), however, the entire income was not disclosed and there was still certain unaccounted income of the assessee. Therefore, the Assessing Officer proceeded to estimate the income of the assessee for the year under consideration.

3.1. The Assessing Officer took into consideration the impounded documents and the hard disk for the two financial years i.e., Financial Year 2015-16 & 2016-17 and further added 30% on account of unaccounted cash sale to the sales figure as found in the hard disk and thereafter determined the total receipts of the two years. The Assessing Officer then took the difference of the sales declared and the sales estimated by the Assessing Officer and added the declared sales consideration of the year under consideration, whereupon, the Assessing Officer estimated the profits @ 5%. The Assessing Officer thereafter gave the benefit of income declared under

the IDS and the income returned by the assessee and further made an addition of Rs.33,18,335/- into the income of the assessee for the year under consideration. The relevant part of the order/calculation made by the Assessing Officer is reproduced as under:-

*“Thus the assessment is being proceeded with 144 section read with section 145(3) after rejecting the books of accounts of assessee.*

<i>Particulars</i>	<i>From impounded documents (cash receipt)</i>	<i>As per assessee disclosure in ITR</i>	<i>Difference</i>
<i>Sale consideration in TNG 20(Cash)</i>	<i>5,88,66,000</i>	<i>-----</i>	<i>5,88,66,000</i>
<i>Sale consideration as in hard disc (customer due as on 21.06.2016)</i>	<i>18,58,13,169(70%) Hence the 30% of cash sale consideration makes the total sale 26,54,28,571</i>	<i>Total sale of 2017-18 is 8,51,10,429 Total sale in AY 2016-17 is 74002802 totalling 15,91,13,231</i>	<i>106315340</i>
<i>Higher of the above two</i>	<i>-----</i>	<i>-----</i>	<i>10,63,15,340</i>

*So thus the total sale consideration for the year is considered at 85110429 +106315340 which is equal to Rs.19,14,25,769 including all the receipts in cash of the previous assessment years and also as already the sale consideration of AY 2016-17 is already disclosed in ITR.*

*The assessee had disclosed 4 per cent net profit during the year AY 2016-17 and the same is reduced to 1.3% during the year AY 2017-18 which is one of the other indicator as assessee had not disclosed the full income and which supports the rejection of books of accounts.*

*Even in year the assessee had disclosed 4% Net profit, the assessee has disclosed in IDS, which means the 4% is also less in comparison and thus 5% net profit is considered for calculation of right amount of income of the assessee during year AY 2017-18*

5% OF TOTAL Sale consideration (including cash receipts) 19,14,25,769 is Rs.95,71,288/-

The assessee has already disclosed

AY 2017-18	11,06,953
IDS	51,46,000
TOTAL	62,52,953

Thus the difference amount Rs. 33,18,335/- is added back to income of the assessee for the year AY 2017-18."

4. The Id. Pr. CIT, however, in exercise of his revisionary jurisdiction u/s 263 of the Act, made his own calculations of estimation of income and held that the income estimated by the Assessing Officer was less. He further noted that the Assessing Officer by estimating the income @ 5% of the receipts has given benefit of expenditure to the assessee @ 95% whereas, as per the provisions of Section 69C of the Act, the Assessing Officer was supposed to add the entire receipts/expenditure.

5. We have heard rival contentions and gone through the record. We find that the Id. Pr. CIT in this case has tried to find fault with the estimation made by the Assessing Officer and thereby holding the order of the Assessing Officer as erroneous, whereas, in our view, the Assessing Officer after fully considering the documents on the file and thereby even estimating additional cash receipts @ 30% and also considering the facts and circumstances of the case has estimated the income of the assessee @ 5% of the gross receipts as compared to 1.3% declared by the assessee for the Assessment Year under consideration. The Id. Pr. CIT has applied his own formula whereby he has calculated the estimated income as under:-

"Now let us compute the undisclosed receipt of FY 2016-17.

Total unaccounted receipt estimated by the AO	Rs.10,63,15,340/-
Less: Unaccounted receipt pertaining to IDS as per submission of the assessee	Rs.5,37,20,000/-

Unaccounted receipt of FY 2016-17	Rs.5,25,95,340/-
Profit @ 5%	Rs.26,29,767/-

*From above it is evident that the AO's non application of mind and incorrect interpretation has resulted in estimation of income of Rs.1,69,767/- in place of Rs.26,29,767/- on the unaccounted receipt of Rs.5,25,95,340/- which gives rate of 0.32% in place of actual rate of estimation of 5%. The AO after rejecting books of account decided to estimate profit @ 5% but actual profit estimated and assessed is Rs.44,25,288/- on a total sale of Rs.13,77,05,769/- (Rs.8,51,10,429/- plus Rs.5,25,95,340/-) which comes to 3.21% only. Hence on this count too the order of the AO is erroneous and prejudicial to the interest of revenue."*

6. The above calculation of the Id. Pr. CIT when compared to that of the Assessing Officer would show that the Id. Pr. CIT, had taken the unaccounted receipts as estimated by the Assessing Officer at Rs.10,63,15,340/- which included the receipts of financial year 2015-16, whereupon, the assessee has shown income of Rs.51,46,000/- under IDS. The Id. Pr. CIT firstly has taken the unaccounted receipts as estimated by the Assessing Officer and further deducted the unaccounted receipts pertaining to IDS and thereafter determined the profit @ 5% to hold that the Assessing Officer has calculated less profit, whereas the Assessing Officer once determined the total unaccounted receipts at Rs.10,63,15,340/-, and thereafter added the receipts shown by the assessee for the Assessment Year under consideration at Rs.8,51,10,429/-, totalling to Rs.19,14,25,769/- and determined the net profit @ 5% at Rs. 95,71,288/-. Thereafter, he gave the set off of the income already declared by the assessee in the return of income as well as under the IDS. Once, the total receipts were estimated, the Assessing Officer rightly calculated the net profit @ 5% and subjected the same to tax after giving set off of the income declared in the return of income as well as the IDS and taxes paid thereon. In our view, it cannot be said that any error has occurred in the order of the Assessing Officer in this respect.

6.1. So far as, the second aspect that the Id. Pr. CIT noted that as per the provisions of Section 69C of the Act, the entire expenditure should be added, in our view, the said view of the Id. Pr. CIT is also not correct. It is not a case, where any unaccounted expenditure has been found, rather it is a case of estimation of income by applying net profit rate.

7. In view the above discussion, we find that the Id. Pr. CIT has wrongly exercised his revisionary jurisdiction u/s 263 of the Act and the impugned order is not sustainable in the eyes of law, hence the same is quashed.

8. In the result appeal of the assessee stands allowed.

**Order pronounced in the Court on 9<sup>th</sup> January, 2023 at Kolkata.**

*Sd/-*

**(Girish Agrawal)  
Accountant Member**

Kolkata, Dated 09/01/2023

*\*SC S.P.\**

*Sd/-*

**(Sanjay Garg)  
Judicial Member**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
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**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata